

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 1168 (Limón) – As Amended March 21, 2024

SENATE VOTE: 37-0

SUBJECT: Business entities: Secretary of State: document filings

SYNOPSIS

One of many ways that identity theft rears its ugly head is in the form of fraudulent business filings that unlawfully use the personal identifying information (PII) of individuals. While existing law enables a victim of such practices to seek a court order to redact or label as impersonated their information contained in a business entity's filing, the Secretary of State (SOS) reports that there are roughly 18,000 businesses registered in California that appear to have misappropriated PII of unsuspecting individuals. Such entities may be able to illegally apply for loans, grants, and tax credits or refunds using the victims' information.

This bill, sponsored by the SOS, augments protections against such practices in two ways. First, the bill enables a person who reasonably suspects that their PII has been used unlawfully in a business entity filing to file, under penalty of perjury, a "disclaimer of proper authority" with the SOS. This disclaimer, which is placed in the entity's file, puts the public on notice that the business entity filing may be misusing the person's PII, thereby providing the victim with more immediate protections against further exploitation of their information. This could serve as an important stopgap while the victim pursues a court order to redact or label their information as impersonated.

Second, the bill enables the SOS to cancel a business entity 60 days after receiving such a court order if no updated statement of information is filed on behalf of the entity beforehand. This is likely to help cull some of the 18,000 presumptively fraudulent businesses that the SOS has identified.

The bill has no registered support or opposition. If it passes this Committee, it will next be heard in Assembly Judiciary Committee..

SUMMARY: Enables the SOS, within 60 days of receiving a court order finding that a person's PII has been used unlawfully in a business entity filing, to cancel the entity if it fails to file an updated statement of information. Enables a person who reasonably suspects that their PII has been used unlawfully in a business entity filing to file a disclaimer of proper authority stating that their PII was unlawfully used in the business entity filing. Specifically, **this bill:**

- 1) Provides that if a court order finding that PII has been used unlawfully in a business entity filing is filed within the record of a limited liability company or a corporation, the SOS may cancel the business entity that is the subject of the order if, after 60 days, an updated statement of information has not been filed on behalf of the entity with the SOS. Prohibits the statement from containing PII that is required to be redacted pursuant to the order.

- 2) Enables a person who reasonably suspects that their PII has been used unlawfully in a business entity filing may, under penalty of perjury and for a \$30 fee, file with the SOS a disclaimer of proper authority claiming their PII was unlawfully used in the business entity filing containing the following information:
 - a. The name of the entity as it appears on SOS records.
 - b. The SOS file number for the entity.
 - c. The entity type.
 - d. The date the business entity document containing their PII was filed.
 - e. The title of the business entity document that contained their PII.
 - f. A description of the type of PII that the person claims was used unlawfully in the business entity filing.
 - g. A statement that the person signing the disclaimer of proper authority did not authorize the use of their PII within the business entity document and that they reasonably suspect that their PII was included in furtherance of an unlawful purpose, as specified.
 - h. A statement that the disclaimer of proper authority does not constitute a determination of any court or law enforcement investigation surrounding the facts and circumstances of the use of the information within the business entity document.

EXISTING LAW:

- 1) Defines, for purposes of Penal Code provisions governing identity theft, “personal identifying information” as any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver’s license, or identification number, social security number, place of employment, employee identification number, professional or occupational number, mother’s maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, United States Citizenship and Immigration Services-assigned number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person, or an equivalent form of identification. (Pen. Code, § 530.55(b).)
- 2) Provides that every person who willfully obtains PII of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without consent of that person, is guilty of a public offense, punishable as a misdemeanor or felony, as prescribed. (Pen. Code, § 530.5(a).)

- 3) Provides that a person who has learned or reasonably suspects that their PII has been unlawfully used by another under 2) may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over their actual residence or place of business. (Pen. Code § 530.6(a).)
- 4) Provides that where an investigation under 3) involves the use of PII in a business entity filing, the person who initiated the investigation may petition the superior court in the county in which they reside for an order directing the alleged perpetrator, if known, and the person using the PII in the business entity filing, to appear at the hearing before the court and show cause for why the PII should not be labeled to show the information is impersonated and does not reflect the person's identity and why the PII should be associated with the business entity. (Civ. Code, § 1798.201.)
- 5) Provides that if the court determines the petition filed pursuant to 4) is meritorious and there is no reasonable cause to believe that the victim's PII has been used lawfully in the business entity filing, the court must make a finding that the PII has been used unlawfully in the business entity filing and must issue an order certifying this determination. In doing so, the court must order the name and associated PII in the business entity filing to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity and must order the data to be removed from publicly accessible electronic indexes and databases. Such an order must be filed with the SOS. (Civ. Code, § 1798.202.)

