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S. 1483

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations in ways that threaten homeland security, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2011

Mr. LEVIN (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations in ways that threaten homeland security, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Incorporation Trans-
3 parency and Law Enforcement Assistance Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Nearly 2,000,000 corporations and limited
7 liability companies are being formed under the laws
8 of the States each year.

9 (2) Very few States obtain meaningful informa-
10 tion about the beneficial owners of the corporations
11 and limited liability companies formed under their
12 laws.

13 (3) A person forming a corporation or limited
14 liability company within the United States typically
15 provides less information to the State of incorpora-
16 tion than is needed to obtain a bank account or driv-
17 er’s license and typically does not name a single ben-
18 efiticial owner.

19 (4) Terrorists and other criminals have ex-
20 ploited the weaknesses in State formation proce-
21 dures to conceal their identities when forming cor-
22 porations or limited liability companies in the United
23 States, and have then used the newly created enti-
24 ties to support terrorist organizations, drug traf-
25 ficking organizations, and international organized
26 crime groups, as well as commit misconduct affect-

1 ing interstate and international commerce such as
2 trafficking in illicit drugs, illegal arms trafficking,
3 money laundering, tax evasion, Internet-based fraud,
4 securities fraud, financial fraud, intellectual property
5 crimes, and acts of foreign corruption.

6 (5) Among those who have abused State incor-
7 poration procedures, Victor Bout, a Russian arms
8 dealer now in United States custody on terrorism-re-
9 lated charges, used at least 12 companies incor-
10 porated in Texas, Florida, and Delaware to carry
11 out his activities, and has been indicted, in part, for
12 conspiring to sell weapons to a terrorist organization
13 trying to kill citizens of the United States and Fed-
14 eral officers and employees.

15 (6) Law enforcement efforts to investigate cor-
16 porations and limited liability companies suspected
17 of wrongdoing that threatens homeland security
18 have been impeded by the lack of available beneficial
19 ownership information, as documented in reports
20 and testimony by officials from the Department of
21 Homeland Security, the Department of Justice, the
22 Financial Crimes Enforcement Network of the De-
23 partment of the Treasury, the Internal Revenue
24 Service, the Government Accountability Office, and
25 others.

1 (7) In July 2006, a leading international anti-
2 money laundering and anti-terrorist financing orga-
3 nization, the Financial Action Task Force on Money
4 Laundering (in this section referred to as the
5 “FATF”), of which the United States is a member,
6 issued a report that criticized the United States for
7 failing to comply with a FATF standard on the need
8 to collect beneficial ownership information and urged
9 the United States to correct this deficiency by July
10 2008.

11 (8) In response to the FATF report and to
12 strengthen measures to protect homeland security,
13 Federal officials have repeatedly urged the States to
14 improve their formation practices by obtaining bene-
15 ficial ownership information for the corporations and
16 limited liability companies formed under the laws of
17 such States. But the States continue to form mil-
18 lions of corporations with hidden owners.

19 (9) Many States have established automated
20 procedures that allow a person to form a new cor-
21 poration or limited liability company within the
22 State within 24 hours of filing an online application,
23 without any prior review of the application by a
24 State official. In exchange for a substantial fee, 2

1 States will form a corporation within 1 hour of a re-
2 quest.

3 (10) Dozens of Internet Web sites highlight the
4 anonymity of beneficial owners allowed under the
5 formation practices of some States, point to those
6 practices as a reason to incorporate in those States,
7 and list those States together with offshore jurisdic-
8 tions as preferred locations for the formation of new
9 corporations, essentially providing an open invitation
10 to terrorists and other wrongdoers to form entities
11 within the United States.

12 (11) In contrast to practices in the United
13 States, all 27 countries in the European Union are
14 already required to have formation agents identify
15 the beneficial owners of the corporations formed by
16 those agents under the laws of those countries.

17 (12) To protect homeland security, reduce the
18 vulnerability of the United States to wrongdoing by
19 United States corporations and limited liability com-
20 panies with hidden owners, protect interstate and
21 international commerce from terrorists and other
22 criminals misusing United States corporations and
23 limited liability companies, strengthen law enforce-
24 ment investigations of suspect corporations and lim-
25 ited liability companies, set minimum standards for

1 and level the playing field among State formation
 2 practices, and bring the United States into compli-
 3 ance with international anti-money laundering and
 4 anti-terrorist financing standards, Federal legisla-
 5 tion is needed to require the States to obtain bene-
 6 ficial ownership information for the corporations and
 7 limited liability companies formed under the laws of
 8 such States.

