

## **NASS Summary of S. 1483**

Note: S. 1483 is a complex bill and may be subject to varying interpretations. The information below is based on NASS's reading of the bill, in consultation with the Treasury Department.

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### **1. Effective Date**

Any state that receives funding from the Department of Homeland Security for preventing terrorism must have procedures in place to comply with the bill no later than the beginning of FY 2014 (October 1, 2013).

### **2. Collection of Beneficial Ownership Information from Corporations and LLCs**

#### **A. Information Provided to the State**

Corporations and LLCs that do not meet the bill's definition of "exempt entities" must provide the state with a list of beneficial owners during the formation process. The list must include each beneficial owner's name, address, and state driver's license /identification number, or US passport number. The list of beneficial owners must include the name of any individuals who use another legal entity (e.g. corporation, trust, partnership) to control the corporation or LLC, and must identify the controlling entity.

If the individual forming the corporation or LLC (the applicant) is not also a beneficial owner, that individual must provide the state with his/her name, address, and state driver's license/identification number or passport number.

#### **B. Foreign Beneficial Owners**

If the list of beneficial owners provided to the state includes any foreign individuals, the corporation or LLC must have a formation agent (does not have to be licensed) verify the individual's name, address, and identity, and obtain a copy of the individual's foreign passport information. The corporation or LLC must provide the state with a

certification from the formation agent that carries out these requirements, and the certification must be included in an annual filing with the state.

### **3. Updating of Beneficial Ownership Information and Annual Filings**

Each corporation or LLC must provide the state with an updated list of beneficial owners no later than 60 days after any change to the information. Corporation and LLCs must also include the list of beneficial owners in an annual filing with the state.

Any formation agent who forms or acquires a corporation or LLCs for the purpose of transferring it to someone else must submit an updated list of beneficial owners to the state no later than 10 days after the agent transfers the corporation or LLC.

### **4. Maintenance of Beneficial Ownership Information**

#### **A. Retention of Information**

Each state must retain the beneficial ownership information for 5 years following the date that a corporation or LLC terminates

#### **B. Public Access**

States have the authority to determine whether or not to disclose any or all of the beneficial ownership information to the public

#### **C. No Verification Duty**

States are not required to verify any of the beneficial ownership information

#### **D. Release of Beneficial Ownership Information**

The state must disclose beneficial ownership information in response to a subpoena or summons from a state or federal agency or congressional committee; a written request from a federal agency on behalf of another country; or written request by the Financial Crimes Enforcement Network of the Department of the Treasury.

Any formation agent holding the identification information for foreign beneficial owners must disclose that information in the circumstances outlined above.

### **5. Option to Use Licensed Formation Agents for Beneficial Ownership Information**

#### **A. Use of a Licensed Formation Agent**

A state may permit a corporation or LLC to provide beneficial ownership information to a licensed formation agent residing in the state if the state has a formal system for licensing formation agents. Any such system must require the licensed agents to register with the state, meet fitness and honesty standards, maintain a physical office and records within the state, undergo regular monitoring, and be subject to noncompliance sanctions

If a corporation or LLC is permitted to, and does, utilize a licensed formation agent, the corporation or LLC must provide the state with a certification from the licensed formation agent who will possess and maintain the beneficial ownership information. The certification and contact information must also be included in an annual filing with the state.

#### **B. Duties of a Licensed Formation Agent**

A licensed formation agent must maintain the beneficial ownership information for five years after termination of the LLC or corporation, and must disclose the information under the same circumstances as required for states (e.g. in response to a subpoena or summons).

If the relationship between the licensed formation and the corporation or LLC ends, the licensed formation agent must provide the state with the beneficial ownership information, or, if instructed by the corporation or LLC, transmit the information to another licensed formation agent and notify the state.

