



**NASS Summary: True Incorporation Transparency for Law Enforcement Act (S1889)
Introduced June 18, 2019 and referred to Senate Judiciary Committee**

Sponsors/Co-Sponsors:

S1454: Sen. Sheldon Whitehouse (D-RI), Sen. Dianne Feinstein (D-CA) and Sen. Charles Grassley (R-IA)

Effective Date

No later than 3 years after enactment any state that receives funding under Subpart 1 of the Omnibus Crime Control and Safe Streets Act of 1968 must have procedures in place to comply with the bill.

Collection of Beneficial Ownership Information from Corporations and LLCs

Information Provided to the State

Corporations and LLCs that do not meet the 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 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/state identification number or passport number.

Foreign Beneficial Owners

If an applicant to form an LLC or Corp does not have a non-expired US passport, DL or state ID card, they shall include with info provided to state a certification by a formation agent residing in the state that agent has obtained info from non-expired foreign passport, has verified name, address and identity of such person, and will provide this information and proof of verification upon release of info requirements outlined in bill.

Updating of Beneficial Ownership Information and Annual Filings

Each corporation or LLC must provide the state with an updated list of beneficial owners with 60 days of any change. 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 no later than 10 days after the agent transfers it.

Bearer Shares

No corporations or LLCs can issue certificates in bearer form in whole or in part.

Maintenance of Beneficial Ownership Information

Retention of Information

Each state must retain the beneficial ownership information for 5 years after a corporation or LLC terminates.

Public Access

States have the authority to determine whether to disclose any or all of the beneficial ownership information to the public.

No Verification Duty

States are not required to verify any of the beneficial ownership information, unless Treasury rules ultimately require it.

Release of Beneficial Ownership Information

The state must disclose beneficial ownership information in response to a subpoena or summons, or an equivalent of such a subpoena or summons, from a local, state or federal agency or congressional committee; a written request from a federal agency on behalf of another country; written request by FinCEN, a written request made by a financial institution, with customer consent, as part of their Customer Due Diligence (CDD) requirements. Any formation agent holding the identification information for foreign beneficial owners must disclose that information in the circumstances outlined above.

State Collection of Identification Information from Exempt Entities

Exempt Entity Certification

Any corporation or LLC defined as exempt (e.g. publicly traded corporations) doesn't have to disclose beneficial ownership information, but the person forming the exempt entity must provide the state with a certification that identifies why entity is exempt. 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.

Exempt Entities with an Ownership Interest

A corporation or LLC will also be considered exempt if an exempt entity has an ownership interest in that corporation or LLC. It must also provide the state with the name of the exempt entities that have the ownership interest.

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 two years from the date the bill goes into effect to provide the state with the exempt entity certification.

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 \$1,000,000, and may face additional fines and/or imprisonment of up to 3 years.

Federal Agency Guidance and Rules

Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General may issue guidance or rules to specify how to verify beneficial ownership info or other ID provided except may not amend or alter beneficial ownership definitions in the bill.

Any guidance or rules issued may explain and clarify the definition of the term "beneficial owner" but may not amend or alter the definition of the term through changes to the definition directly or through manner of implementation.

A failure to issue guidance or rules will not impact/delay implementation date.

Reports

Report on State Compliance

No later than 42 months after enactment, the Comptroller General must submit a report to Congress identifying which states are in compliance and for those not in compliance the steps needed to achieve compliance.

Report on Other Legal Entities

No later than 2 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, 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.

Report on the Bill's Effectiveness

No later than 5 years after the bill is enacted, the Comptroller General must conduct and submit to Congress 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 and other, civil and criminal misconduct.

Disclosure by Federal Contractors

The Administrator for Federal Procurement Policy must revise the Federal Acquisition Regulation to require any bidder 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.

Formation Agent Anti-Money Laundering Obligations

Bank Secrecy Act definition of Financial Institution is amended to include "any person who, for compensation acts on behalf of another person to form, or assist in formation of, a corporation or limited liability company under the laws of a State; or purchases, sells, or transfers the public records that form a corporation or limited liability company." 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 definition 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.

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, and without further appropriation, the Secretary of the Treasury must make unobligated balances in the Department of Treasury Forfeiture Funds available to the states. This amount may not exceed a total of \$30 million.

Upon application by a state, and without further appropriation, the Attorney General must 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.

Evaluation of Funding Requests

No later than the end of the 180-day period beginning on the date the bill is enacted, the Secretary of the Treasury and the Attorney General must issue joint guidance setting forth the procedures for states to apply for funds, including determining which state measures should be funded to assess, plan, develop, test, or implement relevant policies, procedures, or system modifications.

Definitions

Beneficial Owner

The term means a natural person who, directly or indirectly, exercises substantial control over a corporation or limited liability company through ownership interest, voting rights, agreement or otherwise. One who has a substantial interest in or receives substantial economic benefits from the assets of a corporation or limited liability company.

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 limited liability company and whose control over or economic benefit from the company derives solely from employment status of the person;
- a creditor of a corporation or limited liability company, unless the creditor also meets the of a beneficial owner

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.

After enactment, every entity that files in a state will be considered an LLC or corporation.

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

- 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 and, has more than 100 shareholders.
- 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 [or under S2489, an international organization of which the United States is a member].
- 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 religious institution or nonprofit entity (or charity under H4450).
- any corporation or LLC formed and owned in whole or in substantial part by any of the above entities;
- 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 detect, prevent, or punish criminal or civil misconduct.

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, or purchases, sells, or transfers the public records that form a corporation or limited liability company.