9 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

10 (a) TRANSPARENT INCORPORATION PRACTICES.—

11 (1) IN GENERAL.—Subtitle A of title XX of the
 12 Homeland Security Act of 2002 (6 U.S.C. 601 et
 13 seq.) is amended by adding at the end the following:

14 **“SEC. 2009. TRANSPARENT INCORPORATION PRACTICES.**

15 **“(a) INCORPORATION SYSTEMS.—**

16 **“(1) IN GENERAL.—**To protect the security of
 17 the United States from corporations and limited li-
 18 ability companies with hidden owners, each State
 19 that receives funding from the Department under
 20 this title to prevent terrorism shall, not later than
 21 the beginning of fiscal year 2014, use an incorpora-
 22 tion system that meets the following requirements:

23 **“(A) IDENTIFICATION OF BENEFICIAL**
 24 **OWNERS.—**Except as provided in paragraphs

25 (2) and (4), each applicant to form a corpora-

1 tion or limited liability company under the laws
2 of the State is required to provide to the State
3 during the formation process a list of the bene-
4 ficial owners of the corporation or limited liabil-
5 ity company that—

6 “(i) identifies each beneficial owner by
7 name, current residential or business street
8 address, and a unique identifying number
9 from a nonexpired passport issued by the
10 United States or a nonexpired drivers li-
11 cense or identification card issued by a
12 State;

13 “(ii) if any beneficial owner exercises
14 control over the corporation or limited li-
15 ability company through another legal enti-
16 ty, such as a corporation, partnership, or
17 trust, identifies each such legal entity and
18 each such beneficial owner who will use
19 that entity to exercise control over the cor-
20 poration or limited liability company; and

21 “(iii) if the applicant is not a bene-
22 ficial owner, provides the identification in-
23 formation described in clause (i) relating
24 to the applicant.

1 “(B) UPDATED INFORMATION.—For each
2 corporation or limited liability company formed
3 under the laws of the State—

4 “(i) the corporation or limited liability
5 company is required by the State to submit
6 to the State an updated list of the bene-
7 ficial owners of the corporation or limited
8 liability company and the information de-
9 scribed in subparagraph (A) for each such
10 beneficial owner not later than 60 days
11 after the date of any change in the bene-
12 ficial owners of the corporation or limited
13 liability company;

14 “(ii) in the case of a corporation or
15 limited liability company formed or ac-
16 quired by a formation agent and retained
17 by the formation agent as a beneficial
18 owner for transfer to another person, the
19 formation agent is required by the State to
20 submit to the State an updated list of the
21 beneficial owners and the information de-
22 scribed in subparagraph (A) for each such
23 beneficial owner not later than 10 days
24 after date on which the formation agent

1 transfers the corporation or limited liabil-
2 ity company to another person; and

3 “(iii) the corporation or limited liabil-
4 ity company is required by the State to
5 submit to the State an annual filing con-
6 taining the list of the beneficial owners of
7 the corporation or limited liability company
8 and the information described in subpara-
9 graph (A) for each such beneficial owner.

10 “(C) RETENTION OF INFORMATION.—Bene-
11 ficial ownership information relating to each
12 corporation or limited liability company formed
13 under the laws of the State is required to be
14 maintained by the State until the end of the 5-
15 year period beginning on the date that the cor-
16 poration or limited liability company terminates
17 under the laws of the State.

18 “(D) INFORMATION REQUESTS.—Bene-
19 ficial ownership information relating to each
20 corporation or limited liability company formed
21 under the laws of the State shall be provided by
22 the State upon receipt of—

23 “(i) a civil, criminal, or administrative
24 subpoena or summons from a State agen-
25 cy, Federal agency, or congressional com-

1 mittee or subcommittee requesting such in-
2 formation;

3 “(ii) a written request made by a Fed-
4 eral agency on behalf of another country
5 under an international treaty, agreement,
6 or convention, or an order under section
7 3512 of title 18, United States Code, or
8 section 1782 of title 28, United States
9 Code, issued in response to a request for
10 assistance from a foreign country; or

11 “(iii) a written request made by the
12 Financial Crimes Enforcement Network of
13 the Department of the Treasury.

