

**For Discussion in Colorado Secretary of State Fraudulent Business Filings Working Group
January 30, 2023**

Drafted by Working Group Member Greg Wertsch

During the working group meeting on January 11, 2023, the group was informed that there are several statutory provisions passed in 2012 forward that have yet to be implemented by CDOS.

These provisions touch on several proposals that have been introduced by the working group and make the implementation of more secure business filings nearly cost neutral.

SB 12-123's Provisions that have not yet been implemented by CDOS.

SB 12-123 Provisions Awaiting Implementation	Summary of Statute
CRS 24-21-111.5	<p>Requires the creation of a user account that</p> <ul style="list-style-type: none"> • associates multiple business records in one account. • allows the filing of multiple documents at one time. • allows for payment of multiple filings at one time. • (CDOS discretionary) gives the ability to store payment information, view the user's balance, view the user's transaction history, and add money to the user's account. <p>Requires ability for RAs to quickly identify the entities and charitable organizations for which an RA is listed and determine which reports are due.</p> <p>Requires the ability for users to have more search functionality, provide more specific search results, and allow greater usability.</p>
CRS 7-90-102(3.8)	Defines Commercial Registered Agent (CRA) as a Registered Agent who has filed the appropriate documentation with CDOS to become listed as a CRA pursuant to 7-90-707.
CRS 7-90-102(55)	Defines Registered Agent (RA) as a RA required to be maintained by an entity pursuant to part 7 of this article or appointed pursuant to article 70 of this title.
CRS 7-90-305(2)(a)	Adds CRAs to Statements of Correction
CRS 7-90-305.5(2)(a)	Requirements for statement of correction delivered on CRA's behalf.
CRS 7-90-703(1)	When a CRA files a statement of correction for themselves, they must notify every entity and trademark holder they represent and provide a statement to CDOS.
CRS 7-90-707	To become a CRA, a CRA must deliver a listing statement which includes RA name, RA address, and the RA email address that will be used to receive notifications. The CRA must also provide a list of entities represented by the CRA at the time the statement is filed.
CRS 7-90-708	When a CRA terminates, they must submit a CRA Termination Statement to CDOS which includes the name of the RA, a statement that they are ceasing to be a CRA, and a statement indicating that notice of the termination has been delivered to each entity and trademark registrant.

CRS 7-90-709	When a CRA changes address, they must submit a statement of change that includes a statement to CDOS that they have delivered notice to each entity and trademark registrant represented by the CRA.
CRS 7-90-710	CDOS must make available a list of filings made during the previous month that contain the name of any CRA. A fee can be charged for this.
CRS 7-90-501(4)(c)(II)	Not relevant to Working Group Discussion.

CRS 24-21-111.5 HELPS BUSINESSES WHILE ALSO HINDERING BAD ACTORS

CRS 24-21-111.5 requires CDOS to create a robust user account system which I am calling a **Filer-User Account (F-UA)** for the purpose of this memo. This F-UA will have functions such as the ability to associate multiple businesses into one F-UA, file and pay for multiple documents filing at a time, and even the ability to store payment information, transaction history, add funds to the account, and view the balance.

This statute also requires CDOS to provide the ability for Registered Agents (RAs) to quickly identify the entities and charitable organizations for which they represent within a function that will make it easy for them to determine when reports are due for the various entities.

Finally, this statute also requires CDOS to provide users more search functionality, provide more specific search results, and allow greater usability.

This statute requires CDOS to make major technological enhancements to the business registration database and website.

Due to the increased functionality, security, and other benefits of F-UA's I believe most filers will voluntarily register for F-UAs to do their filings.

This statute automatically includes opt-in Secure Business Filing (SBF) since CDOS should only allow F-UA account holders to making filings that are incorporated within their F-UA accounts, which by design already require usernames and passwords to be used.

This should nearly eliminate hijackings of newly businesses and will also incrementally stop hijackings of pre-established businesses as more and more users create F-UAs and link the entities they file documents on behalf of to them.

The other helpful thing that this statute does is it sets the foundation for CDOS to implement the Commercial Registered Agent-User Account (CRA-UA) proposal that I presented last week. Creating a second type of user account into a system that already has user account coding is much simpler than adding a whole new system from scratch.

