

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 610 (660674)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Young

SUBJECT: Business Filings

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Wells/Hrdlicka</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Wells/Hrdlicka</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 610 makes two changes to the statutes regarding limited liability corporations, business corporations, not-for profit corporations, and limited partnerships.

The bill requires the Department of State (department) to notify an entity or its authorized representative of the filing of a record either by email address or mailing address. If the filing changes the email address, the department must send the notification to the new email address and the most recent prior email address. If the filing changes the mailing address, the department must send the notification to the new mailing address and to the most recent prior mailing address.

The bill authorizes an entity to correct a business filing within 30 days after the filing if the record contains false, misleading, or fraudulent information. The fees will be waived if a statement of correction is delivered to the department within 15 days of the entity being notified of the filing.

The department will incur costs to implement the requirements of this bill. However, the amount of costs are unknown at this time because the department has not provided such information.

The bill takes effect July 1, 2018.

II. Present Situation:

The Florida Department of State

The Florida Department of State (department) consists of six divisions: the Division of Elections; Division of Historical Resources; Division of Library and Information Services; Division of Cultural Affairs; Division of Administration; and Division of Corporations.¹

The Division of Corporations (division) maintains a registry for recording and retrieving commercial information that is filed or registered with the department.² In total, the division maintains more than eight million records, including a variety of business entity filings such as articles of incorporation or other forms of business entity organization, annual reports, trade and service mark registrations, judgment lien filings, and fictitious name registrations.³ The division determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its database of records.⁴ This database is publicly available, as are all documents filed with the department.⁵ As of November 1, 2017, the division began sending e-mail notifications to business entities upon its receipt and filing of certain types of business entity filings.^{6,7}

Business Identity Theft

Business identity theft is the impersonation of a business, or one of its owners, employees, or officers, with the intent to defraud or to make illicit gain to the detriment of the business.⁸ One common business identity theft scheme is to make fraudulent filings with the department of State that change the address of the business or name of its officers.⁹ This allows the identity thieves to open new lines of credit in the business' name without its knowledge because information is mailed to the thieves' name and address rather than to the business.

Several states provide informational resources or heightened monitoring to help prevent business identity theft:

¹ Section 20.10, F.S.

² See ss. 55.201 and 606.04, F.S. See also www.sunbiz.org, (last visited Nov. 20, 2017) the division's official website that serves as the state's official business index.

³ Florida Auditor General, *Operational Audit: Department of State, Division of Corporations, Museum of Florida History, and Selected Administrative Activities*, Report No. 2017-195, p. 2, (Mar. 2017), available at https://flauditor.gov/pages/pdf_files/2017-195.pdf (last visited Nov. 16, 2017). See also Florida Department of State, *Long Range Program Plan FY 2018-19 through FY 2022-23*, pp. 13-14, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17110&DocType=PDF> (last visited Nov. 19, 2017).

⁴ *Id.* See also, e.g. ss. 605.0210(5), 607.0125(4), and 617.0125(4) F.S.

⁵ See Florida Department of State, *Corporation Records Search Guide*, available at <http://dos.myflorida.com/sunbiz/search/guides/corporation-records/> (last visited Nov. 16, 2017).

⁶ Florida Department of State, *SB 610 Agency Analysis*, p. 2 (Nov. 13, 2017) (on file with the Senate Committee on Commerce and Tourism).

⁷ Currently, the department is required to deliver an acknowledgement or certified copy of any filed document to a limited liability company or corporation or the authorized representative by mail. Sections 605.0210(2), 607.0125(2), and 617.0125(2), F.S.

⁸ BusinessIDTheft.org, *What is Business Identity Theft?*, <http://www.businessidtheft.org/Education/WhyBusinessIDTheft/tabid/85/Default.aspx> (last visited Nov. 16, 2017).

⁹ Experian Decision Analytics, *Identifying Small-Business Fraud*, p. 5 (2009) available at <https://www.experian.com/whitepapers/Identifying-Small-Business-Fraud.pdf> (last visited Nov. 16, 2017).

- Maine has a monitoring program that emails an enrolled business each time a filing is made under its name;¹⁰
- Nevada’s Secretary of State may investigate fraudulent business filings and administratively prosecute those who fraudulently file such documents;¹¹
- Colorado provides a secure business filing portal, which requires a password to file business documents;¹² and
- California’s Secretary of State provides a resource guide for businesses.¹³

A business may also protect itself from identity theft by monitoring its credit profile through one of the national credit bureaus and by periodically reviewing its business filings on the appropriate state portal.