14 “(E) NO BEARER SHARE CORPORA-
15 TIONS.—A corporation or limited liability com-
16 pany formed under the laws of the State may
17 not issue a certificate in bearer form evidencing
18 either a whole or fractional interest in the cor-
19 poration or limited liability company.

20 “(2) STATES THAT LICENSE FORMATION
21 AGENTS.—

22 “(A) IN GENERAL.—To meet the require-
23 ments under this section, a State described in
24 subparagraph (B) may permit an applicant to
25 form a corporation or limited liability company

1 under the laws of the State, or a corporation or
2 limited liability company formed under the laws
3 of the State, to provide the required informa-
4 tion to a licensed formation agent residing in
5 the State, instead of to the State directly, if the
6 application under paragraph (1)(A) or the up-
7 date under paragraph (1)(B) contains—

8 “(i) the name, current business ad-
9 dress, contact information, and licensing
10 number of the licensed formation agent
11 that has agreed to maintain the informa-
12 tion required under this section; and

13 “(ii) a certification by the licensed
14 formation agent that the licensed forma-
15 tion agent has possession of the informa-
16 tion required under this section and will
17 maintain the information in the State li-
18 censing the licensed formation agent in ac-
19 cordance with State law.

20 “(B) STATES DESCRIBED.—A State de-
21 scribed in this subparagraph is a State that—

22 “(i) receives funding from the Depart-
23 ment under this title to prevent terrorism;
24 and

1 “(ii) maintains a formal licensing sys-
2 tem for formation agents that requires a
3 formation agent to register with the State,
4 meet standards for fitness and honesty,
5 maintain a physical office and records
6 within the State, undergo regular moni-
7 toring, and be subject to sanctions for non-
8 compliance with State requirements.

9 “(C) LICENSED FORMATION AGENT DU-
10 TIES.—A licensed formation agent that receives
11 beneficial ownership information under State
12 law in accordance with this paragraph shall—

13 “(i) maintain the information in the
14 State in which the corporation or limited
15 liability company is being or has been
16 formed in the same manner as required for
17 States under paragraph (1)(C);

18 “(ii) provide the information under
19 the same circumstances as required for
20 States under paragraph (1)(D); and

21 “(iii) perform the duties of a forma-
22 tion agent under paragraph (3).

23 “(D) TERMINATION OF RELATIONSHIP.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (ii), a licensed formation

1 agent that receives beneficial ownership in-
2 formation relating to a corporation or lim-
3 ited liability company under State law in
4 accordance with this paragraph and that
5 resigns, dissolves, or otherwise ends a rela-
6 tionship with the corporation or limited li-
7 ability company shall promptly—

8 “(I) notify the State in writing
9 that the licensed formation agent has
10 resigned or ended the relationship;
11 and

12 “(II) transmit all beneficial own-
13 ership information relating to the cor-
14 poration or limited liability company
15 in the possession of the licensed for-
16 mation agent to the licensing State.

17 “(ii) EXCEPTION.—If a licensed for-
18 mation agent receives written instructions
19 from a corporation or limited liability com-
20 pany, the licensed formation agent may
21 transmit the beneficial ownership informa-
22 tion relating to the corporation or limited
23 liability company to another licensed for-
24 mation agent that is within the same State

1 and has agreed to maintain the informa-
2 tion in accordance with this section.

3 “(iii) NOTICE TO STATE.—If a li-
4 censed formation agent provides beneficial
5 ownership information to another licensed
6 formation agent under clause (ii), the li-
7 censed formation agent providing the infor-
8 mation shall promptly notify in writing the
9 State under the laws of which the corpora-
10 tion or limited liability company is formed
11 of the identity of the licensed formation
12 agent receiving the information.

13 “(3) CERTAIN BENEFICIAL OWNERS.—If an ap-
14 plicant to form a corporation or limited liability com-
15 pany or a beneficial owner, officer, director, or simi-
16 lar agent of a corporation or limited liability com-
17 pany who is required to provide identification infor-
18 mation under this section does not have a non-
19 expired passport issued by the United States or a
20 nonexpired drivers license or identification card
21 issued by a State, each application described in
22 paragraph (1)(A) and each update described in
23 paragraph (1)(B) shall include a certification by a
24 formation agent residing in the State that the for-
25 mation agent—

1 “(A) has obtained for each such person a
2 current residential or business street address
3 and a legible and credible copy of the pages of
4 a nonexpired passport issued by the government
5 of a foreign country bearing a photograph, date
6 of birth, and unique identifying information for
7 the person;

8 “(B) has verified the name, address, and
9 identity of each such person;

10 “(C) will provide the information described
11 in subparagraph (A) and the proof of
12 verification described in subparagraph (B) upon
13 request under the same circumstances as re-
14 quired for States under paragraph (1)(D); and

15 “(D) will retain the information and proof
16 of verification under this paragraph in the
17 State in which the corporation or limited liabil-
18 ity company is being or has been formed until
19 the end of the 5-year period beginning on the
20 date that the corporation or limited liability
21 company terminates under the laws of the
22 State.