Furthermore, since the statute requires CDOS to provide the ability of RAs to quickly identify the entities and charitable organizations for which they are RAs, and to determine when reports are due, the CRA-UA would be the perfect place to implement this statutory requirement.

Another benefit of implementing the CRA-UA along with the F-UA is that it would also greatly simplify the requirements that several additional yet to be enacted statutes place on both CDOS and CRAs.

Implementing the following CRS would also help business and hinder bad actors

CRS 7-90-102(3.8) / CRS 7-90-707 requires CRAs to register with CDOS and in doing so they must deliver a listing statement to CDOS with several pieces of information such as RA name, RA address, RA email address, and a list of all entities that they represent.

CRS 7-90-703(1) requires CRAs that file statements of correction for their own CRA business to file a statement with CDOS that they have notified all the entities and trademark holders that they represent of the correction.

CRS 7-90-708 requires CRAs who are terminating their CRA business to submit a Termination Statement to CDOS which includes a statement that they have notified all the entities and trademark holders that they represent of the termination of the CRA business.

CRS 7-90-709 requires CRAs who file a statement of change to submit a statement to CDOS that they have notified all the entities and trademark holders that they represent of the change made.

CRS 7-90-710 requires CDOS to make available a list of all filings made during the previous month that contain the name of a commercial registered agent.

TECHNOLOGICAL IMPROVEMENTS ARE KEY TO IMPLEMENTING THE LAW AND PROTECTING COLORADANS

These statutes will require CDOS and CRAs to spend a lot of time, energy, and money to implement these processes and hire many FTEs to manage them.

Further, it will mean potentially thousands of entities represented by CRAs will be getting notifications concerning changes that have been made to the CRA which will then legally necessitate them to make additional changes on their own business filings. This will result in confusion and likely many additional calls to CDOS to understand how to update their filings.

Additionally, these statutes will be hard to implement without a variety of errors since there is no automated system to handle them. For example, since filings are made by filers, who are often separate from the CRAs, it is likely some will make typos and other errors when inputting the name and address of the CRA they are using. If that occurs, it would be very challenging for CDOS to comply with CRS 7-90-710 which requires that they provide a list of all filings during the previous month by a specific CRA.

With the present technology in place, implementing the legal statutory requirements will be difficult if not impossible.

Solution? Implement a Registered Agent – User Account (RA-UA) concurrently with the F-UA.

The good news is that the creation of a RA-UA could instantly alleviate 99% of the work and cost associated with implementing SB 12-123 for CDOS and it would make it easy for CRAs and even filers to build businesses in Colorado. The RA-UA could be used by both Registered Agents as well as Commercial Registered Agents.

For example, if CDOS required RAs to create RA-UAs and link the entities for which they are working on behalf of, it would be quick and cost efficient for them to update their CRA entity information in the

system (correction, change, termination, etc) and to make the required notifications to all their entities, through the CDOS system.

The system could automatically alert the effected entities to update their filings to reflect the changes that the CRA made within the RA-UA. The system could even create the new filing and simply require the filer to press a few buttons to make the change and pay the fees for their entities.

This would save the CRA from needing to notify possibly thousands of entities, it would save CDOS from having to manually receive and file various new documents, it will alleviate a lot of unnecessary calls from confused CRAs and filers, and it will almost certainly guarantee the filings from everyone are up-to-date near instantaneously.

The RA-UA would also be able to handle the statutory requirement that CRAs are able to quickly identify entities and charitable organizations they represent and to notify them when various reports are due.

Implementing the RA-UA along with the F-UA would drastically cut down the time and expense these statutes would require of CRAs, CDOS, and filers alike.

The following is one concept of how a RA-UA could function:

1. Require that all RAs create a Registered Agent - User Account (RA-UA) within the CDOS business registration system.
2. They will be asked if they are an RA for more than 5 businesses, and if the answer is yes, they will be advised on the statutes that apply to CRAs. They will then be required to form a CRA entity, per the law, or link to their existing CRA entity to the RA-UA account.
3. During RA-UA creation, CDOS will verify the Colorado physical address (via mailed PIN) of the RA (or CRA if that is elected) and authenticate the identity of the responsible party (via Colorado ID check) prior to allowing the CRA to complete the user registration process.
 - a. Should the RA or CRA update its physical location or responsible party, CDOS will verify the new physical address and/or authenticate the new responsible party.
 - b. CDOS will automatically reverify the Colorado physical address and reauthenticate the responsible person (via Colorado ID check) during the filing of the periodic annual report.
 - c. Should address verification or responsible party authentication fail after X attempts, the entities that the RA is a registered agent for will be notified that they must select a new RA within X time period, otherwise their businesses will be placed in pending status and the RA will not be allowed to be listed as a RA on any new filings.
4. Whenever the RA-UA updates their entity (statement of change, statement of correction, terminates), all the entities that utilize that RA or CRA will be automatically notified by CDOS and given the opportunity to file a statement of change and, with just a few keystrokes, they will

be able to update their filings and pay their fee.

