

Re: **PRO** Amendments to proposed Minnesota Business Filing Fraud Prevention Act - **HF2566**

Dear Members of the Minnesota House and Senate:

I am writing to support amendments to the long-needed proposed Minnesota Business Filing Fraud Prevention Act (the “Bill”).

I have practiced law as a business litigator and counselor for over 38 years with the firm of Ballard Spahr (formerly Lindquist and Vennum). The majority of my practice has focused on ownership and governance disputes in Minnesota companies. I have personal experience with the fraudulent filing of business records with the Minnesota Secretary of State’s office.

Many years ago, I litigated this issue in a governance dispute involving a non-profit corporation. Without authorization, two rogue board members filed new Articles of Incorporation in an attempt to wrest control from the majority on the board. Our client commenced a lawsuit for fraud, breach of fiduciary duty and various other claims. The court issued an injunction invalidating the fraudulent Articles of Incorporation and preventing the wrongdoers from submitting further unauthorized filings with the Secretary of State.

I then searched for the process to remove the improper filing from public records. Finding no applicable removal statute, I communicated with a senior staff member at the Minnesota Secretary of State’s office and provided him with a copy of the injunction. The staff member was very sympathetic, but advised that the Minnesota Government Data Practices Act required a court order directing the Secretary of State to delete the record before it could do so. This was problematic because the Secretary of State was not a party to the lawsuit. Eventually, the Secretary of State’s office provided an affidavit stating that it did not oppose an order requiring it to delete the unauthorized filing and that it waived the right to appear as a party in the pending lawsuit. It was only after following these steps that the Court ordered the Secretary of State to delete the fake Articles of Incorporation.

I strongly support the Bill both to deter fraudulent filings and to provide a clear process for the removal of fraudulent filings. I invite the Legislature to consider following tweaks to the Bill so that it will cover the fact pattern discussed above.

1. The scope of “wrongful filing” in § 300.71, Subd. 1(2) should expressly include documents that modify a business’s “governance” or “control.”
2. § 300.77, providing for judicial review, should permit appeals of final orders issued under § 300.76 to be brought in any district court action between the filer and the complainant in which the subject filing is relevant to the issues in the case.
3. The Act should expressly provide that it is not the exclusive remedy for fraudulent filings and that district courts may directly adjudicate fraudulent filing claims. This is important to prevent a wrongdoer from claiming that the aggrieved corporation must first exhaust its administrative remedy under the Act before seeking injunctive relief

against a fraudulent filer. This is particularly important in situations where fraudulent filings constitute a breach of fiduciary duty by the filer and an injunction is crucial to establish who has control of the subject company.

Thank you very much for considering my comments and proposed amendments.

Regards,

Wally Hilke