

114TH CONGRESS
2D SESSION

S. 2489

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent the formation of corporations with hidden owners, stop the misuse of United States corporations by wrongdoers, and assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, tax evasion, and other criminal and civil misconduct involving United States corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2016

Mr. WHITEHOUSE (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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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) Terrorists and other criminals have ex-
20 ploited the weaknesses in State formation proce-
21 dures to conceal their identities when forming cor-
22 porations or limited liability companies in the United
23 States, and have then used the newly created enti-
24 ties to support terrorist organizations, drug traf-
25 ficking organizations, and international organized
26 crime groups, as well as commit misconduct affect-

1 ing interstate and international commerce such as
2 trafficking in illicit drugs, illegal arms trafficking,
3 money laundering, tax evasion, health care fraud,
4 Internet-based fraud, securities fraud, financial
5 fraud, intellectual property crimes, and acts of cor-
6 ruption.

7 (5) Among those who have abused State incor-
8 poration procedures is Victor Bout, a Russian arms
9 dealer who used at least 12 companies incorporated
10 in Texas, Florida, and Delaware to carry out his ac-
11 tivities, and has been convicted, in part, for con-
12 spiring to sell weapons to a terrorist organization
13 trying to kill citizens of the United States and Fed-
14 eral officers and employees. In addition, Iranian in-
15 terests used a shell company formed in New York to
16 purchase a 36-story building on Fifth Avenue in
17 Manhattan and forwarded millions of dollars in rent
18 each year to Iran until authorities in the United
19 States learned of the transfers and seized the build-
20 ing.

21 (6) Law enforcement efforts to investigate cor-
22 porations and limited liability companies suspected
23 of wrongdoing have been impeded by the lack of
24 available beneficial ownership information, as docu-
25 mented in reports and testimony by officials from

1 the Department of Justice, the Department of
2 Homeland Security, the Financial Crimes Enforce-
3 ment Network of the Department of the Treasury,
4 the Internal Revenue Service, the Government Ac-
5 countability Office, and others.

6 (7) In July 2006, a leading international anti-
7 money laundering and anti-terrorist financing orga-
8 nization, the Financial Action Task Force on Money
9 Laundering (in this section referred to as “FATF”),
10 of which the United States is a member, issued a re-
11 port that criticized the United States for failing to
12 comply with a FATF standard on the need to collect
13 beneficial ownership information and urged the
14 United States to correct this deficiency by July
15 2008.

16 (8) In response to the FATF report and to
17 strengthen measures to protect homeland security,
18 Federal officials have repeatedly urged the States to
19 improve their formation practices by obtaining bene-
20 ficial ownership information for the corporations and
21 limited liability companies formed under the laws of
22 such States. But the States continue to form mil-
23 lions of corporations with hidden owners.

24 (9) Many States have established automated
25 procedures that allow a person to form a new cor-

1 poration or limited liability company within the
2 State within 24 hours of filing an online application,
3 without any prior review of the application by a
4 State official.

5 (10) Dozens of Internet websites highlight the
6 anonymity of beneficial owners allowed under the
7 formation practices of some States, point to those
8 practices as a reason to incorporate in those States,
9 and list those States together with offshore jurisdic-
10 tions as preferred locations for the formation of new
11 corporations, essentially inviting terrorists and other
12 wrongdoers to form entities within the United
13 States.

14 (11) In contrast to practices in the United
15 States, all 28 countries in the European Union are
16 already required to have formation agents identify
17 the beneficial owners of the corporations formed by
18 those agents under the laws of those countries.

19 (12) To reduce the vulnerability of the United
20 States to wrongdoing by United States corporations
21 and limited liability companies with hidden owners,
22 protect interstate and international commerce from
23 terrorists and other criminals misusing United
24 States corporations and limited liability companies,
25 strengthen law enforcement investigations of suspect

1 corporations and limited liability companies, set min-
 2 imum standards for and level the playing field
 3 among State formation practices, and bring the
 4 United States into compliance with international
 5 anti-money laundering and anti-terrorist financing
 6 standards, Federal legislation is needed to require
 7 the States to obtain beneficial ownership information
 8 for the corporations and limited liability companies
 9 formed under the laws of such States.