23 “(4) EXEMPT ENTITIES.—

24 “(A) IN GENERAL.—An incorporation sys-
25 tem described in paragraph (1) shall require

1 that an application for an entity described in
2 subparagraph (C) or (D) of subsection (d)(2)
3 that is proposed to be formed under the laws of
4 a State and that will be exempt from the bene-
5 ficial ownership disclosure requirements under
6 this section shall include in the application a
7 certification by the applicant, or a prospective
8 officer, director, or similar agent of the entity—

9 “(i) identifying the specific provision
10 of subsection (d)(2) under which the entity
11 proposed to be formed would be exempt
12 from the beneficial ownership disclosure re-
13 quirements under paragraphs (1), (2), and
14 (3);

15 “(ii) stating that the entity proposed
16 to be formed meets the requirements for
17 an entity described under such provision of
18 subsection (d)(2); and

19 “(iii) providing identification informa-
20 tion for the applicant or prospective offi-
21 cer, director, or similar agent making the
22 certification in the same manner as pro-
23 vided under paragraph (1) or (3).

24 “(B) EXISTING ENTITIES.—On and after
25 the date that is 1 year after the effective date

1 of the amendments to the incorporation system
2 of a State made to comply with this section, an
3 entity formed under the laws of the State be-
4 fore such effective date shall be considered to
5 be a corporation or limited liability company for
6 purposes of this subsection unless an officer, di-
7 rector, or similar agent of the entity submits to
8 the State a certification—

9 “(i) identifying the specific provision
10 of subsection (d)(2) under which the entity
11 is exempt from the requirements under
12 paragraphs (1), (2), and (3);

13 “(ii) stating that the entity meets the
14 requirements for an entity described under
15 such provision of subsection (d)(2); and

16 “(iii) providing identification informa-
17 tion for the officer, director, or similar
18 agent making the certification in the same
19 manner as provided under paragraph (1)
20 or (3).

21 “(C) EXEMPT ENTITIES HAVING OWNER-
22 SHIP INTEREST.—If an entity described in sub-
23 paragraph (C) or (D) of subsection (d)(2) has
24 or will have an ownership interest in a corpora-
25 tion or limited liability company formed or to be

1 formed under the laws of a State, the applicant,
2 corporation, or limited liability company in
3 which the entity has or will have the ownership
4 interest shall provide the information required
5 under this subsection relating to the entity, ex-
6 cept that the entity shall not be required to pro-
7 vide information regarding any natural person
8 who has an ownership interest in, exercises sub-
9 stantial control over, or receives substantial eco-
10 nomic benefits from the entity.

11 “(b) PENALTIES.—

12 “(1) IN GENERAL.—It shall be unlawful for any
13 person to affect interstate or foreign commerce or
14 threaten homeland security by failing to comply with
15 State law in accordance with this section by—

16 “(A) knowingly providing, or attempting to
17 provide, false or fraudulent beneficial ownership
18 information, including a false or fraudulent
19 identifying photograph, to a State or formation
20 agent;

21 “(B) willfully failing to provide complete or
22 updated beneficial ownership information to a
23 State or formation agent;

1 “(C) knowingly disclosing the existence of
2 a subpoena, summons, or other request for ben-
3 efiticial ownership information, except—

4 “(i) to the extent necessary to fulfill
5 the authorized request; or

6 “(ii) as authorized by the entity that
7 issued the subpoena, summons, or other
8 request; or

9 “(D) in the case of a formation agent,
10 knowingly failing to obtain or maintain credible,
11 legible, and updated beneficial ownership infor-
12 mation, including any required identifying pho-
13 tograph.

