

SHEMIA FAGAN

SECRETARY OF STATE

CHERYL MYERS

DEPUTY SECRETARY OF STATE

TRIBAL LIAISON



State of Oregon

900 Court Street NE #136

Salem, Oregon 97301

503-986-1500

<http://sos.oregon.gov>

April 24, 2023

Dear Chair Taylor, Vice-Chair Bonham, and Committee Members,

The mission of the Secretary of State's Office is to build trust between the people of Oregon and our state government so that public services can make a positive impact in peoples' lives. The Corporation Division directly supports Oregon businesses and ensures registration processes are fast, simple, and easy as possible. It is the first stop for businesses and provides relevant information on government requirements for starting and operating a business.

Our position on HB 2053 is neutral. We have two primary suggestions to address the investigation of assumed business names (ABNs) while continuing to provide education and information about business registration requirements.

First, we want to address Section 1(3) lines 18-22 on the introduced bill where the Secretary of State (SoS) shall investigate complaints and determine matters of fact. The SoS has traditionally focused on educating and informing the public about business registration requirements. Promoting voluntary compliance with the law is less costly and time-consuming than investigating non-compliance. It also aligns with the agency's customer-centered approach and allows staff to focus on filing registrations promptly. Investigating a complaint, or a new violation of the statute will also require determining matters of fact. When complaints arise, or when the agency undertakes its own investigations, SoS will have to verify the truth of the any registration information submitted. The agency will also need to determine whether a person has suffered "an ascertainable loss of money or property."

The SoS currently has a compliance process for corporations and LLCs. This process, outlined below, is not complaint driven and provides room for SoS to educate before penalizing.

**Corporations and Limited Liability Companies:**

In accordance with ORS 60.032 and ORS 63.032, send the business in question an interrogatory letter asking for specific information.

- If no response the division would administratively dissolve the business.
- If response received and the issue was caused by lack of education, Educate, and resolve issue.

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We have not issued penalties other than administrative dissolution. The focus has been on educating.

**All business types:**

If we find out that someone is doing business without being registered, we send a letter advising them of the requirement to register.

- This most commonly is a result of a phone call or email.

If there is a consumer complaint against a business brought forward by an individual, we refer to DOJ. <https://www.doj.state.or.us/consumer-protection/>

The suggestion is removing Section 1(3) on pg.1 and lines 5-18 (pg. 2) replacing it with a more detailed process for investigating violations for assumed business names (ABNs). Adding in a new section under ORS. 648.990 will give SoS more authority to do investigations on ABNs specifically, will allow room to educate those who need it, and will also align with what is already in statute for corporations and limited liability companies (ORS 60.032).

We suggest adding this **new section**:

**Investigations of violations of chapter; confidentiality; penalties; cancellation; rules.**

(1) The Secretary of State may investigate an alleged or potential violation of this chapter, and in the course of the investigation or in response to a request from a law enforcement agency, may order a person using an assumed business name to:

(a) Answer within 30 days any interrogatory that is related to an alleged or potential violation of this chapter that the Secretary of State submits to the person, or

(b) Stop using the assumed business name, if the Secretary determines that the use of the name is in violation of this chapter, including any rules the Secretary has adopted under this chapter.

(2) Notwithstanding the provisions of ORS 192.311 to 192.478, information that the Secretary of State obtains from an interrogatory under paragraph (1)(a) of this subsection is not subject to

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public disclosure. The Secretary of State may provide a law enforcement agency with the information the Secretary of State obtains from an interrogatory under paragraph (1)(a) of this subsection.

(3) (a) If a person fails to comply with an order from the Secretary of State under subsection (1) of this section, the Secretary of State may impose a civil penalty on the person in accordance with ORS 183.745 (Civil penalty procedures);

(b) The Secretary of State may provide in an order that imposes a civil penalty under paragraph (3)(a) of this subsection that the civil penalty is not due and payable until after the order becomes final following any appeal of the order or, if an appeal does not occur, after the order becomes final by operation of law.

(4) The Secretary of State may refuse registration or reactivation of a person's assumed business name unless and until

(a) the requested registration complies with this chapter, including any rules the Secretary has adopted under this chapter,

(b) any due and payable civil penalty concerning the same or a substantially similar name imposed under subsection (3) is paid in full.

(c) A law enforcement agency that has completed an investigation of the assumed business name recommends that the Secretary of State allow the registration or reactivation, or

(d) A court order compels registration.

(5) A person using an assumed business name may appeal in accordance with ORS 183.480 to 183.500 an order the Secretary of State issues or an action the Secretary of State takes under this section.

Thank you for taking the time to read through our testimony. We hope you are open to these suggestions.

Sincerely,

Kathy Wai