

2011 NASS Winter Conference
NASS Business Services Committee
Saturday, February 12, 2011
Washington, DC
8:45 AM – 12:00 PM

Members Present:

Hon. Jeffrey Bullock, DE – Co-Chair
Hon. Delbert Hosemann, MS – Co-Chair
Hon. Beth Chapman, AL
Hon. Debra Bowen, CA
Hon. Scott Gessler, CO
Hon. Denise Merrill, CT
Hon. Kurt Browning, FL
Hon. Brian Kemp, GA
Hon. Ben Ysursa, ID
Hon. Charlie White, IN (by proxy)
Hon. Tom Schedler, LA
Hon. Mark Ritchie, MN
Hon. Robin Carnahan, MO
Hon. Linda McCulloch, MT
Hon. Al Jaeger, ND
Hon. John Gale, NE
Hon. Bill Gardner, NH
Hon. Ross Miller, NV
Hon. Jon Husted, OH
Hon. Kate Brown, OR
Hon. Kenneth McClintock, PR
Hon. Ralph Mollis, RI (by proxy)
Hon. Mark Hammond, SC
Hon. Jason Gant, SD
Hon. Hope Andrade, TX
Hon. Jim Condos, VT
Hon. Sam Reed, WA
Hon. Natalie Tennant, WV
Hon. Max Maxfield, WY

NASS Staff Present:

Ms. Leslie Reynolds, NASS Executive Director
Mr. John Milhofer, NASS Policy Analyst

Secretary Bullock called the meeting to order at 8:45 AM.

International Association of Commercial Administrators – Resources and Benefits

Secretary Hosemann introduced Sarah Steinbeck and Mike Smith, Section Chairs of the International Association of Commercial Administrators (IACA). Mr. Smith and Ms. Steinbeck made the following points in their presentation:

- IACA consists of government professionals that administer business and secured transaction laws
- IACA provides a forum for members to exchange ideas, share concerns, and propose solutions
- IACA has a very active list serve where members can learn about issues in other states and share survey questions.
- The business organization section is developing new technologies, including e-government solutions
- The secured transaction section is involved with UCC Article 9 and e-filing implementation
- The information technology section provides recommendations and assistance to other sections
- The international relations section helps exchange information and ideas with other countries

Proposals on Collection of Beneficial Ownership

Secretary Bullock introduced Secretary Miller, Co-Chair of the NASS Company Formation Task Force, to provide an overview of the incorporation transparency issue. Secretary Miller reported that NASS has been very involved in this issue for several years, providing a recap of events that included the following:

- Government reports from 2006 indicated that the lack of ownership information collected by states impeded law enforcement investigations into shell corporations.
- The Senate Homeland Security and Government Affairs Committee held a hearing in 2006 and discussed having states collect beneficial ownership information from companies.
- NASS established the company formation task force to develop recommendations on a state based approach to this issue, but Senator Levin (D-MI) found the recommendations to be inadequate and introduced legislation requiring states to collect beneficial ownership information.
- After a hearing on Senator Levin's bill [S. 569] in November 2009, the Treasury Department became more involved, and has since drafted several versions of a proposal on this issue (the latest was issued in September 2010).
- Representative Carolyn Maloney (D-NY) also introduced legislation in the last Congress.
- NASS opposes Senator Levin's bill and the other federal proposals based on the potential burdens and confusion for states and small businesses, and implementation costs.
- In 2010, NASS adopted a resolution stating that that the IRS implemented in January 2010 a requirement for providing true ownership, the SS-4(to get an employer ID number) that could assist law enforcement.
- The resolution also calls for a GAO cost study if any federal legislation is pursued, and a dedicated funding source before a state is required to implement any federal legislation.