FISCAL EFFECT: As currently in print, this bill is keyed fiscal.

COMMENTS:

- 1) **Author's statement.** According to the author:

Business identity theft is a growing problem that was exacerbated by a recent fee holiday for filing new business documents. The Secretary of State has identified more than 18,000 corporations and limited-liability companies created in 2022-23 that the Secretary of State presumes to be fraudulently created. In many cases, fraudsters have included on those filings the names of Californians as officers of the business, when those Californians have nothing to do with the business and did not provide their permission to be associated with the business. Criminals may try to use these fraudulent business entities to illegally take out loans, apply for government grants, and take advantage of tax credits or refunds.

Under current law, the Secretary of State has limited authority to address business entity filings that misuse a person's information, which opens the door for these business entities to be used for fraudulent activity and maintains a public record of the false association of innocent Californians with these businesses. This bill provides a process for a person whose information has been used improperly to file a disclaimer of proper authority with the Secretary of State, alerting anyone who accesses the related business entity filing that the person is not associated with the business. Additionally, the bill allows the Secretary of State to cancel a business entity that is the subject of a court order stipulating that a person's name has been used unlawfully in a business entity filing, if that business entity does not file an amended statement of information.

- 2) **Enhanced protections against business entity filings with misappropriated personal information.** According to the Federal Trade Commission, in 2023, there were 119,929 reports

of identity theft in California—the tenth highest rate in the nation.¹ One of many ways that a person’s identity can be misused is through the fraudulent use of a person’s PII in business filings, which may then be used to obtain loans, grants, and tax credits.

To help protect Californians from such deprecations, the Legislature enacted SB 1196 (Jackson, Ch. 696, Stats. 2018) to enable a person who has initiated a law enforcement investigation of the unlawful use of their PII in a business filing to petition a court to order (1) that the PII in the filing be redacted or labeled as impersonated, and (2) that the PII be removed from publicly accessible electronic indexes and databases.² Nevertheless, following a temporary suspension in the 2022-2023 fiscal of the filing fee³ for certain business entities that was intended to draw more businesses to California, the SOS reports a proliferation of fraudulent businesses that appear to have misappropriated the PII of unsuspecting individuals.

This bill augments protections against such businesses filings in two ways. First, the bill enables a person who reasonably suspects that their PII has been used unlawfully in a business entity filing to file, under penalty of perjury, a “disclaimer of proper authority” with the SOS. This disclaimer, which is placed in the entity’s file, puts the public on notice that the business entity filing may be misusing the person’s PII, thereby providing the victim with more immediate protections against further exploitation of their information. This could serve as an important stopgap while the victim pursues a court order to redact or label their information as impersonated.

Second, the bill enables the SOS to cancel a business entity 60 days after receiving such a court order if no updated statement of information is filed on behalf of the entity beforehand. This is likely to help cull some of the 18,000 presumptively fraudulent businesses that the SOS has identified. While cancellation is a harsh remedy, the entity will have had a chance to contest the petition for the court order as well as 60 days in which to file an updated statement that omits the misappropriated PII, thereby limiting the possibility that entities are cancelled arbitrarily or prematurely.

3) **Relevant legislation.** SB 1196 (Jackson, Ch. 696, Stats. 2018) established the procedure by which a person who learns or reasonably suspects that their personal identifying information has been used for an unlawful purpose in a business entity filing may obtain a court order redacting the unauthorized information.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

¹ Federal Trade Commission, “Consumer Sentinel Network: Data Book 2023” (Feb. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf.

² Civ. Code, § 1798.202.

³ The filing fee is \$100 for an in-state corporation with shares and \$70 for an in-state limited liability company or limited partnership. (Gov. Code, §§ 12186, 12188, 23290.)

Analysis Prepared by: Josh Tosney / P. & C.P. / (916) 319-2200