14 “(2) CIVIL AND CRIMINAL PENALTIES.—In ad-
15 dition to any civil or criminal penalty that may be
16 imposed by a State, any person who violates para-
17 graph (1)—

18 “(A) shall be liable to the United States
19 for a civil penalty of not more than \$10,000;
20 and

21 “(B) may be fined under title 18, United
22 States Code, imprisoned for not more than 3
23 years, or both.

24 “(c) RULES.—To carry out this section, the Sec-
25 retary, the Attorney General of the United States, and the

1 Secretary of the Treasury may issue joint guidance or a
2 joint rule to clarify application of the definitions under
3 subsection (d) or to specify how to verify beneficial owner-
4 ship or other identification information provided under
5 this section, including under subsection (a)(3).

6 “(d) DEFINITIONS.—For the purposes of this section:

7 “(1) BENEFICIAL OWNER.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term ‘beneficial owner’
10 means a natural person who, directly or indi-
11 rectly—

12 “(i) exercises substantial control over
13 a corporation or limited liability company;
14 or

15 “(ii) has a substantial interest in or
16 receives substantial economic benefits from
17 the assets of a corporation or limited liabil-
18 ity company.

19 “(B) EXCEPTIONS.—The term ‘beneficial
20 owner’ shall not include—

21 “(i) a minor child;

22 “(ii) a person acting as a nominee,
23 intermediary, custodian, or agent on behalf
24 of another person;

1 “(iii) a person acting solely as an em-
2 ployee of a corporation or limited liability
3 company and whose control over or eco-
4 nomic benefits from the corporation or lim-
5 ited liability company derives solely from
6 the employment status of the person;

7 “(iv) a person whose only interest in
8 a corporation or limited liability company
9 is through a right of inheritance, unless
10 the person also meets the requirements of
11 subparagraph (A); or

12 “(v) a creditor of a corporation or
13 limited liability company, unless the cred-
14 itor also meets the requirements of sub-
15 paragraph (A).

16 “(C) APPLICABILITY OF EXCEPTIONS.—
17 The exceptions under subparagraph (B) shall
18 not apply if used for the purpose of evading or
19 circumventing the provisions of subparagraph
20 (A) or subsection (a).

21 “(2) CORPORATION; LIMITED LIABILITY COM-
22 PANY.—The terms ‘corporation’ and ‘limited liability
23 company’—

24 “(A) have the meanings given such terms
25 under the laws of the applicable State;

1 “(B) include any non-United States entity
2 eligible for registration or registered to do busi-
3 ness as a corporation or limited liability com-
4 pany under the laws of the applicable State;

5 “(C) subject to subsection (a)(4), do not
6 include an entity that is—

7 “(i) a business concern that is an
8 issuer of a class of securities registered
9 under section 12 of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 781) or
11 that is required to file reports under sec-
12 tion 15(d) of that Act (15 U.S.C. 78o(d));

13 “(ii) a business concern constituted or
14 sponsored by a State, a political subdivi-
15 sion of a State, under an interstate com-
16 pact between 2 or more States, by a de-
17 partment or agency of the United States,
18 or under the laws of the United States;

19 “(iii) a depository institution (as de-
20 fined in section 3 of the Federal Deposit
21 Insurance Act (12 U.S.C. 1813));

22 “(iv) a credit union (as defined in sec-
23 tion 101 of the Federal Credit Union Act
24 (12 U.S.C. 1752));

1 “(v) a bank holding company (as de-
2 fined in section 2 of the Bank Holding
3 Company Act of 1956 (12 U.S.C. 1841));

4 “(vi) a broker or dealer (as defined in
5 section 3 of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c)) that is registered
7 under section 15 of the Securities and Ex-
8 change Act of 1934 (15 U.S.C. 78o);

9 “(vii) an exchange or clearing agency
10 (as defined in section 3 of the Securities
11 Exchange Act of 1934 (15 U.S.C. 78c))
12 that is registered under section 6 or 17A
13 of the Securities Exchange Act of 1934
14 (15 U.S.C. 78f and 78q-1);

15 “(viii) an investment company (as de-
16 fined in section 3 of the Investment Com-
17 pany Act of 1940 (15 U.S.C. 80a-3)) or
18 an investment advisor (as defined in sec-
19 tion 202(11) of the Investment Advisors
20 Act of 1940 (15 U.S.C. 80b-2(11))), if the
21 company or adviser is registered with the
22 Securities and Exchange Commission, or
23 has filed an application for registration
24 which has not been denied, under the In-
25 vestment Company Act of 1940 (15 U.S.C.

