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S.B. 98
135th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Rulli

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SUMMARY

Fraudulent filings

- Prohibits filings under the Commercial Transactions Law or the Corporations and Partnerships Law that include the name or address of another person without their consent or that are submitted by a person that lacks authority to make the filing (i.e., "fraudulent filings").
- Authorizes any person who believes they have been impacted by a fraudulent finding to file a complaint with the Secretary of State (SOS).
- Requires the SOS to review each complaint and allows the SOS to forward any likely violations to a county prosecutor for criminal investigation.
- Requires the SOS, upon determining that a complaint indicates a likely violation and meets the bill's content-related requirements, to send a notice and demand to the person that allegedly made the fraudulent filing.
- Requires a person that receives such a notice and demand to respond to the allegations within 21 days.
- Requires the SOS to cancel or invalidate filings that are determined to be fraudulent or unauthorized.
- Allows aggrieved parties to appeal the SOS's determinations or actions under the Administrative Procedure Act.

Statutory agents

- Requires a statutory agent appointment to include the address of the agent's primary residence or usual place of business in this state.
- Specifies that a post office box does not qualify as a valid address for a statutory agent.

Limitation on reinstating certain business entities

- Limits the period in which corporations, associations, and limited liability companies can be reinstated to two years from the date on which the entity was abolished.

Solicitations related to public records

- Requires any person who is not a government entity that solicits a fee for filing a document with, or retrieving a copy of a certificate or public record from, that person to include certain disclosures with the solicitation.

DETAILED ANALYSIS

Overview

The bill amends the law related to fraudulent business filings, including prohibiting certain actions and coordinating how the Secretary of State (SOS) must address such filings. The bill also modifies the law governing appointment of statutory agents by corporations and other legal entities and establishes regulations for commercial solicitations related to filing or retrieving public records.

Fraudulent filings

Prohibitions

The bill prohibits all of the following:

- Including the name of another person on a document filed with the SOS under the Commercial Transactions Law or the Corporations and Partnerships Law without that person's consent, if the named person is included in the filing as:
 - A statutory agent;
 - The individual causing the document to be delivered for filing;
 - The person incorporating, forming, registering, or organizing an entity or name registration;
 - Any other person required to be identified in the document.
- Including an address in a document filed with the SOS under the Commercial Transactions Law or the Corporations and Partnerships Law without the consent of either the owner or occupant of that address;
- Delivering a document to the SOS required by the Commercial Transactions Law or the Corporations and Partnerships Law concerning another person, without the necessary consent or authority to do so.¹

¹ R.C. 111.243(A).

Complaint requirements

The bill allows a person named in, or affected by a potential fraudulent filing to submit a complaint to the SOS. The complaint must be on a form prescribed by the SOS, and must include at least the following information:

- A description of the alleged violation;
- The name and contact information of the person making the complaint;
- The name and contact information of any third party authorized to submit the complaint on behalf of the person that is named in, or affected by, the fraudulent filing;
- The document identification number assigned by the SOS to each alleged fraudulent filing;
- If known, an identification number assigned by the SOS for each person associated with the complaint and the filing;
- Information, if known, identifying each person involved in the filing, including names, street addresses, telephone numbers, websites, and electronic mail addresses;
- Information, if known, identifying the nature of any business or personal relationship between the person making the complaint and each person involved in the filing;
- A statement by the person making the complaint, under penalty of perjury, that the person believes in good faith that the facts stated in the complaint are true;
- Any additional information that the person making the complaint believes may assist the investigation.²

Review and evaluation

The SOS is required to review all complaints received under the bill and evaluate whether the complaint indicates a fraudulent filing and satisfies the content-related requirements described above. If so, the SOS is required to commence an investigation and may also refer the complaint to the prosecuting attorney of the county in which the person alleged to have made the fraudulent filing resides, or is believed to reside based on the best available information, for any potential criminal investigation.

If the SOS determines that the information provided in a fraudulent filing complaint does not indicate a fraudulently filed document or does not satisfy the relevant complaint requirements, the SOS is required to notify the person that submitted the complaint and provide an explanation of any deficiencies.

The SOS may also ask a person who submits a complaint to submit additional information concerning the alleged violation or the person's failure to submit the required

² R.C. 111.243(B).

complaint information. Regardless of the outcome, the SOS must notify the person who submitted a complaint of the outcome of the SOS's review of the complaint. If the SOS rejects a complaint for failure meet the relevant complaint requirements, the complaint may be resubmitted.³

Commencement of investigation

After determining that a complaint indicates a fraudulent filing and meets the bill's content-related requirements, the SOS is required to send a notice and demand to the person that is the subject of the complaint. The SOS must send the notice and demand by mail, electronic mail, and telephone, if the person's address, electronic mail address, or telephone number (as applicable) is known by, or readily available to, the SOS. The SOS may also provide written or verbal notice and demand to any other person that the SOS determines, through investigation, is a means by which to reach the person who is the subject of the complaint.⁴

Content of notice and demand, and the response

The SOS's notice and demand must describe the allegations in the complaint and demand that the person respond within 21 days after the notice and demand was mailed. The response is required to include all of the following information:

- The name and contact information of the person responding to the notice and demand;
- If the responding person is an agent of the person that is the subject of the complaint, any supporting documents that establish the agent's authority to act on the person's behalf;
- The name of the entity at issue in the complaint;
- Information, if known, identifying each person involved in the alleged violation, including names, street addresses, telephone numbers, websites, and electronic mail addresses;
- Information identifying the nature of any business or personal relationship between the person that submitted the complaint and each person involved in the alleged violation, excepting any privileged communications or information;
- A statement that affirms or denies having knowledge of or information about the alleged violation;
- Any material evidence that is reasonably attainable to the person responding to the notice and demand of written consent to use the name or address in the filing at issue in the complaint.⁵

³ R.C. 111.243(C) through (F) and (L).

