



INCORPORATION TRANSPARENCY AND LAW ENFORCEMENT ASSISTANCE ACT

On March 11, 2009, Senator Carl Levin (D-Mich.) introduced a bill that would radically affect persons organizing corporations and limited liability companies in the United States. Entitled the "Incorporation Transparency and Law Enforcement Assistance Act" (S. 569), the bill, co-sponsored by Senators Chuck Grassley (R-Iowa) and Claire McCaskill (D-Mo.), would require identifying the beneficial owners of corporations and limited liability companies organized in the United States. As the sponsors note, "[a]ll 27 countries in the European Union are already required to obtain beneficial ownership information for the corporations they form." It also should be noted that, like the Stop Tax Haven Abuse Act introduced by Senator Levin earlier this month (see *Curtis Alert* on the Stop Tax Haven Abuse Act dated March 11, 2009), S. 569 is the same as a bill that Senator Levin and then-Senator Obama sponsored in the last Congress.

The salient features of S. 569 are as follows:

- All States would have to maintain, by October 2012, a list (including names and addresses) of the ultimate beneficial owners of each corporation and limited liability company formed under their laws and ensure that the information is updated periodically. The information would have to be provided to civil or criminal law enforcement authorities upon receipt of a subpoena or summons or upon written request of a federal agency acting for another country pursuant to international treaty or agreement. A beneficial owner is any individual who has a level of control over, or entitlement to, the funds or assets of an entity that, as a practical matter, enables the individual directly or indirectly to control, manage or direct the entity.
- A formation agent, resident in the State of formation, would have to certify for each such entity with beneficial owners who are not U.S. citizens or permanent residents that the agent has verified the owner's identity and has obtained a copy of each such owner's passport page on which the owner's photograph appears. A formation agent is any person who for compensation assists in the formation of a corporation or limited liability company.
- For corporations and limited liability companies already in existence, beneficial ownership information would be provided for each entity's regular annual filing with the State or, if no filing is required, when there is a change in beneficial ownership.
- Establishes civil and criminal penalties for persons who knowingly provide false information or intentionally fail to provide information to a State.
- Requires that the beneficial owner information be maintained by a State and by the formation agent for five years after the entity terminates.
- Public corporations and entities they form generally would be exempt.
- The Secretary of Treasury, within 90 days of enactment of the bill, would be required to publish rules requiring any persons involved in forming a corporation, limited liability company, partnership, trust or other legal entity to establish anti-money laundering programs.
- The United States General Accounting Office would be required to complete a study of the State beneficial ownership requirements for partnerships and trusts organized within all of the States in the United States.

The full text of the Act is available at:

<http://thomas.loc.gov/cgi-bin/query/z?c111:s569>:



MARCH 2009

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