

**12 Proposals for the Colorado Fraudulent Business Filings Working Group (v3)**  
**Submission by Greg Wertsch**

**December 1, 2022**

**Principle Location Verification on Business Filings**

1	Physically verify principal office location by mailing a unique code to the principal office address which must then be electronically entered into the CDOS system prior to allowing the business to full register.
1a	OR: Physically verify principal office location by mailing a unique code to the principal office address which must then be electronically entered into the CDOS system at any time after full registration. Until such time as the address is verified, the filings and certificates of good standing will be annotated with wording such as: "physical address not verified."

***Why this is important:***

Unlike businesses, bad actors don't want to be found. They do everything they can to be as anonymous and hidden as possible because they don't have customers, instead they create victims. Investigating businesses that use fake addresses makes taxpayer funded investigations much more time intensive and expensive. This results in many more victims being victimized. If we can do anything to help verify addresses, we should do so. Addresses verification is a standard practice that businesses have come to appreciate because it helps them, and their customers be safer. Bad actors hate address verification systems.

***Why option 1a?***

One of the concerns that I have heard over the course of the working group is that we should do whatever we can to reduce government friction on businesses. **Option 1a** allows businesses to form instantaneously, just as they do today. However, it also alerts those that ask for Certificates of Good Standing and those that review the CDOS database that the business has chosen not yet verified their physical address. This should have no effect on situations like one of our group members told us about (the need for new entity at night while in NYC), but it will help potential victims realize that more due diligence may need to be done prior to trusting and sending money to businesses that are not address verified.

### Registered Agents Authentication

2	Require Registered Agents to authenticate their identity within the CDOS business filing system by using their Colorado State Driver's License or Colorado State ID.
2a	And / Or: Utilize a third-party authenticator (such as Lexis Nexus) to authenticate Registered Agents as being actual people who live in Colorado.
3	Require Registered Agents to "Know Your Client" and to retain this information for at least 5 years so it can be provided to an appropriate legal authority upon subpoena or court order. This includes due diligence steps such as fully identifying the client hiring them (name, address, phone number, email address, scan of ID Card or Passport, and obtaining information regarding the purpose of the legal entity.

#### ***Why this is important:***

I've given numerous examples of businesses using the CDOS business database to incorporate with non-existent Registered Agents. There are also plenty of other examples of businesses being incorporated using the names of people who never knew they were being listed as Registered Agents. The State of Colorado, its businesses, and its citizens have a vested interest in having authenticated Colorado residents be registered agents.

As we have talked about many times, in order to hold a business accountable there must be someone in the state that can be served. However, since the CDOS business registration process can be accomplished anywhere in the world, more and more often, there is no accountable party here in Colorado to protect Coloradans and their interests. We must do more to ensure a responsible party is here in Colorado.

The "Know Your Client" information is important because it provides more datapoints to investigators investigating criminal activity, while still protecting the privacy of the entity from public scrutiny. It also makes the Registered Agent, who has been authenticated as residing in Colorado, legally responsible for the creation of the businesses that they form. This only works, however, if we mandate authentication of registered agents. If we do not authenticate registered agents, then the bad actors will continue to fill in bogus details for the registered agents and will not comply with this KYC requirement.

**Make Filing More Clearcut and Allow for Extradition**

4	Update the business filing webforms to clarify exactly what information must be entered into the fields so that there can be no question.
5	Make false filings extraditable felony offences.

***Why this is important:***

Colorado has no mechanism to bring to justice bad actors outside Colorado from putting false information into the CDOS business database to facilitate criminal activity. This is likely due to the fact that when the laws were written, out of state bad actors were not opening businesses in Colorado to victimize people and defraud others. Now, however, it is just as easy for a criminal organization in Russia or South Carolina to open a company in Colorado as it is for the local bookstore owner. Times have changed and we need to increase the reach of our laws to where the bad actors are located.

## Change the Status of Colorado Entities to Better Reflect Ministerial Nature of Filings

6	Change the status of legal entities from being in “Good Standing” to “Existing” and change the “Certificate of Good Standing” to a “Certificate of Existing.”
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### ***Why this is important:***

CRS 7-90-306 states that the secretary of state’s duty to file documents is ministerial and that the filings do (should) not create the presumption that the document is valid or invalid or that the information contained in the document is correct or incorrect.

Yet, it is clear that many victims of crime, which are facilitated by Colorado shell companies, who had tried to do due diligence on the companies prior to being victimized, have presumed that the CDOS provided status of “Good Standing” to entities was more than ministerial.

Many states have gone away from using the term “Good Standing” to instead using the term “Existing” to represent businesses that have filed their documents and paid their fees. Using this language would remove any perceived presumption that CDOS has vetted entity filings. CRS 70-80-208, in fact, itself uses the word “existence” in reference to LLC filings made with CDOS.

### CRS 7-80-208 Notice of existence of limited liability company

“The fact that the articles of organization are on file in the records of the secretary of state is notice that the limited liability company is a limited liability company and is notice of all other facts stated therein that are required to be stated in the articles of organization by section 7-80-204.”

