

FOR IMMEDIATE RELEASE
March 11, 2009

Contacts: Tara Andringa (Levin) 202-228-3685
Jill Kozeny (Grassley) 202-224-3744

Levin-Grassley-McCaskill Bill Introduced to Stop Misuse of U.S. Companies

WASHINGTON – Today Sen. Carl Levin, D-Mich., Sen. Chuck Grassley, R.-Iowa, and Sen. Claire McCaskill, D-Mo., introduced the Incorporation Transparency and Law Enforcement Assistance Act to help law enforcement stop the misuse of U.S. corporations.

Currently, nearly two million corporations and limited liability companies (LLCs) are formed within the United States each year. The States generally form these corporations without asking for the identity of the corporation's beneficial owners, and numerous law enforcement problems have resulted when some of these corporations have become involved with money laundering, tax evasion, or other misconduct. The bill being introduced would require the States to obtain beneficial ownership information for the corporations formed under their laws and to provide access to this information to law enforcement upon receipt of a subpoena or summons.

“For too long, U.S. corporations have been misused to hide illicit activity, including money laundering and tax fraud,” said Levin, chairman of the Permanent Subcommittee on Investigations which has held hearings on the state incorporation issue. “Websites that offer incorporation services worldwide are touting U.S. corporate secrecy and essentially inviting wrongdoers to set up shop here in America. Law enforcement battling corporate misconduct too often can't find out who are the people behind the companies they are investigating. Our bill would clamp down on corporate misconduct by requiring states to get the names of the persons forming private corporations within the United States.”

“The more transparency, the better for keeping business above board and accountable and for building public confidence in the marketplace,” Grassley said. “This legislation makes registration of a corporation meaningful in that the public can know who is running a corporation. Right now, that's not the case.”

The bill is supported by numerous law enforcement associations, including the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the National Association of Assistant United States Attorneys, the National Narcotic Officers' Associations Coalition, the United States Marshals Service Association, and the Association of Former ATF Agents. President Obama cosponsored the same bill during the last Congress, while a member of the Senate.

The Subcommittee has been pursuing this issue since 2000, when the Government Accountability Office (GAO) conducted an investigation, at the Subcommittee's request, into an individual who set up over 2,000 Delaware shell companies and then established bank accounts for those companies, without revealing their identities, moving \$1.4 billion dollars through the bank accounts. In April 2006, the GAO prepared another report at the Subcommittee's request entitled, "Company Formations: Minimal Ownership Information Is Collected and Available." This GAO report reviewed the legal requirements in all 50 states to set up corporations and LLCs, found that most states failed to request beneficial ownership information, and reported that the absence of this ownership information impeded law enforcement investigations of suspect corporations.

In November 2006, the Subcommittee held a hearing in which the GAO report was released, and officials from the Department of Justice (DOJ), Internal Revenue Service (IRS), and Treasury Department's Financial Crimes Enforcement Network (FinCEN) testified about an increase in the use of U.S. shell companies for illicit activities, and the problems caused by the lack of beneficial ownership information. The Subcommittee has collected numerous examples of these law enforcement problems, including the following.

- Immigration and Customs Enforcement (ICE) reported that a Nevada-based corporation received more than 3,700 suspicious wire transfers totaling \$81 million over 2 years. The case was not prosecuted, however, because ICE was unable to identify the corporation's owners.
- FinCEN found that, between April 1996 and January 2004, financial institutions filed 397 suspicious activity reports, involving a total of almost \$4 billion, U.S. shell companies, East European countries, and U.S. bank accounts.
- The Federal Bureau of Investigation (FBI) reported that U.S. shell companies are being used to launder as much as \$36 billion from the former Soviet Union. The FBI also reported that they have 103 open cases investigating market manipulation, most of which involve U.S. shell companies.
- The IRS described a scheme involving three individuals who set up U.S. shell companies to conceal nearly \$9 million in taxable income in secret accounts in the Turks and Caicos Islands and other foreign countries.
- DOJ reported that Russian officials used shell companies in Pennsylvania and Delaware to unlawfully divert \$15 million in international aid intended to upgrade the safety of former Soviet nuclear power plants.
- On April 22, 2008, in response to a question by Sen. Levin, former Department of Homeland Security Secretary Michael Chertoff wrote: "In countless investigations, where the criminal targets utilize shell corporations, the lack of law enforcement's ability to gain access to true beneficial ownership information

slows, confuses or impedes the efforts by investigators to follow criminal proceeds.”

In July 2006, the Financial Action Task Force on Money Laundering, which is the leading international organization combating money laundering, issued a report criticizing the United States for failing to comply with a FATF standard requiring beneficial ownership information to be obtained and urging the United States to correct this deficiency by July 2008. In response, the United States has repeatedly urged the States to strengthen their incorporation practices by obtaining beneficial ownership information for the corporations and LLCs formed under their laws. The States, however, have not changed their incorporation practices.

“U.S. corporations involved in misconduct are currently able to hide behind a veil of corporate secrecy,” said Levin. “It doesn’t make sense that less information is required to form a U.S. corporation than to obtain a drivers license. The United States needs to meet its international anti-money laundering commitments, and that means getting beneficial ownership information for U.S. corporations.”

All 27 countries in the European Union are already required to obtain beneficial ownership information for the corporations they form.

BILL SUMMARY

The Incorporation Transparency and Law Enforcement Assistance Act would:

Beneficial Ownership Information. Require the States to obtain a list of the beneficial owners of each corporation or limited liability company (LLC) formed under their laws, ensure this information is updated annually, and provide the information to civil or criminal law enforcement upon receipt of a subpoena or summons.

Non-U.S. Beneficial Owners. Require corporations and LLCs with non-U.S. beneficial owners to provide a certification from an in-state formation agent that the agent has verified the identity of those owners.

Penalties for False Information. Establish civil and criminal penalties under federal law for persons who knowingly provide false beneficial ownership information or intentionally fail to provide required beneficial ownership information to a State.

Exemptions. Provide exemptions for certain corporations, including publicly traded corporations and the corporations and LLCs they form, since the Securities and Exchange Commission already oversees them; and corporations which a State has determined, with concurrence from the Homeland Security and Justice Departments, should be exempt because requiring beneficial ownership information from them would not serve the public interest or assist law enforcement.

Funding. Authorize States to use an existing DHS grant program, and authorize DHS to use already appropriated funds, to meet the requirements of this Act.

State Compliance Report. Clarify that nothing in the Act authorizes DHS to withhold funds from a State for failing to comply with the beneficial ownership requirements. Require a GAO report by 2013 identifying which States are not in compliance so that a future Congress can determine at that time what steps to take.

Transition Period. Give the States until October 2012 to require beneficial ownership information for the corporations and LLCs formed under their laws.

Anti-Money Laundering Rule. Require the Treasury Secretary to issue a rule requiring formation agents to establish anti-money laundering programs to ensure they are not forming U.S. corporations or other entities for criminals or other suspect persons.

GAO Study. Require GAO to complete a study of State beneficial ownership information requirements for in-state partnerships and trusts.

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