## **6. State Collection of Identification Information from Exempt Entities**

### **A. Exempt Entity Certification**

Any corporation or LLC defined as exempt (e.g. publicly traded corporations) does not have to disclose beneficial ownership information, but the person forming the exempt entity must provide the state with a certification that identifies the provision under which the entity is exempt from having to file beneficial ownership provision. The certification must also include the name, address, and state driver's license/identification number or passport number of the person forming the exempt entity or someone who will be an officer, director, or other agent of the exempt entity.

### **B. Foreign Identification Information**

If the person identified in the exempt entity certification is a foreign individual, the exempt entity must have a formation agent (does not have to be licensed) verify the individual's name, address, and identity, and obtain a copy of the individual's foreign passport information. The exempt entity must provide the state with a certification from the formation agent that carries out these requirements.

### **C. Exempt Entities that Must Disclose Ownership Interest**

A corporation or LLC that is otherwise not exempt will be considered exempt if an exempt entity has an ownership interest in that corporation or LLC. When this is the basis for a corporation or LLC being exempt, it must also provide the state with the name of the exempt entities that have the ownership interest.

### **D. Filing Requirement for Exempt Entities Created Prior to the Effective Date**

Any exempt entity that was created prior to the effective date of the bill has one year from the date the bill goes into effect to provide the state with the exempt entity certification.

## **7. Penalties**

Prohibits anyone providing or attempting to provide false or fraudulent beneficial ownership information to a state or formation agent; willfully failing to provide complete or updated beneficial ownership information to a state or formation agent; or knowingly disclosing the existence of a valid request for beneficial ownership information except to the extent necessary to fulfill the request or as authorized by the entity that issues the request

Formation agents are prohibited from knowingly failing to obtain or maintain, and update the beneficial ownership information

In addition to any state civil or criminal penalties, anyone in violation of the relevant provisions is liable for up to \$10,000, and may face additional fines and/or imprisonment of up to 3 years.

## **8. Ban on Bearer Shares**

No corporation or LLC may issue bearer share certificates

## **9. Federal Agency Guidance and Rules**

The Secretary of Homeland Security, the Attorney General of the US, and the Secretary of the Treasury may issue joint guidance or rules to clarify the definitions of the bill, or to specify how to verify beneficial ownership or other identification information.

## **10. Reports**

### **A. Report on State Compliance**

No later than June 1, 2015, the Comptroller General must submit a report to Congress identifying which states are in compliance with the bill, and for those not in compliance, what measures must be taken for the state to achieve compliance.

### **B. Report on Other Legal Entities**

No later than two years after the bill is enacted, the Comptroller General must submit a report to Congress that identifies state procedures regarding the formation of partnerships, trusts, charitable organizations, and other legal entities. The report must also identify any states that required collection of beneficial ownership information from these entities, and must evaluate whether the lack of beneficial ownership information from these entities raises concerns about the involvement of the entities in illicit conduct, has impeded investigations, or has drawn international criticism.

### **C. Report on the Bill's Effectiveness**

No later than 5 years after the bill is enacted, the Comptroller General must conduct a study assessing the effectiveness of incorporation practices implemented under the bill in providing law enforcement agencies with prompt access to reliable, useful, and complete beneficial ownership information; and strengthening the capability of law enforcement agencies to combat incorporation abuses, civil and criminal misconduct, and threats to homeland security.

## **11. Effect on State Law**

The bill does not supersede, alter or affect any state law except where a state has elected to receive funding from the Department of Homeland Security to prevent terrorism, and then only to the extent that the state law is inconsistent with the bill. A state law is not inconsistent with the bill if it (1) requires additional information, more frequently updated information, or additional measures to verify information related to a corporation, LLC, or beneficial owner; or (2) imposes additional limits on public access to beneficial ownership information.

## **12. Disclosure by Federal Contractors**

No later than the beginning of FY 2014, the Administrator for Federal Procurement Policy must revise the Federal Acquisition Regulation to require any contractor who is subject to the requirement to disclose beneficial ownership information under this Act to provide the information required to be disclosed to the Federal Government as part of any bid or proposal for a contract with the value threshold in excess of the simplified acquisition threshold.