1 80a–1 et seq.) or the Investment Advisor
2 Act of 1940 (15 U.S.C. 80b–1 et seq.);

3 “(ix) an insurance company (as de-
4 fined in section 2 of the Investment Com-
5 pany Act of 1940 (15 U.S.C. 80a–2));

6 “(x) a registered entity (as defined in
7 section 1a of the Commodity Exchange Act
8 (7 U.S.C. 1a)), or a futures commission
9 merchant, introducing broker, commodity
10 pool operator, or commodity trading advi-
11 sor (as defined in section 1a of the Com-
12 modity Exchange Act (7 U.S.C. 1a)) that
13 is registered with the Commodity Futures
14 Trading Commission;

15 “(xi) a public accounting firm reg-
16 istered in accordance with section 102 of
17 the Sarbanes–Oxley Act (15 U.S.C. 7212);

18 “(xii) a public utility that provides
19 telecommunications service, electrical
20 power, natural gas, or water and sewer
21 services within the United States;

22 “(xiii) a charity or nonprofit entity
23 that is described in sections 501(c), 527,
24 or 4947(a)(1) of the Internal Revenue
25 Code of 1986, has not been denied tax ex-

1 empt status, and is required to and has
2 filed the most recently due annual informa-
3 tion return with the Internal Revenue
4 Service;

5 “(xiv) any business concern that—

6 “(I) employs more than 20 em-
7 ployees on a full time basis in the
8 United States;

9 “(II) files income tax returns in
10 the United States demonstrating more
11 than \$5,000,000 in gross receipts or
12 sales; and

13 “(III) has an operating presence
14 at a physical location within the
15 United States; or

16 “(xv) any corporation or limited liabil-
17 ity company which is owned, in whole or in
18 substantial part, by an entity described in
19 clause (i), (ii), (iii), (iv), (v), (vi), (vii),
20 (viii), (ix), (x), (xi), (xii), (xiii), or (xiv);
21 and

22 “(D) do not include any class of business
23 concerns which the Secretary, the Attorney
24 General of the United States, and the Secretary
25 of the Treasury jointly determine in writing,

1 upon the request of a State, and through an
2 order, guidance, or rule should be exempt from
3 the requirements of subsection (a), because re-
4 quiring beneficial ownership information from
5 the business concern would not serve the public
6 interest and would not assist law enforcement
7 efforts to detect, prevent, or punish terrorism,
8 money laundering, tax evasion, or other mis-
9 conduct that threatens homeland security.

10 “(3) FORMATION AGENT.—The term ‘formation
11 agent’ means a person who, for compensation, acts
12 on behalf of another person to form, or assist in the
13 formation, of a corporation or limited liability com-
14 pany under the laws of a State.”.

15 (2) TECHNICAL AND CONFORMING AMEND-
16 MENT.—The table of contents in section 1(b) of the
17 Homeland Security Act of 2002 (6 U.S.C. 101 et
18 seq.) is amended by inserting after the item relating
19 to section 2008 the following:

“Sec. 2009. Transparent incorporation practices.”.

20 (b) FUNDING AUTHORIZATION.—

21 (1) IN GENERAL.—To carry out section 2009 of
22 the Homeland Security Act of 2002, as added by
23 this Act, during the 3-year period beginning on the
24 date of enactment of this Act, funds shall be made
25 available to each State (as that term is defined

1 under section 2 of the Homeland Security Act of
2 2002 (6 U.S.C. 101)) to pay reasonable costs relat-
3 ing to compliance with the requirements of such sec-
4 tion 2009.

5 (2) FUNDING SOURCES.—To protect the United
6 States against the misuse of United States corpora-
7 tions with hidden owners, funds shall be provided to
8 each State to carry out the purposes described in
9 paragraph (1) from one or more of the following
10 sources:

11 (A) Upon application by a State, after con-
12 sultation with the Secretary of Homeland Secu-
13 rity, and without further appropriation, the
14 Secretary of the Treasury may make available
15 to the State unobligated balances described in
16 section 9703(g)(4)(B) of title 31, United States
17 Code, in the Department of the Treasury For-
18 feiture Fund established under section 9703(a)
19 of title 31, United States Code.