5. If more than 5 entities requested linkages to an RA and the RA approves, the system will advise them that they are now considered a Commercial Registered Agent (CRA) and advised on the statutory requirements placed on CRAs (such as up to date filings and document retention requirements). They will then be required to form a CRA entity and link it to their RA-UA or link their pre-existing CRA entity to the RA-UA account.

Commercial Registered Agent Information and Document Retention Requirements

1. CRAs must keep their own entity filings up to date with CDOS, if they are found not to comply, they will be fined XX amount for every entity that they represent. For example, if the CRA moves its physical location or let's go of the responsible party listed in the CRA-UA, and they do not make those changes within the CRA-UA, they will be in violation and be fined "X amount" for every company that is utilizing their CRA services.
2. CRAs must maintain up-to-date records that provide the verifiable identity, address, and contact information for at least one officer or director of the entity/entities that they represent. This information and related documents are subject to audit and verification by appropriate law enforcement personnel. If they are found to not to comply with these record keeping requirements, they will be fined "X amount" for every entity that they represent and may be suspended from operating in the State of Colorado.

The following is one concept of how a F-UA could function:

Provide filers the option to create a Filer-User Account (F-UA)

1. The filer will initiate the creation of their F-UA.
2. The filer will then adopt entities that have already been filed so they can be placed together within their F-UA. This will have several time saving benefits for them as it will make it easier to manage their filings and secure their entities within their password protected F-UA.
3. The filer will also be able to create a new entity. If they do this, the process will be very similar to the current process, except for the Registered Agent field as shown below:
 1. Here they will either be able to select a CRA that they have a pre-established relationship with, or they may select to be their own registered agent.
 2. Once they select their CRA or RA from the list, they can then complete their filing.
 3. An automatic message will then be sent to the selected CRA/RA and the CRA/RA can then either choose to accept or deny their relationship with the newly created entity.
 4. If the RA accepts the entity, the entity formation will be complete.

5. If the CRA/RA denies their relationship with the entity, the filer will have the opportunity to file a statement of correction (for a fee) and select another RA. This then starts the linking process over again.
6. If they select to be their own RA, they must first create a RA-UA and link that account with their F-UA.

Benefits of Creating F-UA and RA-UA Accounts Concurrently

1. CDOS would be able to fully implement SB 12-123 without worry about non-compliance with the law as the system would handle the legal requirements automatically.
2. CDOS would only need to verify and authenticate RAs and could charge a nominal fee for this service.
3. CDOS would only need to be concerned with manual password resets for CRA and RA accounts instead of for all business accounts.
4. Filers can still file as effortlessly as they do now with little to no delay and in many cases, it will be even faster and easier to register businesses.
5. Filers will maintain as much privacy as they have today.
6. Bad actors attempting to create illicit shells would be stymied by the new CRA/RA user account process.
7. Civil litigators and law enforcement will have a verified Colorado address to serve, and they will have an authenticated Colorado person to speak with and to obtain KYC from regarding suspect businesses.
8. CRAs will appreciate the cost and time savings that the RA-UA provides them. It could literally save them hundreds of hours and thousands of dollars a year.
9. Business owners will appreciate the new functionality of the CDOS system which will save them time and money.
10. F-UA and RA-UA accounts may become revenue drivers for CDOS. It can prompt business owners and registered agents to make timely filings and make it easier than ever for various parties to pay their fees.

Proposal for Consideration

- Require CDOS to implement SB 12-123 in concurrence with the creation of Registered Agent – User Accounts by X Date.

Note: *This will allow CDOS to implement SB 12-123 with the tools needed to do so efficiently and effectively while also allowing for an increase in budget, should it be required, to accomplish the necessary improvements.*