In Florida, cases of business identity theft can be prosecuted under s. 817.568, F.S. Identity theft is punishable by a third degree felony up to a first degree felony, depending on the presence of aggravating circumstances, including the number of victims harmed and the pecuniary value amassed by the perpetrator.¹⁴

III. Effect of Proposed Changes:

The bill makes two changes to the statutes regarding limited liability corporations, business corporations, not-for profit corporations, and limited partnerships.

The bill requires the department to notify an entity or its authorized representative of the filing of a record either by email address or by sending a copy of the document to the entity’s or representative’s mailing address. If the filing changes the email address, the department must send the notification to the new email address and the most recent prior email address. If the filing changes the mailing address, the department must send the notification to the new mailing address and to the most recent prior mailing address. Further, for limited liability corporations, corporations, and not-for-profit corporations, the department will no longer be required to send a certified copy of the document to the entity or its representative. (Section 2, amending s. 605.0210, F.S.; Section 4, amending s. 607.0125, F.S.; Section 6, amending s. 617.0125, F.S.; Section 7, amending s. 620.1206, F.S.; and Section 9, amending s. 620.8105, F.S.).

The bill authorizes an entity to correct a business filing within 30 days after the filing if the record contains false, misleading, or fraudulent information. The fees will be waived if a statement of correction is delivered to the department within 15 days of the entity being notified

¹⁰ Maine Bureau of Corporations, *Corporate Fraud Monitoring*, <https://www1.maine.gov/online/sos/cfm/> (last visited Nov. 16, 2017). This program costs enrollees \$35 per year.

¹¹ Nev. Rev. Stat. s. 225.084. *See also*, Nevada Secretary of State, *Forged or Fraudulent Filing Complaints*, <http://nvsos.gov/sos/businesses/forged-or-fraudulent-filing-complaints> (last visited Nov. 16, 2017). The Secretary of State’s investigation may only be initiated based on an affected business’ complaint.

¹² Colorado Secretary of State, *Business Identity Theft Resource Guide*, <https://www.sos.state.co.us/pubs/business/ProtectYourBusiness/BITresourceguide.html> (last visited Nov. 7, 2017).

¹³ California Secretary of State, *Business Identity Theft Resources*, <http://www.sos.ca.gov/business-programs/customer-alerts/alert-business-identity-theft/> (last visited Nov. 16, 2017).

¹⁴ A third degree felony is punishable by up to 5 years imprisonment and up to a \$5,000 fine; a second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine; a first degree felony is punishable by up to 30 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

of the filing. (Section 1, amending s. 605.0209, F.S.; Section 3, amending s. 607.0124, F.S.; Section 5, amending s. 617.0124, F.S.; Section 8, amending s. 620.1207, F.S.; and Section 10, creating s. 620.81054, F.S.).

Sections 11, 12, 13, 14, and 15 make conforming changes to ss. 620.1201, 620.1202, 620.1203, 620.1812, and 620.2108, F.S.

Section 16 provides the bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses may see better protection from business identity theft and the economic losses associated with it.

C. Government Sector Impact:

The department has indicated that modifications to its current information system will be needed to implement the requirements of this bill. A fiscal analysis of the costs for, and the time needed to implement, such modifications have not been provided by the department. The department may have some cost savings due to the elimination of the requirement to send a certified copy of filed documents to the entity or its representative.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0209, 605.0210, 607.0124, 607.0125, 617.0124, 617.0125, 620.1206, 620.1207, 620.8105, 620.1201, 620.1202, 620.1203, 620.1812, and 620.2108.

The bill creates section 620.81054 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on December 7, 2017:

The committee substitute removes the new requirement of the department to develop and offer a business filing monitoring service, and instead:

- Requires the department, upon receipt of a record, to send a notice to the entity's or authorized representative's email address on file with the department. The CS creates specific requirements if the filing changes the email address or mailing address of the entity, and eliminates the requirement to send certified copies of documents to the entity or its representative.
- Authorizes an entity to correct a filed record if it contains false, misleading, or fraudulent information. The correction is not subject to any department fees if the correction is delivered to the department within 15 days of notification of the filing to the entity.

- B. **Amendments:**

None.