

111TH CONGRESS
1ST SESSION

S. 569

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2009

Mr. LEVIN (for himself, Mr. GRASSLEY, and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Incorporation Trans-
3 parency and Law Enforcement Assistance Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Nearly 2,000,000 corporations and limited
7 liability companies are being formed under the laws
8 of the States each year.

9 (2) Very few States obtain meaningful informa-
10 tion about the beneficial owners of the corporations
11 and limited liability companies formed under their
12 laws.

13 (3) A person forming a corporation or limited
14 liability company within the United States typically
15 provides less information to the State of incorpora-
16 tion than is needed to obtain a bank account or driv-
17 er’s license and typically does not name a single ben-
18 eficial owner.

19 (4) Criminals have exploited the weaknesses in
20 State formation procedures to conceal their identi-
21 ties when forming corporations or limited liability
22 companies in the United States, and have then used
23 the newly created entities to commit crimes affecting
24 interstate and international commerce such as ter-
25 rorism, drug trafficking, money laundering, tax eva-

1 sion, securities fraud, financial fraud, and acts of
2 foreign corruption.

3 (5) Law enforcement efforts to investigate cor-
4 porations and limited liability companies suspected
5 of committing crimes have been impeded by the lack
6 of available beneficial ownership information, as doc-
7 umented in reports and testimony by officials from
8 the Department of Justice, the Department of
9 Homeland Security, the Financial Crimes Enforce-
10 ment Network of the Department of the Treasury,
11 the Internal Revenue Service, and the Government
12 Accountability Office, and others.

13 (6) In July 2006, a leading international anti-
14 money laundering organization, the Financial Action
15 Task Force on Money Laundering (in this section
16 referred to as the “FATF”), of which the United
17 States is a member, issued a report that criticizes
18 the United States for failing to comply with a FATF
19 standard on the need to collect beneficial ownership
20 information and urged the United States to correct
21 this deficiency by July 2008.

22 (7) In response to the FATF report, the United
23 States has repeatedly urged the States to strengthen
24 their incorporation practices by obtaining beneficial
25 ownership information for the corporations and lim-

1 ited liability companies formed under the laws of
2 such States.

3 (8) Many States have established automated
4 procedures that allow a person to form a new cor-
5 poration or limited liability company within the
6 State within 24 hours of filing an online application,
7 without any prior review of the application by a
8 State official. In exchange for a substantial fee, 2
9 States will form a corporation within 1 hour of a re-
10 request.

11 (9) Dozens of Internet websites highlight the
12 anonymity of beneficial owners allowed under the in-
13 corporation practices of some States, point to those
14 practices as a reason to incorporate in those States,
15 and list those States together with offshore jurisdic-
16 tions as preferred locations for the formation of new
17 corporations, essentially providing an open invitation
18 to criminals and other wrongdoers to form entities
19 within the United States.

20 (10) In contrast to practices in the United
21 States, all countries in the European Union are re-
22 quired to identify the beneficial owners of the cor-
23 porations they form.

24 (11) To reduce the vulnerability of the United
25 States to wrongdoing by United States corporations

1 and limited liability companies with unknown own-
 2 ers, to protect interstate and international commerce
 3 from criminals misusing United States corporations
 4 and limited liability companies, to strengthen law en-
 5 forcement investigations of suspect corporations and
 6 limited liability companies, to set minimum stand-
 7 ards for and level the playing field among State in-
 8 corporation practices, and to bring the United States
 9 into compliance with its international anti-money
 10 laundering obligations, Federal legislation is needed
 11 to require the States to obtain beneficial ownership
 12 information for the corporations and limited liability
 13 companies formed under the laws of such States.