10 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

11 (a) TRANSPARENT INCORPORATION PRACTICES.—
 12 Part E of title I of the Omnibus Crime Control and Safe
 13 Streets Act of 1968 (42 U.S.C. 3750 et seq.) is amended
 14 by adding at the end the following:

15 **“Subpart 4—Transparent Incorporation Practices**

16 **“SEC. 531. TRANSPARENT INCORPORATION PRACTICES.**

17 “(a) INCORPORATION SYSTEMS.—

18 “(1) IN GENERAL.—To protect the United
 19 States from the misuse affecting interstate or for-
 20 eign commerce of corporations and limited liability
 21 companies with hidden owners, each State that re-
 22 ceives funding under subpart 1 shall, not later than
 23 3 years after the date of enactment of this subpart,
 24 use an incorporation system that meets the following
 25 requirements:

1 “(A) IDENTIFICATION OF BENEFICIAL
2 OWNERS.—Except as provided in paragraphs
3 (2) and (4), each applicant to form a corpora-
4 tion or limited liability company under the laws
5 of 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, current residential or business street
11 address, and a unique identifying number
12 from a nonexpired passport issued by the
13 United States or a nonexpired drivers li-
14 cense or identification card issued by a
15 State;

16 “(ii) if any beneficial owner exercises
17 control over the corporation or limited li-
18 ability company through another legal enti-
19 ty, such as a corporation, partnership, or
20 trust, identifies each such legal entity and
21 each such beneficial owner who will use
22 that entity to exercise control over the cor-
23 poration or limited liability company; and

24 “(iii) if the applicant is not a bene-
25 ficial owner, provides the identification in-

1 formation described in clause (i) relating
2 to the applicant.

3 “(B) UPDATED INFORMATION.—For each
4 corporation or limited liability company formed
5 under the laws of the State—

6 “(i) the corporation or limited liability
7 company is required by the State to submit
8 to the State an updated list of the bene-
9 ficial owners of the corporation or limited
10 liability company and the information de-
11 scribed in subparagraph (A) for each such
12 beneficial owner not later than 60 days
13 after the date of any change in the bene-
14 ficial owners of the corporation or limited
15 liability company;

16 “(ii) in the case of a corporation or
17 limited liability company formed or ac-
18 quired by a formation agent and retained
19 by the formation agent as a beneficial
20 owner for transfer to another person, the
21 formation agent is required by the State to
22 submit to the State an updated list of the
23 beneficial owners and the information de-
24 scribed in subparagraph (A) for each such
25 beneficial owner not later than 10 days

1 after the date on which the formation
2 agent transfers the corporation or limited
3 liability company to another person; and

4 “(iii) the corporation or limited liabil-
5 ity company is required by the State to
6 submit to the State an annual filing con-
7 taining the list of the beneficial owners of
8 the corporation or limited liability company
9 and the information described in subpara-
10 graph (A) for each such beneficial owner.

11 “(C) RETENTION OF INFORMATION.—Ben-
12 efcial ownership information relating to each
13 corporation or limited liability company formed
14 under the laws of the State is required to be
15 maintained by the State until the end of the 5-
16 year period beginning on the date that the cor-
17 poration or limited liability company terminates
18 under the laws of the State.

19 “(D) INFORMATION REQUESTS.—Bene-
20 fcial ownership information relating to each
21 corporation or limited liability company formed
22 under the laws of the State shall be provided by
23 the State upon receipt of—

24 “(i) a civil, criminal, or administrative
25 subpoena or summons from a State agen-

1 cy, Federal agency, or congressional com-
 2 mittee or subcommittee requesting such in-
 3 formation;

4 “(ii) a written request made by a Fed-
 5 eral agency on behalf of another country
 6 under an international treaty, agreement,
 7 or convention, or an order under section
 8 3512 of title 18, United States Code, or
 9 section 1782 of title 28, United States
 10 Code, issued in response to a request for
 11 assistance from a foreign country; or

12 “(iii) a written request made by the
 13 Financial Crimes Enforcement Network of
 14 the Department of the Treasury.

15 “(E) NO BEARER SHARE CORPORA-
 16 TIONS.—A corporation or limited liability com-
 17 pany formed under the laws of the State may
 18 not issue a certificate in bearer form evidencing
 19 either a whole or fractional interest in the cor-
 20 poration or limited liability company.

