

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 661 Business Filings

**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee, Miller and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 610

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Hoffman	Harrington
2) Transportation & Tourism Appropriations Subcommittee	13 Y, 0 N	Cobb	Davis
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Current law provides that limited liability companies, Florida corporations, not-for-profit corporations, and partnerships operating in Florida maintain business records with the Department of State's Division of Corporations (department), which are available to the public. The department is a ministerial filing agency; as such, the department must file the record received unless the department determines that the record does not comply with the filing requirements. The department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid. In 2016, the department received 467,208 business entity filings. Any user can file an annual report or amendment online and there does not appear to be a verification system in place for business entities to review these filings before the records are filed.

This bill provides that a person on whose behalf a filed record was delivered to the department for filing may correct the record if the record contains false, misleading, or fraudulent information. A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee of the department if the statement is delivered to the department within a specified time. In addition, the bill requires the department to send notice of the filing of a business record to the electronic mail address on file for the company or entity or its authorized representative or send a copy of the document to the address of such company or entity or its representative. If the record changes the electronic mail address for the company, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the department must send such notice to the new mailing address and to the most recent prior mailing address.

The Revenue Estimating Conference met on January 30, 2018, and determined that there is a negative but insignificant impact to the General Revenue Fund. According to the Department of State, the bill will not result in a fiscal impact on its operations.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Business Filings

The Division of Corporations (division) within the Department of State (department) collects, maintains, and makes available to the public all information related to business entities and certain information related to sole proprietorships operating in Florida and certain financial transactions that take place in the state.<sup>1</sup> This information includes:

- filings of corporations, limited liability companies, limited partnerships, general partnerships;
- declarations of trust;
- certain specified cooperative associations;
- notary commissions;
- cable franchises;
- trademarks and service marks;
- Uniform Commercial Code financing statements;
- federal liens and judgment liens; and
- fictitious name registrations.<sup>2</sup>

All business entity documents and commercial registrations received and filed by the division are available to the public via the internet, mail, and walk-in requests.<sup>3</sup> The department is a ministerial filing agency; as such, the department must file the record received unless the department determines that the record does not comply with the filing requirements.<sup>4</sup> The department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid.<sup>5</sup>

###### Sunbiz.org

Sunbiz.org is the official website for the division. In the 2016 calendar year, the division received 467,208 business entity filings.<sup>6</sup> These filings can be found online, along with the document numbers, which are unique IDs for each filed business entity in the state.<sup>7</sup>

On the division's website, any user can enter a document number to file or amend a business filing.<sup>8</sup> With the document number, any user of this website can file an annual report or amendment, with no additional information. The annual report allows a user to:

- Add, delete, or change the names or addresses of the officers, directors, managers, authorized members and make changes to addresses only for any general partners.
- Change the registered agent and registered office address.
- Change the principal office address and mailing address for the business entity.
- Add or change the federal employer identification number.

---

<sup>1</sup> OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY, *Department of State – Corporations*, <http://www.oppaga.state.fl.us/profiles/4092/front.htm/> (last visited Jan. 4, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Section 605.0206(1), F.S.

<sup>5</sup> Section 605.0210(5), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> DIVISION OF CORPORATIONS, *Search for Corporations, Limited Liability Companies, Limited Partnerships and Trademarks by Name*, <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (last visited Jan. 4, 2018).

<sup>8</sup> DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, <https://services.sunbiz.org/Filings/AnnualReport/FilingStart> (last visited Jan. 4, 2018).

Prior to filing the report, the user must verify the name of the registered agent, agree to the changes, and make a payment. The payment can be any major credit card or any debit card with a Visa or MasterCard logo.<sup>9</sup>

### Fraudulent Filings

Sunbiz.org warns a user that he or she must be authorized to execute the annual report or a supplement as required by Chapter 605, F.S.<sup>10</sup> The penalties for a false filing with the department include a third degree felony for “fraudulent practices.”<sup>11</sup> In addition, such a person may be charged with the crime of forgery and counterfeiting.<sup>12</sup>

Beyond these warnings, there appears to be no verification system in place for entities to review these filings before the division files them, which has raised concerns.<sup>13</sup>

### **Effect of the Bill**

This bill provides that a person on whose behalf a filed record was delivered to the department for filing may correct the record if the record contains false, misleading, or fraudulent information. A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee of the department if the statement is delivered to the department within a specified time. In addition, the bill requires the department to send notice of the filing of a business record to the electronic mail address on file for the company or entity or its authorized representative or send a copy of the document to the address of such company or entity or its representative. If the record changes the electronic mail address for the company, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the department must send such notice to the new mailing address and to the most recent prior mailing address.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 605.0209, F.S., authorizing certain persons to correct filed records that contain certain information; providing that a statement of correction is not subject to a department fee if delivered within a certain timeframe.

Section 2. Amends s. 605.0210, F.S., requiring the department to send a notice of the filing of a record through e-mail or send a copy of the document to the mailing address of the entity for limited liability companies.

Section 3. Amends s. 607.0124, F.S., authorizing a domestic or foreign corporation to correct certain documents if they contain false, misleading, or fraudulent information.

Section 4. Amends s. 607.0125, F.S., requiring the department to send a notice of the filing of a record through e-mail or send a copy of the document to the mailing address of the entity for Florida corporations.

Section 5. Amends s. 617.0124, F.S., authorizing a domestic or foreign corporation to correct certain documents that contain certain information.

---

<sup>9</sup> DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/#payment> (last visited Jan. 4, 2018).

<sup>10</sup> DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/#payment> (last visited Jan. 4, 2018).

<sup>11</sup> Section 817.155, F.S.

<sup>12</sup> Section 831.06, F.S.

<sup>13</sup> For an example of reported abuse, see Samantha Joseph, *How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk*, FLA. BUS. R. ONLINE, available at <https://advance.lexis.com/api/permalink/6f55602d-bbfd-4097-aa7a-0dfd87c0c354/?context=1000516>.

Section 6. Amends s. 617.0125, F.S., requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the domestic or foreign corporation.

Section 7. Amends s. 620.1206, F.S., requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the limited partnership, foreign limited partnership, or its registered agent.

Section 8. Amends s. 620.1207, F.S., authorizing a limited partnership or foreign limited partnership to correct certain documents that contain certain information.

Section 9. Amends s. 620.8105, F.S., requiring the department to send a notice of the filing of a document by electronic mail or send a copy of the document to mailing address of the partnership, limited liability partnership, or its agent.

Section 10. Amends s. 620.81054, F.S., authorizing a partnership or limited liability partnership to correct a filed document within a certain timeframe and under certain circumstances.

Section 11 through 15. Amends ss. 620.1201, 620.1202, 620.1203, 620.1812, and 620.2108, F.S., conforming provisions to changes made by the act.

Section 16. Provides an effective date of July 1, 2018

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Revenue Estimating Conference met on January 30, 2018, and determined that there is a negative but insignificant impact to the General Revenue Fund.

#### **2. Expenditures:**

According to the Department of State, the bill will not result in a fiscal impact to its operations.<sup>14</sup>

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

---

<sup>14</sup> Email from the Department of State dated January 23, 2018, on file with the Transportation and Tourism Appropriations Subcommittee.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Oversight, Transparency & Administration Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the requirement that the department create an optional secure business filing service and instead requires the department to allow a person to update his or her business filing information if the record contains false, misleading, or fraudulent information; and
- Provides that a statement of correction filed to correct false, misleading, or fraudulent information is not subject to any department fee if the statement is delivered to the department within a specified period.

The bill analysis is drafted to the committee substitute approved by the Oversight, Transparency & Administration Subcommittee.