



OFFICE OF THE SECRETARY OF STATE

ROSS MILLER
Secretary of State

June 17, 2009

The Honorable Joseph I. Lieberman
Chairman
Senate Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Lieberman,

I am opposed to the passage of S.569, the Incorporation Transparency and Law Enforcement Assistance Act, as proposed, and instead advocate an approach similar to that enacted by Nevada and that proposed by the National Association of Secretaries of State and the Uniform Laws Commission.

Notably, Nevada now prohibits bearer shares, thoroughly investigates fraudulent filings, requires information on owners of record be provided to further criminal investigations, and most recently, legislation passed during the 2009 Nevada Legislative Session significantly limits the creation of any new corporations sole, prohibiting them entirely by 2011.

In November 2006, the Nevada Secretary of State's office participated in the U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs hearing regarding state incorporation practices. Since that time, the State of Nevada and my office have taken action in response to the concerns raised during that hearing.

In 2007, I proposed legislation that was passed by the Nevada Legislature. These changes to Nevada law include:

- The strict prohibition on the issuance of bearer shares by Nevada corporations;
- Grants authority to the Secretary of State to investigate forged or fraudulent filing complaints and to correct the documents on record when deemed forged or fraudulent;
- Requires that information on owners of record be provided upon demand of the Secretary of State and requires answers to any interrogatory submitted in the course of a criminal investigation, and that if that information is not received within 3 days of request, the entities right to conduct business is forfeited. (See NRS 78.152 text, attached)

ONE HUNDRED ONE NORTH CARSON STREET, SUITE THREE
CARSON CITY, NEVADA 89701-4786
(775) 684-5708 • FAX (775) 684-5717

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Additionally, my office has actively participated in the efforts of the National Association of Secretaries of State Business Filing Task Force, the Uniform Laws Commission, and the International Association of Commercial Administrators in addressing the owner of records issue and in the development of alternative processes and legislation and has supported the Nevada Registered Agents Association in its efforts in developing industry best practices and "know your customer" guidelines to minimize the improper use of Nevada entities.

I remain available to further assist in this matter.

Respectfully,



ROSS MILLER
Secretary of State

Attachment

cc: Senator Reid
Senator Ensign
Representative Berkley
Representative Heller
Representative Titus

***NRS 78.152 List or statement to be maintained at registered office or principal place of business; requirement to assist in criminal investigation; failure to comply; regulations.**

1. In addition to any records required to be kept at the registered office pursuant to NRS 78.105, a corporation that is not a publicly traded corporation shall maintain at its registered office or principal place of business in this State:

- (a) A current list of its owners of record; or
- (b) A statement indicating where such a list is maintained.

2. The corporation shall:

(a) Provide the Secretary of State with the name and contact information of the custodian of the list described in subsection 1. The information required pursuant to this paragraph shall be kept confidential by the Secretary of State.

(b) Provide written notice to the Secretary of State within 10 days after any change in the information contained in the list described in subsection 1.

3. Upon the request of any law enforcement agency in the course of a criminal investigation, the Secretary of State may require a corporation to:

(a) Submit to the Secretary of State, within 3 business days, a copy of the list required to be maintained pursuant to subsection 1; or

(b) Answer any interrogatory submitted by the Secretary of State that will assist in the criminal investigation.

4. If a corporation fails to comply with any requirement pursuant to subsection 3, the Secretary of State may take any action necessary, including, without limitation, the suspension or revocation of the corporate charter.

5. The Secretary of State shall not reinstate or revive a charter that was revoked or suspended pursuant to subsection 4 unless:

(a) The corporation complies with the requirements of subsection 3; or

(b) The law enforcement agency conducting the investigation advises the Secretary of State to reinstate or revive the corporate charter.

6. The Secretary of State may adopt regulations to administer the provisions of this section.

(Added to NRS by 2007, 1315)