

Memo from Greg Wertsch

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January 3, 2023

To:
Colorado Fraudulent Business Filing Working Group
Colorado Department of State
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On December 29, 2022, The Colorado Secretary of State's Office forwarded a document entitled, "The Federal Corporate Transparency Act: More Answers are Proposed" by Herrick K. Lidstone, Jr., Burns, Figa & Will, P.C., dated January 11, 2023.

I've reviewed the document, read several others, and have also spoken to several individuals within the federal government about the CTA and thought it may be helpful to share some additional perspective about it and how it may affect the problem we see occurring within the Colorado Secretary of State Business Registration Database. I do not believe the CTA will solve the problem we have identified within the Colorado Secretary of State Business Registration Database.

First, the CTA depends on registered agents, business incorporators, and filers to provide truthful information to the state and federal government. What we have seen in Colorado is that bad actors purposefully file false information during business formation to avoid taxation, Customs duties, and so they can remain completely anonymous for the purpose of committing various criminal acts with their newly formed entities. Without accurate information, the CTA will be unable to enforce any penalties upon the bad actors and due to this fact, the CTA will have no effect on them.

Second, the Colorado Secretary of State's Office believes they currently have no choice but to allow the formation of entities using false information. Furthermore, they believe they must allow these entities to continue to be seen in "Good Standing" even after being notified about the fraudulent filings. The document states that, "Even in Colorado companies may be formed without identifying any owners or any individuals, and without even complying with Colorado law regarding registered agents. C.R.S. § 7-90-601 requires, for example, that domestic entities named as registered agents have "a usual place of business in this state" (Colorado)". However, no one checks this. From a review of filings made in just the last year, it appears that UPS boxes and vacant lots are used by registered agents "as a usual place of business" in Colorado."

Third, many of the bad actors that are forming businesses using the Colorado Secretary of State Business Registration Database are doing so in places that are outside the jurisdiction of the United States Government in countries with no extradition treaties in place. The State of Colorado and the United States Government is powerless to enforce criminal and civil laws (i.e. the CTA) on persons that are located in places that the government has no jurisdiction.

Forth, the CTA has not been finalized and there is a chance it will not be implemented as expected or at all due to possible federal legal challenges that may be forthcoming.

Fifth, even if the CTA does go into effect in a way that will solve some of the issues we see here in Colorado, its effectiveness still heavily depends on what the State of Colorado does to ensure only accurate information is entered during entity formation. Even then, it may take years and possibly even decades to have an impact within Colorado.

For the above reasons, I believe that any discussion of the CTA potentially solving the issues we have here in Colorado is a distraction. We cannot and should not rely upon outside government agencies to solve problems that we can solve ourselves.

I believe that if Colorado does this right, our state could be a shining beacon on the hill for other states to follow regarding business filing security while still maintaining business privacy and filing efficiency. Coloradans are known as leaders. We should continue to lead especially when it comes to business security, keeping people safe, and stopping criminal enterprises.