



Colorado  
**Secretary of State**



# COUNTERACTING FRAUDULENT BUSINESS FILINGS IN COLORADO

**Christopher Beall**  
Deputy Secretary of State



# Colorado Secretary of State



# An Act

SENATE BILL 22-034

BY SENATOR(S) Kolker and Priola, Bridges, Buckner, Gardner, Gonzales, Holbert, Kirkmeyer, Lundeen, Pettersen, Smallwood, Winter, Woodward; also REPRESENTATIVE(S) Bird and Sandridge, Carver, Cutter, Duran, Herod, Hooton, Jodeh, Kipp, Lindsay, Lontine, Neville, Pico, Snyder, Titone, Valdez A., Weissman, Bernett, Boesenecker, Esgar, Exum, Geitner, Kennedy, McCluskie, McKean, Ricks, Soper, Van Beber, Van Winkle, Williams, Woodrow, Young.

CONCERNING MEASURES TO COUNTERACT THE FILING OF FRAUDULENT BUSINESS DOCUMENTS WITH THE SECRETARY OF STATE.

*Be it enacted by the General Assembly of the State of Colorado:*

(2) This act applies to complaints submitted and offenses committed on or after the applicable effective date of this act.

Steve Fenberg  
PRESIDENT OF  
THE SENATE

Alec Garnett  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

Cindi L. Markwell  
SECRETARY OF  
THE SENATE

Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED June 2<sup>nd</sup> 2022 at 3:10 pm  
(Date and Time)

  
Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO



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## ***CONCERNING MEASURES TO COUNTERACT THE FILING OF FRAUDULENT BUSINESS DOCUMENTS WITH THE SECRETARY OF STATE***

Enacted in 2022, SB 22-034 amends Colorado's business entity laws to:

- Create a complaint process and provide a remedy for victims of business identity theft.
- Authorize the Colorado SOS to provide public notice about businesses that have been either subjected to or created by fraudulent filings.
- Include fraudulent business filings among the list of deceptive trade practices under the Colorado Consumer Protection Act.
- Authorize additional study on future measures to prevent fraudulent filings.



## TWO MAIN TYPES OF BUSINESS IDENTITY THEFT

### 1. “Hijacking” of existing legitimate registered businesses:

- a. Fraudsters make unauthorized changes to business information (entity name, business address, registered agent, etc.)
- b. Fraudsters usually choose older businesses that are delinquent or have been dissolved.
- c. Desirability stems from the entity’s length of existence.

### 2. Registration of new fraudulent businesses using a Colorado resident’s address or identity:

- a. A victim often receives strange mail or packages at their homes. In some cases, federal law enforcement agencies follow up with inquiries.
- b. A victim may also be notified by banks that it received a business loan application in the victim’s name.



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## COMPLAINT PROCESS

### FILING A COMPLAINT (STARTING FEBRUARY 1, 2023):

- Victims can file an online complaint with the Colorado SOS.
- The SOS will review to ensure allegations meet statutory requirements, e.g., that the complaint isn't really an internal business ownership dispute.

### INVESTIGATION:

- Complaints are forwarded to the Colorado Attorney General's office for investigation.
- The Colorado Attorney General will send two Notices of Demand to the entity requiring a response to the complaint.
- Failure to respond is deemed conceding the complaint's allegations.
- If an entity does respond, it can request an administrative hearing.



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## REMEDIES

For **legitimate “hijacked” businesses**, the SOS is authorized to:

- ✓ Redact addresses and names used without authorization from filings.
- ✓ Mark each unauthorized filing as unauthorized.
- ✓ Mark the entity as a victim of fraudulent or unauthorized acts to provide public notice.

For **fraudulent businesses**, the SOS is authorized to:

- ✓ Redact addresses and names used without authorization from filings.
- ✓ Mark the entity itself as being unauthorized or fraudulent to provide public notice.
- ✓ Disable filing functionality for the entity to prevent future filings.

For any person injured by a fraudulent business filing:

- ✓ Injunctive relief and damages are available under the Colorado Consumer Protection Act.



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## WORKING GROUP

SB 22-034 also creates a working group to consider additional protections:

- Members will include representative individuals from various stakeholder categories including law enforcement, business associations, the state bar association, and business owners.
- Group will study “potential measures to counteract and prevent fraudulent filings.”
- Group must submit a report to the General Assembly by January 31, 2023, containing possible legislative options, including estimated costs and benefits.



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# Questions?

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