14 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

15 (a) TRANSPARENT INCORPORATION PRACTICES.—

16 (1) IN GENERAL.—Subtitle A of title XX of the
 17 Homeland Security Act of 2002 (6 U.S.C. 601 et
 18 seq.) is amended by adding at the end the following:

19 **“SEC. 2009. TRANSPARENT INCORPORATION PRACTICES.**

20 **“(a) INCORPORATION SYSTEMS.—**

21 **“(1) IN GENERAL.—**To protect the security of
 22 the United States, each State that receives funding
 23 from the Department under section 2004 shall, not
 24 later than the beginning of fiscal year 2012, use an

1 incorporation system that meets the following re-
2 quirements:

3 “(A) Each applicant to form a corporation
4 or limited liability company under the laws of
5 the State is required to provide to the State
6 during the formation process a list of the bene-
7 ficial owners of the corporation or limited liabil-
8 ity company that—

9 “(i) identifies each beneficial owner by
10 name and current address; and

11 “(ii) if any beneficial owner exercises
12 control over the corporation or limited li-
13 ability company through another legal enti-
14 ty, such as a corporation, partnership, or
15 trust, identifies each such legal entity and
16 each such beneficial owner who will use
17 that entity to exercise control over the cor-
18 poration or limited liability company.

19 “(B) Each corporation or limited liability
20 company formed under the laws of the State is
21 required by the State to update the list of the
22 beneficial owners of the corporation or limited
23 liability company by providing the information
24 described in subparagraph (A)—

1 “(i) in an annual filing with the State;

2 or

3 “(ii) if no annual filing is required
4 under the law of that State, each time a
5 change is made in the beneficial ownership
6 of the corporation or limited liability com-
7 pany.

8 “(C) Beneficial ownership information re-
9 lating to each corporation or limited liability
10 company formed under the laws of the State is
11 required to be maintained by the State until the
12 end of the 5-year period beginning on the date
13 that the corporation or limited liability company
14 terminates under the laws of the State.

15 “(D) Beneficial ownership information re-
16 lating to each corporation or limited liability
17 company formed under the laws of the State
18 shall be provided by the State upon receipt of—

19 “(i) a civil or criminal subpoena or
20 summons from a State agency, Federal
21 agency, or congressional committee or sub-
22 committee requesting such information; or

23 “(ii) a written request made by a Fed-
24 eral agency on behalf of another country
25 under an international treaty, agreement,

1 or convention, or section 1782 of title 28,
2 United States Code.

3 “(2) NON-UNITED STATES BENEFICIAL OWN-
4 ERS.—To further protect the security of the United
5 States, each State that accepts funding from the De-
6 partment under section 2004 shall, not later than
7 the beginning of fiscal year 2012, require that, if
8 any beneficial owner of a corporation or limited li-
9 ability company formed under the laws of the State
10 is not a United States citizen or a lawful permanent
11 resident of the United States, each application de-
12 scribed in paragraph (1)(A) and each update de-
13 scribed in paragraph (1)(B) shall include a written
14 certification by a formation agent residing in the
15 State that the formation agent—

16 “(A) has verified the name, address, and
17 identity of each beneficial owner that is not a
18 United States citizen or a lawful permanent
19 resident of the United States;

20 “(B) has obtained for each beneficial
21 owner that is not a United States citizen or a
22 lawful permanent resident of the United States
23 a copy of the page of the government-issued
24 passport on which a photograph of the bene-
25 ficial owner appears;

1 “(C) will provide proof of the verification
2 described in subparagraph (A) and the photo-
3 graph described in subparagraph (B) upon re-
4 quest; and

5 “(D) will retain information and docu-
6 ments relating to the verification described in
7 subparagraph (A) and the photograph described
8 in subparagraph (B) until the end of the 5-year
9 period beginning on the date that the corpora-
10 tion or limited liability company terminates,
11 under the laws of the State.

