

The MarTech Group, Inc.

Comments regarding Greg Wertsch's "12 Proposals for the Colorado Fraudulent Business Filings Working Group (v3)"

First, Mr. Wertsch made an impassioned and very pertinent presentation about the harm that may result from fraudulent filings. From that presentation, I came to realize that it might be more important for the general welfare to make State filings "trustworthy" than to make the filing process easy. We expect documents issued by government agencies to be trustworthy.

What follows are questions and suggestions about Greg's "12 proposals."

1/1a Greg proposes to mail a unique code to the principal office address of the business. Should that be to the address of the registered agent (RA)? When I moved back to Colorado in 2001, I registered my corporation before I had established residence, enabling me to acquire an EIN and open a business bank account. I'm not sure I even provided the address of the business; if I did, it was my finance's address. People who register a "shell" to protect their anonymity don't provide a business address other than the RA; doing so would defeat the purpose of the registration.

As a citizen, I would prefer option 1a, marking any certificates of good standing as "address verification pending" or something similarly inoffensive. In most situations, address verification is likely to happen promptly.

2/2a/3 Please understand that many small businesses are registered by the owner or principal, initially using either their home address or a friend/relative's address. If the owner is a new resident of Colorado, they may not yet have acquired a driver's license (and aren't required to for, I vaguely recall, 30 days.) I'm also not clear how the driver's license would be submitted and how it would be authenticated. On that basis, I encourage using one of the online identity verification systems, but I'm doubtful that the registrant needs to have established residence in Colorado as long as the RA provides a Colorado address.

I suggest that professional RA's be provided a way of establishing their identity once and receiving some form of identification number (perhaps just their driver's license number) that can be used on subsequent registrations.

I have a concern about the "know your client" requirement. I have no problem with requiring the RA, if that is not the registrant, to verify the identity of the person wishing to engage them as the RA and retain that information, but I'm not sure that's sufficient in the absence of a requirement to keep that data up-to-date. I'm also unsure how this requirement can be enforced.

4/5 Whatever can be done to clarify the information that is required of the registrant is always a good idea. I only vaguely remember the process, which suggests that it was painless.

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Making false filings a felony offense seems to be overkill. I'm not an attorney and only vaguely understand the principles behind our legal system, but this seems a step too far. I appreciate Greg's reasoning for recommending this, and I would, too, in his position. If we can do a good job of assuring that the initial registration is performed by someone whose identity is verified and using an address that can be verified, I suspect we will have driven most of those wishing to file fraudulently to another state!

- 6 Rather than changing the status wording, I'd prefer that, if a corporation doesn't file make their annual filing promptly, they are placed in an "inactive" or "suspended" status. There is no justification for not making the filing (and SoS needs the money.)
- 7 Is there a difference between "dormant" and failing to make the annual filing? Is there an actual status of "dormant"? I understand Greg's reasoning for this request, but I suggest we need to have a better understanding of why and how business registrations go dormant.

A business can secure its registration and receive a PIN which is required to make any changes to the registration. However, this feature is not well known to businesses, particularly those that have been in business for several years. I would recommend that all registrations be secured, realizing that this requires a capability for retrieving or resetting a lost PIN.

Idea: Perhaps send that PIN along with the address confirmation that follows registration.

- 8/9/10 I conceptually support creating a public web form for filing concerns about the legitimacy of a business, although I doubt this would find much use. There are some obvious downsides to such a reporting mechanism and little incentive to follow up on such reports. If there is a concern, that should be related to law enforcement, which has far better capabilities to follow through (acknowledging that law enforcement is overworked, understaffed, and generally has higher priorities).

I have a concern about engaging the Secretary of State's office in the law enforcement process. If law enforcement has reasonable suspicion that a business is operating under a false registration, I suspect that they have methods of pursuing that information without involving the SoS offices. (This follows from the best business advice I ever got, "Stick to the knitting," i.e., don't get involved in areas in which you have no expertise.)

- 11 Creating an API that allows law enforcement to analyze business filings for suspicious activity is questionable due to concerns about personal privacy. I suggest that the task of analyzing suspicious filings belongs to the Secretary of State's office. What we may need is a better way for SoS to refer suspect filings to appropriate law enforcement authorities.

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- 12 This might better be stated as encouraging registration of a Colorado trademark, which is cumbersome but not seriously expensive. (I had never thought of doing this and wasn't aware this was even a possibility. However, I just attempted to do so, went through the entire process, continued to the payment step, and got a timeout after having only been online for 15 minutes.)

Encouraging businesses to trademark their name at the Federal level ignores the rather large expense and complexity of doing so and is, generally, beyond the finances of most small businesses. If many businesses pursued this avenue, we would soon discover a substantial conflict between identical business names in separate states, generally requiring at least one business to change its name. (Every state has a raft of "ABC something" companies.)

Roger Loeb, December 10, 2022