21 “(2) STATES THAT LICENSE FORMATION
 22 AGENTS.—

23 “(A) IN GENERAL.—To meet the require-
 24 ments under this section, a State described in
 25 subparagraph (B) may permit an applicant to

1 form a corporation or limited liability company
2 under the laws of the State, or a corporation or
3 limited liability company formed under the laws
4 of the State, to provide the required informa-
5 tion to a licensed formation agent residing in
6 the State, instead of to the State directly, if the
7 application under paragraph (1)(A) or the up-
8 date under paragraph (1)(B) contains—

9 “(i) the name, current business ad-
10 dress, contact information, and licensing
11 number of the licensed formation agent
12 that has agreed to maintain the informa-
13 tion required under this section; and

14 “(ii) a certification by the licensed
15 formation agent that the licensed forma-
16 tion agent has possession of the informa-
17 tion required under this section and will
18 maintain the information in the State li-
19 censing the licensed formation agent in ac-
20 cordance with this section.

21 “(B) STATES DESCRIBED.—A State de-
22 scribed in this subparagraph is a State that—

23 “(i) receives funding under subpart 1;
24 and

1 “(ii) maintains a formal licensing sys-
 2 tem for formation agents that requires a
 3 formation agent to register with the State,
 4 meet standards for fitness and honesty,
 5 maintain a physical office and records
 6 within the State, undergo regular moni-
 7 toring, and be subject to sanctions for non-
 8 compliance with State requirements.

9 “(C) LICENSED FORMATION AGENT DU-
 10 TIES.—A licensed formation agent that receives
 11 beneficial ownership information in accordance
 12 with this section shall—

13 “(i) maintain the information in the
 14 State in which the corporation or limited
 15 liability company is being or has been
 16 formed in the same manner as required for
 17 States under paragraph (1)(C);

18 “(ii) provide the information under
 19 the same circumstances as required for
 20 States under paragraph (1)(D); and

21 “(iii) perform the duties of a forma-
 22 tion agent under paragraph (3).

23 “(D) TERMINATION OF RELATIONSHIP.—

24 “(i) IN GENERAL.—Except as pro-
 25 vided in clause (ii), a licensed formation

1 agent that receives beneficial ownership in-
2 formation relating to a corporation or lim-
3 ited liability company under State law in
4 accordance with this paragraph and that
5 resigns, dissolves, or otherwise ends a rela-
6 tionship with the corporation or limited li-
7 ability company shall within 60 days—

8 “(I) notify the State in writing
9 that the licensed formation agent has
10 resigned or ended the relationship;
11 and

12 “(II) transmit all beneficial own-
13 ership information relating to the cor-
14 poration or limited liability company
15 in the possession of the licensed for-
16 mation agent to the licensing State.

17 “(ii) EXCEPTION.—If a licensed for-
18 mation agent receives written instructions
19 from a corporation or limited liability com-
20 pany, the licensed formation agent may
21 transmit the beneficial ownership informa-
22 tion relating to the corporation or limited
23 liability company to another licensed for-
24 mation agent that is within the same State

1 and has agreed to maintain the informa-
2 tion in accordance with this section.

3 “(iii) NOTICE TO STATE.—If a li-
4 censed formation agent provides beneficial
5 ownership information to another licensed
6 formation agent under clause (ii), the li-
7 censed formation agent providing the infor-
8 mation shall, within the 60-day period
9 specified under clause (i), notify in writing
10 the State under the laws of which the cor-
11 poration or limited liability company is
12 formed of the identity of the licensed for-
13 mation agent receiving the information.

14 “(3) CERTAIN BENEFICIAL OWNERS.—If an ap-
15 plicant to form a corporation or limited liability com-
16 pany or a beneficial owner, officer, director, or simi-
17 lar agent of a corporation or limited liability com-
18 pany who is required to provide identification infor-
19 mation under this section does not have a non-
20 expired passport issued by the United States or a
21 nonexpired drivers license or identification card
22 issued by a State, each application described in
23 paragraph (1)(A) and each update described in
24 paragraph (1)(B) shall include a certification by a

1 formation agent residing in the State that the for-
2 mation agent—

3 “(A) has obtained for each such person a
4 current residential or business street address
5 and a legible and credible copy of the pages of
6 a nonexpired passport issued by the government
7 of a foreign country bearing a photograph, date
8 of birth, and unique identifying information for
9 the person;

10 “(B) has verified the name, address, and
11 identity of each such person;

12 “(C) will provide the information described
13 in subparagraph (A) and the proof of
14 verification described in subparagraph (B) upon
15 request under the same circumstances as re-
16 quired for States under paragraph (1)(D); and

17 “(D) will retain the information and proof
18 of verification under this paragraph in the
19 State in which the corporation or limited liabil-
20 ity company is being or has been formed until
21 the end of the 5-year period beginning on the
22 date that the corporation or limited liability
23 company terminates under the laws of the
24 State.