20 (B) Upon application by a State, after con-
21 sultation with the Secretary of Homeland Secu-
22 rity, and without further appropriation, the At-
23 torney General of the United States may make
24 available to the State excess unobligated bal-
25 ances (as defined in section 524(c)(8)(D) of

1 title 28, United States Code) in the Department
2 of Justice Assets Forfeiture Fund established
3 under section 524(c) of title 28, United States
4 Code.

5 (3) MAXIMUM AMOUNTS.—

6 (A) DEPARTMENT OF THE TREASURY.—

7 The Secretary of the Treasury may not make
8 available to States a total of more than
9 \$20,000,000 under paragraph (2)(A).

10 (B) DEPARTMENT OF JUSTICE.—The At-

11 torney General of the United States may not
12 make available to States a total of more than
13 \$10,000,000 under paragraph (2)(B).

14 (c) STATE COMPLIANCE REPORT.—Nothing in this
15 section or an amendment made by this section authorizes
16 the Secretary of Homeland Security to withhold from a
17 State any funding otherwise available to the State under
18 title XX of the Homeland Security Act of 2002 (6 U.S.C.
19 601 et seq.) because of a failure by that State to comply
20 with section 2009 of the Homeland Security Act of 2002,
21 as added by this section. Not later than June 1, 2015,
22 the Comptroller General of the United States shall submit
23 to the Committee on Homeland Security and Govern-
24 mental Affairs of the Senate and the Committee on Home-
25 land Security of the House of Representatives a report

1 identifying which States are in compliance with section
2 2009 of the Homeland Security Act of 2002 and, for any
3 State not in compliance, what measures must be taken by
4 that State to achieve compliance with section 2009 of the
5 Homeland Security Act of 2002.

6 (d) EFFECT ON STATE LAW.—

7 (1) IN GENERAL.—This Act and the amend-
8 ments made by this Act do not supersede, alter, or
9 affect any statute, regulation, order, or interpreta-
10 tion in effect in any State, except where a State has
11 elected to receive funding from the Department of
12 Homeland Security under title XX of the Homeland
13 Security Act of 2002 (6 U.S.C. 601 et seq.) to pre-
14 vent terrorism (as defined in section 2 of the Home-
15 land Security Act of 2002 (6 U.S.C. 101)), and then
16 only to the extent that such State statute, regula-
17 tion, order, or interpretation is inconsistent with this
18 Act or an amendment made by this Act.

19 (2) NOT INCONSISTENT.—A State statute, reg-
20 ulation, order, or interpretation is not inconsistent
21 with this Act or an amendment made by this Act if
22 such statute, regulation, order, or interpretation—

23 (A) requires additional information, more
24 frequently updated information, or additional
25 measures to verify information related to a cor-

1 poration, limited liability company, or beneficial
2 owner, than is specified under this Act or an
3 amendment made by this Act; or

4 (B) imposes additional limits on public ac-
5 cess to the beneficial ownership information ob-
6 tained by the State than is specified under this
7 Act or an amendment made by this Act.

8 (3) STATE RECORDS.—Nothing in this Act or
9 the amendments made by this Act limits the author-
10 ity of a State, by statute or otherwise, to disclose or
11 to not disclose to the public all or any portion of the
12 beneficial ownership information provided to the
13 State under section 2009 of the Homeland Security
14 Act of 2002, as added by this Act.

15 (4) NO DUTY OF VERIFICATION.—This Act and
16 the amendments made by this Act do not impose
17 any obligation on a State to verify the name, ad-
18 dress, or identity of a beneficial owner whose infor-
19 mation is submitted to such State under section
20 2009 of the Homeland Security Act of 2002, as
21 added by this Act.

22 (e) FEDERAL CONTRACTORS.—Not later than the be-
23 ginning of fiscal year 2014, the Administrator for Federal
24 Procurement Policy shall revise the Federal Acquisition
25 Regulation maintained under section 1303(a)(1) of title

1 41, United States Code, to require any contractor who is
2 subject to the requirement to disclose beneficial ownership
3 information under section 2009 of the Homeland Security
4 Act of 2002, as added by this Act, to provide the informa-
5 tion required to be disclosed under section 2009 of the
6 Homeland Security Act of 2002 to the Federal Govern-
7 ment as part of any bid or proposal for a contract with
8 a value threshold in excess of the simplified acquisition
9 threshold under section 134 of title 41, United States
10 Code.

