

Senate Commerce Committee

Aaron Jones 271-2609

HB 406-FN, relative to the formation of fraudulent businesses.

Hearing Date: April 8, 2025

Time Opened: 11:09 a.m.

Time Closed: 11:28 a.m.

Members of the Committee Present: Senators Innis, Ricciardi, McGough, Fenton and Reardon

Members of the Committee Absent : Senator Murphy

Bill Analysis: This bill:

- I. Establishes a registry of registered agents for New Hampshire businesses.
- II. Allows corporations to restate their articles of incorporation.
- III. Enables the secretary of state to verify and prevent fraudulent business formations.
- IV. Creates penalties for individuals who fraudulently formulate businesses.

The bill is a request of the secretary of state.

Sponsors:

Rep. Bay

Rep. Grill

Rep. Hunt

Rep. Burroughs

Sen. Fenton

Who supports the bill: Representative Luz Bay, Senator Donovan Fenton, Representative John Hunt, Erin Hennessey (NHSOS), Tom Connolly (NHSOS), Sarahlynn Williams, Janet Lucas

Who opposes the bill: Curtis Howland, James Gardner, John Light

Who is neutral on the bill: No one

Summary of testimony presented in support:

Representative Luz Bay

- Representative Bay said this bill was aimed at addressing the formation of fraudulent businesses.

- This bill was a request from the Secretary of State's Office, and it arose from real concerns voiced by hard-working Granite Staters.
- Representative Bay told a story of how her constituents reached out to her in fear because they had discovered that another business had registered a name that was similar to theirs. They even used the exact address of their restaurant, and they opened bank accounts in its name.
- Representative Bay noted that multiple Asian restaurants have faced similar fraudulent activities.
- Representative Bay said her constituents suspected that they were being targeted, so they contacted the Office for help, but there was no process to document this type of fraud.
- Tom Connolly, the Director of the Corporations Division within the Office, stated they would send a letter to the new business owner. However, due to it being a fraudulent business, the letter would be returned to the sender. After that the business would be marked as not in good standing, and it would not be allowed to open bank accounts. Subsequently, the business would be dissolved.
- Representative Bay said the intention of this bill was to provide a mechanism for addressing fraudulent registrations as well as preventing business owners from losing what they have worked hard for.
- **Senator Fenton** asked if the bill as amended adequately protected the businesses she was talking about.
 - **Representative Bay** said the amended version provided a procedure, but she did not know if it could stop perpetrators from registering a fraudulent business with a legitimate business address. The original bill stated the business had to say they owned or leased the place of business, but the amended version took that language out.
- **Senator Reardon** asked if the business was registered with the Secretary of State's Office.
 - **Representative Bay** replied yes.
- **Senator Reardon** asked if it had a similar name.
 - **Representative Bay** said yes.

Erin Hennessey, Deputy Secretary State of State, and Tom Connolly, Director of Corporations Division, New Hampshire Secretary of State

- Deputy Secretary of State Hennessey said New Hampshire has seen an uptick in fraudulent business filings. The intent of this legislation was to prevent fraudulent businesses from taking advantage of New Hampshire businesses. She believed the language in this bill gave the Office the tools to react to fraudulent filings.
- Mr. Connolly said there are synthetic entities that engage in business fraud by using real and fake information to appear as a legitimate business. Also, the state has seen company hijacking where individuals will find businesses that have not submitted their annual report, and they place their name as the

principals of the business and submit the filing, so it appears they are the owner. This allows fraudulent individuals to make applications of credit to banks.

- Currently, there is nothing in the statute that provides the Office with a remedy.
- This bill gave the Office the ability to identify filings by complaint or by other means. They will be able to remove the filings from the record in an expeditious manner, and they will not have to wait the 60-day period to administratively dissolve the business.
- **Senator Reardon** noted that she had experience in this area, and she was always denied a similar name as another company. She was concerned that two names of similar restaurants made it past the review system. She asked if they are moving towards using a digital system to review the names and ensure there is no duplication.
 - **Mr. Connolly** said the Legislature changed the statutory language for determining business availability in 2016. Now the standard is ensuring that the names are legally distinguishable. He noted they are now accepting more filings with similar names, then they would have before 2016.
- **Senator Reardon** asked if the scenario mentioned by Representative Bay had passed their test.
 - **Mr. Connolly** said those names were accepted. Every name is reviewed, and nothing is approved by machine. He said in a case like this, they could employ a program where they could do further reviews on those names.
- **Senator Reardon** asked if they would have a problem with bringing back the pre-2016 standard, so they would not have these situations.
 - **Mr. Connolly** said that the Secretary of State would need to be asked his opinion. Nationally, most states have transitioned to the legally distinguishable standard. Their view is that it is not the role of the Office to decide who gets to use a name; instead, that is a civil matter. All they are doing is giving an entity a name. Going back to the old standard would slow down the filing process, but he noted there is a balance to take into account.

Summary of testimony presented in opposition: None

Neutral Information Presented: None