25 “(4) EXEMPT ENTITIES.—

1 “(A) IN GENERAL.—An incorporation sys-
2 tem described in paragraph (1) shall require
3 that an application for an entity described in
4 clause (i) or (ii) of subsection (d)(2)(B) that is
5 proposed to be formed under the laws of a
6 State and that will be exempt from the bene-
7 ficial ownership disclosure requirements under
8 this section shall include in the application a
9 certification by the applicant, or a prospective
10 officer, director, or similar agent of the entity—

11 “(i) identifying the specific provision
12 of subsection (d)(2)(B) under which the
13 entity proposed to be formed would be ex-
14 empt from the beneficial ownership disclo-
15 sure requirements under paragraphs (1),
16 (2), and (3);

17 “(ii) stating that the entity proposed
18 to be formed meets the requirements for
19 an entity described under such provision of
20 subsection (d)(2)(B); and

21 “(iii) providing identification informa-
22 tion for the applicant or prospective offi-
23 cer, director, or similar agent making the
24 certification in the same manner as pro-
25 vided under paragraph (1) or (3).

1 “(B) EXISTING ENTITIES.—On and after
2 the date that is 2 years after the date on which
3 a State begins requiring beneficial ownership
4 information in compliance with this section, an
5 entity formed under the laws of the State be-
6 fore such effective date shall be considered to
7 be a corporation or limited liability company for
8 purposes of this subsection unless an officer, di-
9 rector, or similar agent of the entity submits to
10 the State a certification—

11 “(i) identifying the specific provision
12 of subsection (d)(2)(B) under which the
13 entity is exempt from the requirements
14 under paragraphs (1), (2), and (3);

15 “(ii) stating that the entity meets the
16 requirements for an entity described under
17 such provision of subsection (d)(2)(B); and

18 “(iii) providing identification informa-
19 tion for the officer, director, or similar
20 agent making the certification in the same
21 manner as provided under paragraph (1)
22 or (3).

23 “(C) EXEMPT ENTITIES WITH AN OWNER-
24 SHIP INTEREST.—As part of the beneficial own-
25 ership information required under subsection

1 (a)(1), neither an applicant seeking to form a
2 corporation or limited liability company nor a
3 corporation or limited liability company pro-
4 viding updated information is required to iden-
5 tify the beneficial owners of any entity that
6 qualifies as an exempt entity under subsection
7 (d)(2)(B).

8 “(b) PENALTIES.—

9 “(1) IN GENERAL.—It shall be unlawful for any
10 person to affect interstate or foreign commerce by
11 failing to comply with this subpart by—

12 “(A) knowingly providing, or attempting to
13 provide, false or fraudulent beneficial ownership
14 information, including a false or fraudulent
15 identifying photograph, to a State or formation
16 agent;

17 “(B) willfully failing to provide complete or
18 updated beneficial ownership information to a
19 State or formation agent;

20 “(C) knowingly disclosing the existence of
21 a subpoena, summons, or other request for ben-
22 eficial ownership information, except—

23 “(i) to the extent necessary to fulfill
24 the authorized request; or

1 “(ii) as authorized by the entity that
2 issued the subpoena, summons, or other
3 request; or

4 “(D) in the case of a formation agent,
5 knowingly failing to obtain or maintain credible,
6 legible, and updated beneficial ownership infor-
7 mation, including any required identifying pho-
8 tograph.

9 “(2) CIVIL AND CRIMINAL PENALTIES.—In ad-
10 dition to any civil or criminal penalty that may be
11 imposed by a State, any person who violates para-
12 graph (1)—

13 “(A) shall be liable to the United States
14 for a civil penalty of not more than \$1,000,000;
15 and

16 “(B) may be fined under title 18, United
17 States Code, imprisoned for not more than 3
18 years, or both.

19 “(c) RULES.—To carry out this subpart, the Attor-
20 ney General of the United States, the Secretary of Home-
21 land Security, and the Secretary of the Treasury may
22 issue joint guidance or a joint rule to clarify application
23 of the definitions under subsection (d) or to specify how
24 to verify beneficial ownership or other identification infor-
25 mation provided under this section, including under sub-

1 section (a)(3). Failure to issue any such guidance or rule
 2 shall not delay the effective date of the requirements under
 3 this subpart.