Secretary Miller introduced Chip Poncy, Director of Strategic Policy, Terrorist Financing and Financial Crimes at the U.S. Treasury. Mr. Poncy's remarks included the following points:

- Treasury's most recent proposal was released in September 2010 and deals with the issues raised when Treasury testified at the November 2009 hearing on Senator Levin's bill.
- The Treasury proposal covers all legal entities registered with the states in order to avoid creating incentives for creating one entity over another and to provide consistency.

- The proposal includes exemptions for publicly traded companies, financial institutions, nonprofit corporations, and certain other entities.
- The definition of beneficial ownership in the proposal is consistent with international standards, but also includes a regulatory process to define it more clearly.
- The proposal includes an opt-in features where states could license formation agents and subject them to supervision and examination, and in exchange the licensed formation agents would hold the beneficial ownership information instead of the states.
- The formation agent regulation provisions in the proposal alleviate burdens placed on states, but create questions as to who will oversee the compliance regime for formation agents.
- The proposal allocates funds from the DOJ and Treasury to assist states with implementation.
- The next steps for Treasury will involve reaching out to stakeholders and reinvigorating efforts on the issue.
- Treasury has pledged to continue working with Senator Levin to find a workable solution, even though it may not be perfect.
- Treasury also hopes to work with NASS and address the interests of states.

Secretary Bullock introduced Laura Stuber, Counsel of the Permanent Subcommittee on Investigations, Senate Homeland Security and Government Affairs Committee. Ms. Stuber provided several examples of shell companies that have been used for illicit purposes and made the following points in her presentation:

- States form millions of corporation and LLCs without knowing who is behind them, and the lack of ownership information can result in misuse of the companies for illicit purposes.
- Senator Levin will be introducing a new incorporation transparency bill in this Congress, with some changes from previous versions [she was not able to discuss those changes].
- Two approaches to the collection of ownership information have been considered in recent proposals - one involves having the government retain beneficial ownership information, and the other would have formation agents retain that information.
- The preferable approach would be for the government to collect and retain that information, since formation agents may come and go, but the state is consistent.
- There is also concern that a formation agent would alert the company or wrongdoer to the fact that the government is seeking information, whereas the state is unlikely to do that.

Secretary Hosemann asked the speakers what the liability of the Secretaries of State would be if they did not maintain all of the information required. Mr. Poncy said that the proposal requires GAO to do a study after two years to identify the status of implementation in the states. If the study shows that states are lagging, then they would have to consider what options might be available, but they hope that doesn't become an issue. Ms. Stuber echoed the comments regarding the GAO study, and noted that there are no penalties in the bill.

Secretary Bullock said Delaware spent a significant amount of time working with Treasury and Senator Levin's office on this issue and thought progress had been made, but did not see any of that progress in the Treasury proposals. He added that he is not interested in going through that process again, and asked how things would be different this year. Mr. Poncy said he understands the frustration, and that no position on this issue will give everyone what they want.

He also noted that the Treasury proposal might not accommodate everyone's interests, including Senator Levin, but it was an attempt to identify issues in Senator Levin's draft and provide an acceptable scenario. He said those involved will need to be flexible in order to find a solution.

Secretary Gale, former Co-Chair of the NASS Company Formation Task Force, expressed disappointment with statements made by Senator Levin when this issue first came under discussion. He said Senator Levin's comments regarding the FATF evaluation report of the U.S. provided an inaccurate portrayal of U.S. compliance in relation to other countries. He also expressed concern that Senator Levin's legislation encompasses a large percentage of legitimate businesses when it should focus on the small percentage of shell entities. Ms. Stuber responded that while there are only a small number of companies that are misused, criminal laws impact everyone in order to protect everyone. She added that changes being made to Senator Levin's legislation will include a number of compromises that will, hopefully, meet the approval of NASS.

