

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: SB 610

INTRODUCER: 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>

I. Summary:

SB 610 requires the Florida Department of State (department) to develop and implement an optional email service, in order to discourage fraudulent business filings, that sends a notification to business entities each time a document is delivered for filing under the business entity's name. The business entity may review and reject the document. If the entity has not rejected the document by 15 days after the department has received the document, then the department must file the document. The department must implement this service by December 31, 2018.

Additionally, the bill clarifies the methods by which the department must notify a partnership entity each time a document is filed under its name.

The department will incur costs to implement the requirements of this bill. Such costs are unknown at this time.

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

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.

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:

- 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

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).

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).

- 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 requires the department to develop and offer a business filing monitoring service (the service) that discourages fraudulent business filings. A business that opts-in to the service:

- Receives an email confirmation from the department when a document is delivered for filing under the business’ name;
- May review the document to determine whether it is fraudulent; and
- May direct the department to cancel the processing for filing of the document. If the business fails to reject further processing within 15 days of receipt of the document by the department, the department must file the document.

The department must offer the monitoring service by December 31, 2018.

The bill permits the department to keep any fees associated with a rejected filing.

The bill also clarifies that the department must notify a business entity or its authorized representative of the filing of any record under the entity’s name by either:

- Email to all of the business entity’s email addresses on file; or
- Postal mail of a certified copy of the filed document to the business entity’s mailing and physical address.

Sections 1, 5, and 6 make conforming changes to ch. 605, F.S., relating to limited liability companies (amending ss. 605.0210, 605.0206, and 605.103, F.S.).

Sections 2 and 7 make conforming changes to ch. 607, F.S., relating to corporations (amending ss. 607.0125 and 607.0123, F.S.).

Sections 3 and 8 make conforming changes to ch. 617, F.S., relating to not-for-profit corporations (amending ss. 617.0125 and 617.0123, F.S.).

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.

Sections 4, 9, 10, 11, 12, 13, 14, and 15 make conforming changes to ch. 620, F.S., relating to partnerships (amending ss. 620.8105, 620.8303, 620.8304, 620.8704, 620.8914, 620.8918, 620.9001, and 620.9102, F.S.). The bill also creates a requirement for the department to deliver an acknowledgement or certified copy of any filed document to a partnership (Section 4, amending s. 620.8015, 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. The costs for, and the time needed to implement, such modifications are unknown at this time.

VI. Technical Deficiencies:

Issue 1: The bill refers to an “optional” secure business filing service. However, the bill does not specify how a business entity must opt-in to or opt-out of such service.

Issue 2: The bill may need to be expanded in order to cover every type of business entity or business filing.

Issue 3: The bill requires the department to notify a business entity when the department receives a document for filing and requires the department to file the document within 15 days of receipt.

Because the time period runs from the date that the department receives the document and the bill does not specify when the department must notify a business entity that the department has received the document, a business entity may not have sufficient time to review the document before it is filed. This circumstance could be resolved by amending the bill to require the department to file the document 15 days after notifying the business entity that the department received the document.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0210, 607.0125, 617.0125, 620.8105, 605.0206, 605.0103, 607.0123, 617.0123, 620.8303, 620.8304, 620.8704, 620.8914, 620.8918, 620.9001, 620.9102.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.