4 “(d) DEFINITIONS.—For the purposes of this section:

5 “(1) BENEFICIAL OWNER.—

6 “(A) IN GENERAL.—Except as provided in
 7 subparagraph (B), the term ‘beneficial owner’
 8 means a natural person who, directly or indi-
 9 rectly—

10 “(i) exercises substantial control over
 11 a corporation or limited liability company;
 12 or

13 “(ii) has a substantial interest in or
 14 receives substantial economic benefits from
 15 the assets of a corporation or limited liabil-
 16 ity company.

17 “(B) EXCEPTIONS.—The term ‘beneficial
 18 owner’ shall not include—

19 “(i) a minor child;

20 “(ii) a person acting as a nominee,
 21 intermediary, custodian, or agent on behalf
 22 of another person;

23 “(iii) a person acting solely as an em-
 24 ployee of a corporation or limited liability
 25 company and whose control over or eco-

1 nomic benefits from the corporation or lim-
 2 ited liability company derives solely from
 3 the employment status of the person;

4 “(iv) a person whose only interest in
 5 a corporation or limited liability company
 6 is through a right of inheritance, unless
 7 the person also meets the requirements of
 8 subparagraph (A); or

9 “(v) a creditor of a corporation or
 10 limited liability company, unless the cred-
 11 itor also meets the requirements of sub-
 12 paragraph (A).

13 “(C) ANTI-ABUSE RULE.—The exceptions
 14 under subparagraph (B) shall not apply if used
 15 for the purpose of evading, circumventing, or
 16 abusing the provisions of subparagraph (A) or
 17 subsection (a).

18 “(2) CORPORATION; LIMITED LIABILITY COM-
 19 PANY.—

20 “(A) IN GENERAL.—Subject to subpara-
 21 graph (B), the terms ‘corporation’ and ‘limited
 22 liability company’—

23 “(i) have the meanings given such
 24 terms under the laws of the applicable
 25 State; and

1 “(ii) include any non-United States
 2 entity eligible for registration or registered
 3 to do business as a corporation or limited
 4 liability company under the laws of the ap-
 5 plicable State.

6 “(B) EXEMPT ENTITIES.—Subject to sub-
 7 section (a)(4), the terms ‘corporation’ and ‘lim-
 8 ited liability company’ do not include an entity
 9 that—

10 “(i) is—

11 “(I) a business concern that is an
 12 issuer of a class of securities reg-
 13 istered under section 12 of the Securi-
 14 ties Exchange Act of 1934 (15 U.S.C.
 15 781) or that is required to file reports
 16 under section 15(d) of that Act (15
 17 U.S.C. 78o(d));

18 “(II) a business concern con-
 19 stituted or sponsored by a State, a po-
 20 litical subdivision of a State, under an
 21 interstate compact between 2 or more
 22 States, by a department or agency of
 23 the United States, under the laws of
 24 the United States, or by an inter-

1 national organization of which the
2 United States is a member;

3 “(III) a depository institution (as
4 defined in section 3 of the Federal
5 Deposit Insurance Act (12 U.S.C.
6 1813));

7 “(IV) a credit union (as defined
8 in section 101 of the Federal Credit
9 Union Act (12 U.S.C. 1752));

10 “(V) a bank holding company (as
11 defined in section 2 of the Bank Hold-
12 ing Company Act of 1956 (12 U.S.C.
13 1841));

14 “(VI) a broker or dealer (as de-
15 fined in section 3 of the Securities
16 Exchange Act of 1934 (15 U.S.C.
17 78c)) that is registered under section
18 15 of the Securities Exchange Act of
19 1934 (15 U.S.C. 78o);

20 “(VII) an exchange or clearing
21 agency (as defined in section 3 of the
22 Securities Exchange Act of 1934 (15
23 U.S.C. 78c)) that is registered under
24 section 6 or 17A of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78f
2 and 78q-1);

3 “(VIII) an investment company
4 (as defined in section 3 of the Invest-
5 ment Company Act of 1940 (15
6 U.S.C. 80a-3)) or an investment advi-
7 sor (as defined in section 202(11) of
8 the Investment Advisors Act of 1940
9 (15 U.S.C. 80b-2(11))), if the com-
10 pany or adviser is registered with the
11 Securities and Exchange Commission,
12 or has filed an application for reg-
13 istration which has not been denied,
14 under the Investment Company Act of
15 1940 (15 U.S.C. 80a-1 et seq.) or the
16 Investment Advisor Act of 1940 (15
17 U.S.C. 80b-1 et seq.);