12 “(b) PENALTIES FOR FALSE BENEFICIAL OWNER-
13 SHIP INFORMATION.—In addition to any civil or criminal
14 penalty that may be imposed by a State, any person who
15 affects interstate or foreign commerce by knowingly pro-
16 viding, or attempting to provide, false beneficial ownership
17 information to a State, by intentionally failing to provide
18 beneficial ownership information to a State upon request,
19 or by intentionally failing to provide updated beneficial
20 ownership information to a State—

21 “(1) shall be liable to the United States for a
22 civil penalty of not more than \$10,000; and

23 “(2) may be fined under title 18, United States
24 Code, imprisoned for not more than 3 years, or both.

1 “(c) FUNDING AUTHORIZATION.—To carry out this
2 section—

3 “(1) a State may use all or a portion of the
4 funds made available to the State under section
5 2004; and

6 “(2) the Administrator may use funds appro-
7 priated to carry out this title, including unobligated
8 or reprogrammed funds, to enable a State to obtain
9 and manage beneficial ownership information for the
10 corporations and limited liability companies formed
11 under the laws of the State, including by funding
12 measures to assess, plan, develop, test, or implement
13 relevant policies, procedures, or system modifica-
14 tions.

15 “(d) STATE COMPLIANCE REPORT.—Nothing in this
16 section authorizes the Administrator to withhold from a
17 State any funding otherwise available to the State under
18 section 2004 because of a failure by that State to comply
19 with this section. Not later than June 1, 2013, the Comp-
20 troller General of the United States shall submit to the
21 Committee on Homeland Security and Governmental Af-
22 fairs of the Senate and the Committee on Homeland Secu-
23 rity of the House of Representatives a report identifying
24 which States are in compliance with this section and, for

1 any State not in compliance, what measures must be taken
 2 by that State to achieve compliance with this section.

3 “(e) DEFINITIONS.—In this section:

4 “(1) BENEFICIAL OWNER.—The term ‘bene-
 5 ficial owner’ means an individual who has a level of
 6 control over, or entitlement to, the funds or assets
 7 of a corporation or limited liability company that, as
 8 a practical matter, enables the individual, directly or
 9 indirectly, to control, manage, or direct the corpora-
 10 tion or limited liability company.

11 “(2) CORPORATION; LIMITED LIABILITY COM-
 12 PANY.—The terms ‘corporation’ and ‘limited liability
 13 company’—

14 “(A) have the meanings given such terms
 15 under the laws of the applicable State;

16 “(B) do not include any business concern
 17 that is an issuer of a class of securities reg-
 18 istered under section 12 of the Securities Ex-
 19 change Act of 1934 (15 U.S.C. 781) or that is
 20 required to file reports under section 15(d) of
 21 that Act (15 U.S.C. 78o(d)), or any corporation
 22 or limited liability company formed by such a
 23 business concern;

24 “(C) do not include any business concern
 25 formed by a State, a political subdivision of a

State, under an interstate compact between 2
or more States, by a department or agency of
the United States, or under the laws of the
United States; and

“(D) do not include any individual busi-
ness concern or class of business concerns
which a State, after obtaining the written con-
currence of the Administrator and the Attorney
General of the United States, has determined in
writing should be exempt from the requirements
of subsection (a), because requiring beneficial
ownership information from the business con-
cern would not serve the public interest and
would not assist law enforcement efforts to de-
tect, prevent, or punish terrorism, money laun-
dering, tax evasion, or other misconduct.

“(3) FORMATION AGENT.—The term ‘formation
agent’ means a person who, for compensation, acts
on behalf of another person to assist in the forma-
tion of a corporation or limited liability company
under the laws of a State.”.

(2) TABLE OF CONTENTS.—The table of con-
tents in section 1 of the Homeland Security Act of
2002 (6 U.S.C. 101 et seq.) is amended by inserting
after the item relating to section 2008 the following:

“Sec. 2009. Transparent incorporation practices.”.

1 (b) EFFECT ON STATE LAW.—

2 (1) IN GENERAL.—This Act and the amend-
3 ments made by this Act do not supersede, alter, or
4 affect any statute, regulation, order, or interpreta-
5 tion in effect in any State, except where a State has
6 elected to receive funding from the Department of
7 Homeland Security under section 2004 of the Home-
8 land Security Act of 2002 (6 U.S.C. 605), and then
9 only to the extent that such State statute, regula-
10 tion, order, or interpretation is inconsistent with this
11 Act or an amendment made by this Act.