## Business Reinstatements

7	Require affidavits and photo IDs for people attempting to reinstate businesses that have been dormant for 1 year.
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### ***Why this is important:***

Colorado has no interest in allowing unrelated parties to reinstate dormant businesses. There are no legitimate reasons for unrelated parties to want to reinstate a closed business when it is simple and inexpensive to open a new entity. The only reason an unrelated party would want to do this is to misrepresent their business as being established so they can get loans from banks and/or investors that they could not get with a new business; convince customers that they can be trusted because of their longevity; or perhaps for other reasons pertaining to new technologies and social media that look at company age to establish credibility.

Whatever the reason, Colorado has no interest in unrelated parties reinstating dormant businesses. With that said, Colorado does have an interest in allowing those who are legitimately connected to the dormant business to reinstate it. Asking for an affidavit of ownership and identification should greatly reduce the number of bad actors attempting to use dormant businesses for bad reasons.

### ***Why only require an affidavit and ID after one year of dormancy?***

This is to allow those that accidentally allowed their business registration to lapse to regain it without any additional government-imposed friction. If we later find that bad actors are taking over companies that have been dormant for less than one year, we can always reexamine this issue.

### Publicly Available Fraudulent Business Filing Tip Web Form

8	Create a public webform that allows the public to file tips about businesses they suspect are using false information in filings. Direct these tips to a CDOS database as well the appropriate law enforcement agency such as CBI.
9	Create an official mechanism for law enforcement agencies to alert CDOS of businesses that are suspected of utilizing false information in their business filings.
10	Halt the issuance of "Certificates of Good Standing" and change the business status to "Under Review" for businesses under law enforcement suspicion of using false information in their business filings. CDOS will then utilize the contact information provided in the business filing to seek additional information (such as a utility bill from the primary business location) in order to reinstate it to Good Standing.

#### ***Why this is important:***

SB 22-034 is meant to help those that are directly impacted by a fraudulent business filing, and it requires the complainant to state that they may be charged with perjury. It also requires a laborious process between CDOS, the attorney general's office, and administrative law judges. Due to this, it is likely only those people who have been severely impacted by their home addresses being used for fraudulent business filings will file a complaint.

While SB 22-034 is certainly better than nothing for those that are severely impacted by fraudulent business filings, it does nothing to stop the problem, which is mainly the victimization of countless others impacted by WHAT the fraudulent businesses are DOING which usually has nothing to do with where they are pretending to be located.

Because of this, I believe it is important to implement a system in which anyone can file a "tip" with CDOS about businesses that they believe are fraudulently filed, are actively victimizing others, or has victimized the tipster. It is also important that people can choose to do this anonymously if they so wish.

I have spoken to many victims that have said they have told CDOS employees that they have been victimized by a fraudulently filed Colorado business and those filings still show as "Good Standing" in the database. Suggesting victims call their police department is not enough. If CDOS has been made aware of crimes being undertaken by a business that they have collected money from and will continue to collect money from, we should not brush that off.

A mechanism should be instated that largely works automatically with, little human involvement (i.e. inexpensively), that allows the public to report fraudulently filed businesses, sends those tips to LE, and allows LE to respond to CDOS that there is probable cause to believe that information provided in the filing is false.

Once LE makes this notification back to CDOS, an automated process could be initiated which changes the business status to "Under Review" and automatically sends mail to the addresses on file for response. If no response comes back, then the business should be placed in an inactive status. If the business responds with evidence that what they filed is accurate, then they should be placed back into Good Standing. As has been discussed in the working group, it is not CDOS' responsibility to investigate businesses. I agree that is the job of law enforcement. However, I do believe that if CDOS is made aware (especially by law enforcement) that the filing that has been made appears to be false (i.e., the physical

address is an empty lot or someone else's house) then I do believe that it is the responsibility of CDOS to verify the information that was entered.

## Real-Time Data Monitoring

11	Create and utilize an API that allows CBI/LE to analyze all business filings in real-time for suspicious activity.
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### ***Why this is important:***

It is in state's best interest to ensure criminal organizations do not utilize the CDOS business database to facilitate crime. This is also in the best interest of our businesses and our people. As has been discussed in our meetings, bad actors will always find a way around safeguards. In order to stay one step ahead of them to prevent countless victims from losing their life savings and businesses from getting decimated by foreign businesses that don't play by the same rules, CDOS must work closely with law enforcement.

One way to do this is to implement the use of an API that will stream data from business filing entries into LE run analytical tools that can stop victimization before it starts. All banks utilize such analytical tools to keep their customers and money as safe as possible. In order for CDOS to continue to provide a robust and easy to use database (that can just as easily be used by bad actors), we must utilize technology to share data continuously to monitor the corruption of the database by criminals.

## Intellectual Property Rights Awareness

12	Educate and encourage businesses to trademark their business name to protect it from copycats.
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### **Why this is important:**

A complaint a few citizens brought up during our working group meetings is about new entities that are incorporating fraudulent businesses with names that are very similar to their established business entities names. One way to help these small Colorado businesses would be to encourage them to file federal trademarks with the USPTO. It could be very beneficial for new incorporators to be provided information and/or links about filing for a trademark. It would be beneficial to suggest also recording their trademark with Customs and Border Protection so that violative counterfeit goods that use their trademarks can administratively be seized at the border.