18 “(IX) an insurance company (as
19 defined in section 2 of the Investment
20 Company Act of 1940 (15 U.S.C.
21 80a-2)) which is formed under the
22 laws of and regulated by a State;

23 “(X) a registered entity (as de-
24 fined in section 1a of the Commodity
25 Exchange Act (7 U.S.C. 1a)), or a fu-

1 tures commission merchant, intro-
2 ducing broker, commodity pool oper-
3 ator, or commodity trading advisor
4 (as defined in section 1a of the Com-
5 modity Exchange Act (7 U.S.C. 1a))
6 that is registered with the Commodity
7 Futures Trading Commission;

8 “(XI) a public accounting firm
9 registered in accordance with section
10 102 of the Sarbanes-Oxley Act (15
11 U.S.C. 7212);

12 “(XII) a public utility that pro-
13 vides telecommunications service, elec-
14 trical power, natural gas, or water
15 and sewer services within the United
16 States;

17 “(XIII) a church or nonprofit en-
18 tity that is described in section
19 501(c)(3) or 527 of the Internal Rev-
20 enue Code of 1986;

21 “(XIV) any business concern
22 that—

23 “(aa) employs more than 20
24 employees on a full-time basis in
25 the United States;

1 “(bb) files income tax re-
2 turns in the United States dem-
3 onstrating more than \$5,000,000
4 in gross receipts or sales;

5 “(cc) has an operating pres-
6 ence at a physical location within
7 the United States; and

8 “(dd) has more than 100
9 shareholders; or

10 “(XV) any corporation or limited
11 liability company which is owned, in
12 whole or in substantial part, by an en-
13 tity described in subclause (I), (II),
14 (III), (IV), (V), (VI), (VII), (VIII),
15 (IX), (X), (XI), (XII), (XIII), or
16 (XIV); or

17 “(ii) is within any class of business
18 concerns which the Attorney General of the
19 United States, the Secretary of Homeland
20 Security, and the Secretary of the Treas-
21 ury jointly determine in writing, upon the
22 request of a State, and through an order,
23 guidance, or rule should be exempt from
24 the requirements of subsection (a), because
25 requiring beneficial ownership information

1 from the business concern would not serve
2 the public interest and would not assist
3 law enforcement efforts to detect, prevent,
4 or punish criminal or civil misconduct.

5 “(3) FORMATION AGENT.—The term ‘formation
6 agent’ means a person who, for compensation, acts
7 on behalf of another person to form, or assist in the
8 formation, of a corporation or limited liability com-
9 pany under the laws of a State.”.

10 (b) FUNDING AUTHORIZATION.—

11 (1) IN GENERAL.—To carry out section 531 of
12 title I of the Omnibus Crime Control and Safe
13 Streets Act of 1968, as added by this Act, and to
14 protect the United States against the misuse affect-
15 ing interstate or foreign commerce of corporations or
16 limited liability companies with hidden owners, dur-
17 ing the 3-year period beginning on the date of enact-
18 ment of this Act, funds shall be made available to
19 each State (as that term is defined under section
20 901(a)(2) of the Omnibus Crime Control and Safe
21 Streets Act of 1968 (42 U.S.C. 3791(a)(2))), to pay
22 reasonable costs to comply with the requirements of
23 such section 531 from one or more of the following
24 sources:

1 (A) Upon written request by a State, and
2 without further appropriation, the Attorney
3 General of the United States shall make avail-
4 able or transfer to the State funds from excess
5 unobligated balances (as defined in section
6 524(c)(8)(D) of title 28, United States Code) in
7 the Department of Justice Assets Forfeiture
8 Fund established under section 524(c) of title
9 28, United States Code.

10 (B) Upon written request by a State, after
11 consultation with the Attorney General of the
12 United States, and without further appropria-
13 tion, the Secretary of the Treasury shall make
14 available or transfer to the State funds from
15 unobligated balances described in section
16 9703(g)(4)(B) of title 31, United States Code,
17 in the Department of the Treasury Forfeiture
18 Fund.