12 (2) NOT INCONSISTENT.—A State statute, reg-
13 ulation, order, or interpretation is not inconsistent
14 with this Act or an amendment made by this Act if
15 such statute, regulation, order, or interpretation—

16 (A) requires additional information, more
17 frequently updated information, or additional
18 measures to verify information related to a cor-
19 poration, limited liability company, or beneficial
20 owner, than is specified under this Act or an
21 amendment made by this Act; or

22 (B) imposes additional limits on public ac-
23 cess to the beneficial ownership information ob-
24 tained by the State than is specified under this
25 Act or an amendment made by this Act.

1 **SEC. 4. ANTI-MONEY LAUNDERING OBLIGATIONS OF FOR-**
2 **MATION AGENTS.**

3 (a) ANTI-MONEY LAUNDERING OBLIGATIONS OF
4 FORMATION AGENTS.—Section 5312(a)(2) of title 31,
5 United States Code, is amended—

6 (1) in subparagraph (Y), by striking “or” at
7 the end;

8 (2) by redesignating subparagraph (Z) as sub-
9 paragraph (AA); and

10 (3) by inserting after subparagraph (Y) the fol-
11 lowing:

12 “(Z) any person involved in forming a cor-
13 poration, limited liability company, partnership,
14 trust, or other legal entity; or”.

15 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
16 RULE FOR FORMATION AGENTS.—

17 (1) PROPOSED RULE.—Not later than 90 days
18 after the date of enactment of this Act, the Sec-
19 retary of the Treasury, in consultation with the At-
20 torney General of the United States, the Secretary
21 of Homeland Security, and the Commissioner of the
22 Internal Revenue Service, shall publish a proposed
23 rule in the Federal Register requiring persons de-
24 scribed in section 5312(a)(2)(Z) of title 31, United
25 States Code, as amended by this section, to establish

1 anti-money laundering programs under subsection
2 (h) of section 5318 of that title.

3 (2) FINAL RULE.—Not later than 270 days
4 after the date of enactment of this Act, the Sec-
5 retary of the Treasury shall publish the rule de-
6 scribed in this subsection in final form in the Fed-
7 eral Register.

8 **SEC. 5. STUDY AND REPORT BY GOVERNMENT ACCOUNT-**
9 **ABILITY OFFICE.**

10 Not later than 1 year after the date of enactment
11 of this Act, the Comptroller General of the United States
12 shall conduct a study and submit to the Committee on
13 Homeland Security and Governmental Affairs of the Sen-
14 ate and the Committee on Homeland Security of the
15 House of Representatives a report—

16 (1) identifying each State that has procedures
17 that enable persons to form or register under the
18 laws of the State partnerships, trusts, or other legal
19 entities, and the nature of those procedures;

20 (2) identifying each State that requires persons
21 seeking to form or register partnerships, trusts, or
22 other legal entities under the laws of the State to
23 provide information about the beneficial owners (as
24 that term is defined in section 2009 of the Home-
25 land Security Act of 2002, as added by this Act) or

1 beneficiaries of such entities, and the nature of the
2 required information;

3 (3) evaluating whether the lack of available
4 beneficial ownership information for partnerships,
5 trusts, or other legal entities—

6 (A) raises concerns about the involvement
7 of such entities in terrorism, money laundering,
8 tax evasion, securities fraud, or other mis-
9 conduct; and

10 (B) has impeded investigations into enti-
11 ties suspected of such misconduct; and

12 (4) evaluating whether the failure of the United
13 States to require beneficial ownership information
14 for partnerships and trusts formed or registered in
15 the United States has elicited international criticism
16 and what steps, if any, the United States has taken
17 or is planning to take in response.

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