11 **SEC. 4. ANTI-MONEY LAUNDERING AND ANTI-TERRORIST**
12 **FINANCING OBLIGATIONS OF FORMATION**
13 **AGENTS.**

14 (a) ANTI-MONEY LAUNDERING AND ANTI-TER-
15 RORIST FINANCING OBLIGATIONS OF FORMATION
16 AGENTS.—Section 5312(a)(2) of title 31, United States
17 Code, is amended—

18 (1) in subparagraph (Y), by striking “or” at
19 the end;

20 (2) by redesignating subparagraph (Z) as sub-
21 paragraph (AA); and

22 (3) by inserting after subparagraph (Y) the fol-
23 lowing:

1 “(Z) any person engaged in the business of
2 forming corporations or limited liability compa-
3 nies; or”.

4 (b) DEADLINE FOR IMPLEMENTING RULE FOR FOR-
5 MATION AGENTS.—

6 (1) PROPOSED RULE.—Not later than 120 days
7 after the date of enactment of this Act, the Sec-
8 retary of the Treasury, in consultation with the Sec-
9 retary of Homeland Security, the Attorney General
10 of the United States, and the Commissioner of the
11 Internal Revenue Service, shall publish a proposed
12 rule in the Federal Register requiring persons de-
13 scribed in section 5312(a)(2)(Z) of title 31, United
14 States Code, as amended by this section, to establish
15 anti-money laundering programs under subsection
16 (h) of section 5318 of that title.

17 (2) FINAL RULE.—Not later than 270 days
18 after the date of enactment of this Act, the Sec-
19 retary of the Treasury shall publish the rule de-
20 scribed in this subsection in final form in the Fed-
21 eral Register.

22 (3) EXCLUSIONS.—Any rule promulgated under
23 this subsection shall exclude from the category of
24 persons engaged in the business of forming a cor-
25 poration or limited liability company—

- 1 (A) any government agency; and
- 2 (B) any attorney or law firm that uses a
- 3 paid formation agent operating within the
- 4 United States to form the corporation or lim-
- 5 ited liability company.

6 **SEC. 5. STUDIES AND REPORTS.**

7 (a) OTHER LEGAL ENTITIES.—Not later than 2

8 years after the date of enactment of this Act, the Comp-

9 troller General of the United States shall conduct a study

10 and submit to the Committee on Homeland Security and

11 Governmental Affairs of the Senate and the Committee

12 on Homeland Security and the Committee on Financial

13 Services of the House of Representatives a report—

14 (1) identifying each State that has procedures

15 that enable persons to form or register under the

16 laws of the State partnerships, trusts, charitable or-

17 ganizations, or other legal entities, and the nature of

18 those procedures;

19 (2) identifying each State that requires persons

20 seeking to form or register partnerships, trusts,

21 charitable organizations, or other legal entities under

22 the laws of the State to provide information about

23 the beneficial owners (as that term is defined in sec-

24 tion 2009 of the Homeland Security Act of 2002, as

1 added by this Act) or beneficiaries of such entities,
2 and the nature of the required information;

3 (3) evaluating whether the lack of available
4 beneficial ownership information for partnerships,
5 trusts, charitable organizations, or other legal enti-
6 ties—

7 (A) raises concerns about the involvement
8 of such entities in terrorism, money laundering,
9 tax evasion, securities fraud, trafficking in illicit
10 drugs, or other misconduct or threats to home-
11 land security; and

12 (B) has impeded investigations into enti-
13 ties suspected of such misconduct; and

14 (4) evaluating whether the failure of the United
15 States to require beneficial ownership information
16 for partnerships, trusts, charitable organizations, or
17 other legal entities formed or registered in the
18 United States has elicited international criticism and
19 what steps, if any, the United States has taken or
20 is planning to take in response.

21 (b) EFFECTIVENESS OF INCORPORATION PRAC-
22 TICES.—Not later than 5 years after the date of enact-
23 ment of this Act, the Comptroller General of the United
24 States shall conduct a study and submit to the Committee
25 on Homeland Security and Governmental Affairs of the

1 Senate and the Committee on Homeland Security of the
2 House of Representatives a report assessing the effective-
3 ness of incorporation practices implemented under this
4 Act and the amendments made by this Act in—

5 (1) providing law enforcement agencies with
6 prompt access to reliable, useful, and complete bene-
7 ficial ownership information; and

8 (2) strengthening the capability of law enforce-
9 ment agencies to combat incorporation abuses, civil
10 and criminal misconduct, and threats to homeland
11 security.

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