⁴ R.C. 111.243(G)(1) and (2).

⁵ R.C. 111.243(G)(3) and (H).

Concession by lack of response

If, within 21 days after mailing a notice and demand, the SOS does not receive a response, the person that is the subject of the complaint is deemed to have conceded to the allegations.⁶

Resolving fraudulent filings

Upon a prima facie showing that an entity was created without authorization or for fraudulent purposes, the SOS must do all of the following:

- Cancel the business record in question with a notice that the entity is unauthorized or fraudulent;
- Redact each address and name that was used without authorization from the entity's filing and from any other relevant filings;
- Disable additional filing functionality on the entity's records.

Upon a prima facie showing of an unauthorized filing made for a legitimate entity, the SOS must do both of the following:

- Cancel each unauthorized filing for the entity with a notice that the filing is unauthorized;
- Redact each address and name that was used without authorization from the entity's filing and from the relevant filings.⁷

The bill specifies that either of the following constitute a prima facie showing of a violation:

- A concession to the allegations either directly, or constructively by failing to timely respond to the notice and demand;
- A determination by the SOS that the violation occurred, based on the merits of the complaint and any responses to the notice and demand.⁸

The SOS's determination on, and resolution of, a complaint are subject to appeal under the Administrative Procedure Act.⁹

⁶ R.C. 111.243(I).

⁷ R.C. 111.243(J).

⁸ R.C. 111.243(K).

⁹ R.C. 111.243(M).

Notice of outcome

The bill requires the SOS to communicate the outcome of the complaint to the person who submitted it and each person at issue in the complaint. Such notice may be effectuated through electronic mail or, if no electronic mail address is provided, by mail.¹⁰

Statutory agents

The bill makes changes to the law related to statutory agents. Statutory agents are the persons designated by a corporation or other legal entity to receive processes, notices, or demands required or permitted by law. Many legal entities are required to designate a statutory agent.

Current law requires an appointment of a statutory agent to set forth the name and Ohio address of the agent. The bill expands this requirement by also requiring the appointment to include the address of the agent's primary residence in Ohio or, if the agent is not a natural person, the agent's usual place of business in Ohio. The bill defines "usual place of business" as a place in Ohio that is customarily open during normal business hours and where an individual is generally present who is authorized to perform the services of a registered agent, including accepting service of process and other notifications for the person serving as a statutory agent. The bill specifies that a post office box does not qualify as a "usual place of business," regardless of whether that post office box has an associated street address. The bill makes this change for statutory agent requirements for for-profit and nonprofit corporations, associations, limited liability companies, business trusts, real estate investment trusts, partnerships, and limited liability partnerships.¹¹

Limitation on reinstating certain business entities

Current law allows corporations, associations, and limited liability companies that have been abolished to be reinstated if the entity files an application with the SOS and pays a filing fee or reinstatement fee, depending upon the reason the entity was abolished. The bill limits the period in which such an entity can be reinstated to two years from the date on which the entity was abolished.¹²

Solicitations related to public records

The bill establishes new regulations for commercial solicitations related to filing or retrieving public records. For the purposes of these changes, the bill defines "solicit" or "solicitations" as meaning the act of directly advertising to a person. However, these terms do not include either of the following:

- Communication initiated by a consumer;

¹⁰ R.C. 111.243(L).

¹¹ R.C. 1701.07, 1702.06, 1703.041, 1706.09, 1746.04, 1747.03, 1776.07, and 1782.04.

¹² R.C. 1701.07, 1702.06, 1702.59, 1703.15, 1703.29, 1706.09, 1729.11, and 1785.06.

- Advertising or marketing to a person with whom the solicitor has a current or former commercial relationship.

Under the bill, any person, other than the federal government, the state, a state agency, or a local government, that solicits a fee for filing a document, or retrieving a copy or certified copy of a certificate or public record, must do all of the following:

- Include a statement in the solicitation, in the same language as the solicitation, that is identical or substantially similar to the following: “This is an advertisement. This offer is not being made by, or on behalf of, any government agency. You are not required to make any payment or take any other action in response to this offer.”
- Ensure, if the solicitation is in writing, that the statement is in at least 24-point type and located at the top of the physical document or the beginning of the electronic communication.
- Include, in the case of mailed solicitation, the words “THIS IS NOT A GOVERNMENT DOCUMENT” in 24-point type and all capital letters on the envelope, outside cover, or wrapper in which the solicitation is mailed;
- Include information on where the person can file a document directly with the SOS or retrieve a copy or certified copy of a certificate or public record;
- Include the name of the person making the solicitation and the person’s physical address, which cannot be a post office box.

The bill prohibits public records solicitations in a form, or that use deadline dates or other language, that makes them appear to be issued by the federal government, the state, a state agency, or a local government, or that appears to impose a legal duty on the person being solicited.

A violation of the bill’s solicitation requirements constitutes a deceptive act or practice in connection with a consumer transaction in violation of the Consumer Sales Practice Act (“CSPA”) and is subject to any applicable penalties. The CSPA authorizes both the AG and consumers to sue alleged violators. Suits brought by the AG could result in civil penalties of up to \$25,000 and suits brought by consumers could result in treble damages plus up to \$5,000 in noneconomic damages.¹³

¹³ R.C. 111.242; R.C. 1345.07(D) and 1345.09, not in the bill.

HISTORY

Action	Date
Introduced	03-28-23
Reported, S. Judiciary	12-13-23
Passed Senate (32-0)	12-13-23