19 (2) ELIGIBLE COSTS.—The Attorney General
20 and Secretary of the Treasury, in their sole discre-
21 tion, shall determine what costs are reasonable for
22 purposes of paragraph (1), taking into account the
23 maximum amount of funds available for distribution
24 to States under paragraph (3).

25 (3) MAXIMUM AMOUNTS.—

1 (A) DEPARTMENT OF JUSTICE.—The At-
2 torney General of the United States may not
3 make available to States a total of more than
4 \$10,000,000 under paragraph (1)(A).

5 (B) DEPARTMENT OF THE TREASURY.—
6 The Secretary of the Treasury may not make
7 available to States a total of more than
8 \$30,000,000 under paragraph (1)(B).

9 (4) FUNDING AVAILABILITY.—The amounts
10 available to be provided to, and any amounts pro-
11 vided to, a State under paragraph (1) shall be ex-
12 empt from, and shall not be reduced under, any
13 order under section 251A of the Balanced Budget
14 and Emergency Deficit Control Act of 1985 (2
15 U.S.C. 901a).

16 (c) STATE COMPLIANCE REPORT.—Nothing in this
17 Act or an amendment made by this Act authorizes the
18 Attorney General of the United States to withhold from
19 a State any funding otherwise available to the State under
20 subpart 1 of part E of title I of the Omnibus Crime Con-
21 trol and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.)
22 because of a failure by that State to comply with subpart
23 4 of part E of title I of the Omnibus Crime Control and
24 Safe Streets Act of 1968, as added by this Act. Not later
25 than 42 months after the date of enactment of this Act,

1 the Comptroller General of the United States shall submit
 2 to the Committee on the Judiciary of the Senate and the
 3 Committee on the Judiciary of the House of Representa-
 4 tives a report identifying which States are in compliance
 5 with subpart 4 of part E of title I of the Omnibus Crime
 6 Control and Safe Streets Act of 1968 and, for any State
 7 not in compliance, what measures must be taken by that
 8 State to achieve compliance with such subpart 4.

9 (d) EFFECT ON STATE LAW.—

10 (1) IN GENERAL.—This Act and the amend-
 11 ments made by this Act do not supersede, alter, or
 12 affect any statute, regulation, order, or interpreta-
 13 tion in effect in any State, except where a State has
 14 elected to receive funding from the Department of
 15 Justice under subpart 1 of part E of title I of the
 16 Omnibus Crime Control and Safe Streets Act of
 17 1968 (42 U.S.C. 3750 et seq.), and then only to the
 18 extent that such State statute, regulation, order, or
 19 interpretation is inconsistent with this Act or an
 20 amendment made by this Act.

21 (2) NOT INCONSISTENT.—A State statute, reg-
 22 ulation, order, or interpretation is not inconsistent
 23 with this Act or an amendment made by this Act if
 24 such statute, regulation, order, or interpretation—

1 (A) requires additional information, more
2 frequently updated information, or additional
3 measures to verify information related to a cor-
4 poration, limited liability company, or beneficial
5 owner, than is specified under this Act or an
6 amendment made by this Act; or

7 (B) imposes additional limits on public ac-
8 cess to the beneficial ownership information ob-
9 tained by the State than is specified under this
10 Act or an amendment made by this Act.

11 (3) STATE RECORDS.—Nothing in this Act or
12 the amendments made by this Act limits the author-
13 ity of a State, by statute or otherwise, to disclose or
14 to not disclose to the public all or any portion of the
15 beneficial ownership information provided to the
16 State under subpart 4 of part E of title I of the Om-
17 nibus Crime Control and Safe Streets Act of 1968,
18 as added by this Act.

19 (4) NO DUTY OF VERIFICATION.—This Act and
20 the amendments made by this Act do not impose
21 any obligation on a State to verify the name, ad-
22 dress, or identity of a beneficial owner whose infor-
23 mation is submitted to such State under subpart 4
24 of part E of title I of the Omnibus Crime Control
25 and Safe Streets Act of 1968, as added by this Act.

1 (e) **FEDERAL CONTRACTORS.**—Not later than the
 2 first day of the first full fiscal year beginning at least 1
 3 year after the date of enactment of this Act, the Adminis-
 4 trator for Federal Procurement Policy shall revise the
 5 Federal Acquisition Regulation maintained under section
 6 1303(a)(1) of title 41, United States Code, to require any
 7 contractor who is subject to the requirement to disclose
 8 beneficial ownership information under subpart 4 of part
 9 E of title I of the Omnibus Crime Control and Safe Streets
 10 Act of 1968, as added by this Act, to provide the informa-
 11 tion required to be disclosed under such subpart 4 to the
 12 Federal Government as part of any bid or proposal for
 13 a contract with a value threshold in excess of the sim-
 14 plified acquisition threshold under section 134 of title 41,
 15 United States Code.