Corporate Identity Theft

Secretary Hosemann introduced Secretary Kemp from Georgia. Secretary Kemp described Georgia's efforts to prevent corporate identity theft. His presentation included the following points:

- Corporate entities that form or renew online must provide at least one email address
- Email notifications are sent to email addresses associated with an entity whenever a change is made
- A backup features permanently stores every email address added to an entity's record
- Georgia provides a website with information and resources on corporate identity theft
- The Corporations Division works with law enforcement to help investigate criminal activity
- Meetings were held with the state bankers association and other organizations to discuss the issue

Secretary Hosemann introduced Secretary Gessler to talk about Colorado's experience with business identity theft. Secretary Gessler's presentation included the following points:

- Business identity theft involves hijacking a business identity and using it to establish lines of credit
- 85 Colorado businesses have been victims of identity theft
- Losses in Colorado so far amount to one million dollars, and the rate of theft is growing
- Colorado has worked with law enforcement and affected agencies to find solutions to the issue
- Colorado has a website with information and resources to help educate the public
- Email notification allow businesses to monitor records for unusual activity
- The state is working to implement password protection for all business records

Secretary Bullock introduced Bob Beckett and Robert Strezze from Dun and Bradstreet to discuss corporate identity theft. Mr. Beckett and Mr. Strezze made the following points in their presentation:

- Corporate identity theft involves stealing a business identity to secure new or existing lines of credit
- Victims of identity theft include small and large businesses, banks, and credit bureaus
- Patterns of theft include falsifying business registrations and filing false reports
- Corporate identity theft is on the rise, with a steady increase in thefts over the last few years
- Public and private partnership are important to prevent this type of crime and prosecute criminals

Notarization and E-Notarization

Secretary Bullock reported that the Interstate Recognition of Notarizations (IRON) Act passed in the last Congress, but was vetoed by President Obama due to concerns about its impact on the mortgage foreclosure process and related issues. He introduced Secretary Marshall to discuss electronic notarization efforts in North Carolina.

Secretary Marshall's presentation included the following points:

- Work on e-notarization began in 2005 and was followed by extensive rulemaking
- North Carolina now has about 600 electronic notaries
- Electronic notary tools include an e-notary signature and e-notary seal
- North Carolina certifies e-notary providers, but permits variation in the technology
- E-notaries must hold a valid North Carolina notary commission and take a course and exam
- E-notarization involves personal appearance, identification, and affixing e-notary signature and seal
- North Carolina currently has 5 different e-notary solution providers
- Industries using e-notarization include business, finance, government, legal, and medical

Committee Business

Secretary Bullock and Secretary Marshall discussed working with NASS members to review and possibly update the NASS e-notarization standards. The one item of business was a NASS Resolution in Support of the National Commission on eNotarization. The commission was established to develop standards on eNotarization in 2006. The standards that came out of that commission were adopted by NASS in the summer of 2006 and will be up for reauthorization this summer. However, the original commission no longer exists. Because there was no longer a commission, Bullock recommended allowing the resolution to sunset, but members may want to arrange a group to review the e-notarization standards. Secretary Ritchie also agreed that the resolution should sunset, but suggested that members who are interested in the issue volunteer to be part of a review of the standards for the summer conference. Secretary Marshall, Secretary Browning, Secretary Bullock, and Secretary Jaeger were among the members interested in being part of those discussions. No action needs to be taken to allow a resolution to sunset.

Reynolds pointed out that over the last six or seven months, there has been a focus on the topic of corporate identity theft. She asked if there was interest among the members in putting together a corporate identity theft task force to work with relevant organizations in the Washington, DC area and elsewhere. Secretaries Bowen, Bullock, Kemp, Chapman, Condos, and Ysursa were among those that expressed interest.

Secretary Browning reported that Florida residents have been receiving advertisements from groups that offer to file corporate documents for several hundred dollars, although the filings are actually very simple and require only a small fee. He said he believes this is an unfair and fraudulent practice. Jerry Bonner said they have seen similar scams in Indiana and the Attorney General has been trying to track down the people responsible. He added that Indiana would be interested in working with other states to exchange information on this issue.

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MEETING MINUTES

There were no action items for this committee. The meeting adjourned at 12:05 PM.