## **13. Formation Agent Anti-Money Laundering Obligations**

The Bank Secrecy Act definition of Financial Institution is amended to include "any person involved in forming a corporation or limited liability company."

No later than 120 days after the bill is enacted, the Secretary of the Treasury must publish a proposed rule in the Federal Register requiring person persons meeting the amended provision to establish anti-money laundering programs under the Bank Secrecy Act. A final rule must be published no later than 270 days after the bill is enacted.

Any rule promulgated must exclude from the category of persons engaged in the business of forming a corporation or LLC any government agency, and any attorney or law firm that uses a paid formation agent operating within the US to form the corporation or LLC.

## 14. Funding

During the three years after the bill is enacted, funds are authorized to be made available to each state to pay reasonable costs relating to compliance with the requirements of this Act. Funds must be provided from Treasury Department asset forfeiture funds and/or Department of Justice asset forfeiture funds.

Upon application by a state, after consulting with the Secretary of Homeland Security, and without further appropriation, the Secretary of the Treasury may make unobligated balances in the Department of Treasury Forfeiture Funds available to the states. This amount may not exceed a total of \$20 million.

Upon application by a state, after consulting with the Secretary of Homeland Security, and without further appropriation, the Attorney General may make excess unobligated balances in the Department of Justice Asset Forfeiture Fund available to the states. This amount may not exceed a total of \$10,000,000.

Funds otherwise available to a state under the Homeland Security Act may not be withheld for failure to comply with the provisions of the bill.

## 15. Definitions

### A. Beneficial Owner

The term means a natural person who, directly or indirectly, exercises substantial control over a corporation or LLC, or, has a substantial interest in, or receives substantial economic benefits from, the assets of the corporation or LLC.

The term “beneficial owner” does not include any of the following:

- a minor child
- a person acting as a nominee, intermediary, custodian, or agent on behalf of another person
- a person acting as an employee of a corporation or LLC, and whose control over or economic benefit from the company is derived solely from his/her employment status
- a person who only interest in the corporation or LLC is through a right of inheritance, unless the person also meets the criteria of the beneficial owner definition
- a creditor of a corporation or LLC, unless the creditor also meets the criteria of the beneficial owner definition

### B. Corporation; Limited Liability Company (LLC)

The terms “corporation” and “LLC” have the meanings as defined by state law. It includes any non-US entity eligible for registration or registered to do business as a corporation or LLC in the state.

The terms “corporation” and “LLC” do not include any of the following:

- a business that issues securities registered or required to file reports under the Securities and Exchange Act
- a business constituted or sponsored by a state, political subdivision of a state, an interstate compact by two or more states, or a federal department or agency
- a depository institution
- a credit union
- a bank holding company
- a broker dealer registered under the Securities and Exchange Act
- an exchange or clearing agency registered under the Securities and Exchange Act
- an investment company or investment advisor registered with the SEC
- an insurance company

- a registered entity, futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor registered with the Commodity Futures Trading Commission
- a public accounting firm registered in accordance with the Sarbanes-Oxley Act
- a public utility
- a charity or nonprofit entity
- any business that has 20 or more full time employee in the US; files income tax returns with more than five million in gross receipts or sales; and has an operating presence or physical office within the U.S.
- any corporation or LLC formed and owned in whole or in substantial part by any of the above entities;

and;

- Any individual business or class of business which the Secretary of Homeland Security, the Attorney General of the US, and the Secretary of the Treasury jointly determine in writing upon request of a state and through an order, guidance, or rule should be exempt from the because requiring beneficial ownership information from the business would not serve the public interest and would not assist law enforcement efforts to deter, detect, prevent, or punish terrorism, money laundering, tax evasion, or other misconduct that threatens homeland security

### C. Formation Agent

A formation agent is any person who, for compensation, acts on behalf of another person to assist in the formation of a corporation or LLC under state law.