16 **SEC. 4. ANTI-MONEY LAUNDERING AND ANTI-TERRORIST**
 17 **FINANCING OBLIGATIONS OF FORMATION**
 18 **AGENTS.**

19 (a) **ANTI-MONEY LAUNDERING AND ANTI-TER-**
 20 **RORIST FINANCING OBLIGATIONS OF FORMATION**
 21 **AGENTS.**—Section 5312(a)(2) of title 31, United States
 22 Code, is amended—

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

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

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

5 “(Z) any person engaged in the business of
6 forming corporations or limited liability compa-
7 nies; or”.

8 (b) DEADLINE FOR IMPLEMENTING RULE FOR FOR-
9 MATION AGENTS.—

10 (1) PROPOSED RULE.—Not later than 120 days
11 after the date of enactment of this Act, the Sec-
12 retary of the Treasury, in consultation with the Sec-
13 retary of Homeland Security and the Attorney Gen-
14 eral of the United States, shall publish a proposed
15 rule in the Federal Register requiring persons de-
16 scribed in section 5312(a)(2)(Z) of title 31, United
17 States Code, as amended by this section, to establish
18 anti-money laundering programs under subsection
19 (h) of section 5318 of that title.

20 (2) FINAL RULE.—Not later than 270 days
21 after the date of enactment of this Act, the Sec-
22 retary of the Treasury shall publish the rule de-
23 scribed in this subsection in final form in the Fed-
24 eral Register.

1 (3) EXCLUSIONS.—Any rule promulgated under
 2 this subsection shall exclude from the category of
 3 persons engaged in the business of forming a cor-
 4 poration or limited liability company—

5 (A) any government agency; and

6 (B) any attorney or law firm that uses a
 7 paid formation agent operating within the
 8 United States to form the corporation or lim-
 9 ited liability company.

10 **SEC. 5. STUDIES AND REPORTS.**

11 (a) OTHER LEGAL ENTITIES.—Not later than 2
 12 years after the date of enactment of this Act, the Comp-
 13 troller General of the United States shall conduct a study
 14 and submit to the Committee on the Judiciary of the Sen-
 15 ate and the Committee on the Judiciary of the House of
 16 Representatives a report—

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

22 (2) identifying each State that requires persons
 23 seeking to form or register partnerships, trusts,
 24 charitable organizations, or other legal entities under
 25 the laws of the State to provide information about

1 the beneficial owners (as that term is defined in sec-
 2 tion 531 of title I of the Omnibus Crime Control
 3 and Safe Streets Act of 1968, as added by this Act)
 4 or beneficiaries of such entities, and the nature of
 5 the required information;

6 (3) evaluating whether the lack of available
 7 beneficial ownership information for partnerships,
 8 trusts, charitable organizations, or other legal enti-
 9 ties—

10 (A) raises concerns about the involvement
 11 of such entities in terrorism, money laundering,
 12 tax evasion, securities fraud, trafficking in illicit
 13 drugs, or other criminal or civil misconduct;
 14 and

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

17 (4) evaluating whether the failure of the United
 18 States to require beneficial ownership information
 19 for partnerships, trusts, charitable organizations, or
 20 other legal entities formed or registered in the
 21 United States has elicited international criticism and
 22 what steps, if any, the United States has taken or
 23 is planning to take in response.

24 (b) EFFECTIVENESS OF INCORPORATION PRAC-
 25 TICES.—Not later than 5 years after the date of enact-

1 ment of this Act, the Comptroller General of the United
2 States shall conduct a study and submit to the Committee
3 on the Judiciary of the Senate and the Committee on the
4 Judiciary of the House of Representatives a report assess-
5 ing the effectiveness of incorporation practices imple-
6 mented under this Act and the amendments made by this
7 Act in—

8 (1) providing law enforcement agencies with
9 prompt access to reliable, useful, and complete bene-
10 ficial ownership information; and

11 (2) strengthening the capability of law enforce-
12 ment agencies to combat incorporation abuses and
13 other civil and criminal misconduct.

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