

A BILL

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SEC. 2. FINDINGS.

SEC. 3. TRANSPARENT INCORPORATION PRACTICES.

IN GENERAL.—Subtitle [X] of title [XX] of the [Act of] is amended by adding at the end the following:

“TRANSPARENT INCORPORATION PRACTICES.

“(a) DEFINITIONS.—In this section:

“(1) APPROPRIATE REQUEST. — The term ‘Appropriate Request’ means:

- (A) a grand jury subpoena, or a civil, criminal or administrative subpoena or summons from a State or Federal law enforcement agency;
- (B) a subpoena from any other federal agency;
- (C) an order, pursuant to section 3512 of title 18, United States Code, or section 1782 of title 28, United States Code, issued in response to a request for assistance from a foreign country; or
- (D) a written request made by the Financial Crimes Enforcement Network.

“(2) **BENEFICIAL OWNER.**— The term ‘Beneficial Owner’ of any Covered Legal Entity means, other than a minor:

(A) an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, intermediary, tiered entity, or otherwise, has or shares the power to vote or direct the voting of at least as much of any interest in such Covered Legal Entity as any other individual. For purposes of this provision, an “interest” in a Covered Legal Entity shall include an interest as a holder of an equity security (in the case of a corporation), a voting interest (in the case of an Limited Liability Company), or a voting right (in the case of an Limited Partnership or Limited Liability Partnership). For determining the interest that an individual holds in a Covered Legal Entity, the entity shall aggregate the interests held directly or indirectly, including through any other Legal Entity, that are attributed to that individual as set forth above, with the following indirect interests attributed to that individual, if any:

(i) For interests held by trusts or estates, the interests shall be attributed to the primary grantor (in the case of a revocable trust), or each trustee (in the case of an irrevocable trust), and the executor (in the case of an estate); and

(ii) For interests held by general partnerships, the interests shall be attributed to the general partners, based on their right to vote.

and

(B) The individual with greater responsibility than any other individual for managing or directing the regular affairs of the Covered Legal Entity.

“(3) **COVERED LEGAL ENTITY.** —The term ‘Covered Legal Entity’ means any Legal Entity that is not an Exempt Legal Entity.

“(4) **DOCUMENTATION AGENT.**— The term ‘Documentation Agent’ means, in any State, an individual or an entity who, whether or not for compensation and whether or not he or she is a Beneficial Owner of such Legal Entity, acts on behalf of a Legal Entity to fulfill the obligations set forth in Section 3(b)(2) of this Act, and who is not a Licensed Documentation Agent in that State.

“(5) **EFFECTIVE DATE.**—The term ‘Effective Date’ means [October 1, 2012].

“(6) EXEMPT LEGAL ENTITY.—The term ‘Exempt Legal Entity’ includes any of the following entities, or any entity in which any of the following entities holds at least as much interest as any other interest holder. For the purposes of this provision “interest” shall have the same meaning as set forth in Section 3(a)(2)(A) of this Act—

“(A) any Legal Entity that is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d));

“(B) any Legal Entity formed by a State, a political subdivision of a State, under an interstate compact between 2 or more States, by a department or agency of the United States, or by the United States Congress;

“(C) any financial institution registered with or regulated by a Federal functional regulator (as defined in 15 U.S.C. 6809) or by the Commodity Futures Trading Commission or a bank regulated by a State bank regulator or an insurance company regulated by a State insurance department; and

“(D) any Legal Entity that:

“(i) employs more than twenty (20) full-time employees in the U.S.; and

“(ii) files U.S. federal tax returns demonstrating more than ten million dollars (\$10,000,000) in gross receipts or sales; and

“(iii) has a U.S. operating presence with a physical street address in the U.S.

“(E) any Legal Entity that is described in 26 U.S.C. 501(c), 26 U.S.C. 527, or 26 U.S.C. 4947(a)(1), and that has filed with the Internal Revenue Service either (i) the most recently due annual information return pursuant to 26 U.S.C. 6033 (or is not required to file an annual information return pursuant to 26 U.S.C. 6033), or (ii) an application for recognition of exemption from federal income tax, if the exemption has not been denied and the due date, including any extension granted, for filing its first annual information return as an exempt organization has not yet passed.

“(7) LEGAL ENTITY.— The term ‘Legal Entity’ means any

“(A) corporation,

“(B) limited liability company,

“(C) limited partnership, or

“(D) limited liability partnership,

as such terms are defined under the laws of the applicable State, or

“(E) any non-U.S. entity qualified to do business in any State,.

“(8) LICENSED DOCUMENTATION AGENT. —The term ‘Licensed Documentation Agent’ means, in any State, an individual or an entity that acts on behalf of a Legal Entity to fulfill the obligations set forth in Section 3(b)(2) of this Act, and that is licensed by such State pursuant to a State law or regulation that subjects the Licensed Documentation

Agent to (i) registration, (ii) “fit and proper” licensing requirements of the managers and beneficial owners (including at a minimum identification, verification and physical presence requirements, absence of convictions for crimes of dishonesty or fraud, or regulatory proceedings that raise honesty or integrity concerns), (iii) effective and regular monitoring for compliance, and (iv) sanctions for noncompliance.

“(b) COMPANY FORMATION OBLIGATIONS.—

To protect the security of the United States, each State that receives funding from the [XX] shall, not later than the Effective Date, amend its laws to adopt a legal entity formation system that meets the following requirements:

“(1) OBLIGATIONS OF LEGAL ENTITIES

“(A) Each applicant that designates a Documentation Agent in forming a Legal Entity under the laws of a State shall provide to the State at the time of formation of the entity, either—

“(i) in the case of Covered Legal Entities, a beneficial ownership information statement that:

- (1) identifies each Beneficial Owner by name and residential or business street address; and
- (2) identifies the Documentation Agent by name and business or residential street address; and
- (3) contains a notarized signature of the Documentation Agent and signatures of each Beneficial Owner, certifying that the obligations of Section 3(b)(1)(C) of this Act have been met; or

“(ii) in the case of Exempt Legal Entities, an exempt entity statement that:

- (1) identifies the Documentation Agent by name and business or residential street address; and
- (2) contains a notarized signature of the Documentation Agent, stating that the certification and documentation required in section 3(b)(1)(D) have been obtained.

“(B) Each applicant that designates a Licensed Documentation Agent in forming a Legal Entity under the laws of a State shall provide to the State at the time of formation of the entity, either—

“(i) in the case of Covered Legal Entities, a licensed documentation agent information statement that:

- (1) identifies the Licensed Documentation Agent by name and business or residential street address and contains his or her notarized signature; and
- (2) contains a statement, signed by the Licensed Documentation Agent, certifying that the obligations of Section 3(b)(1)(C) of this Act have been met; or

“(ii) in the case of Exempt Legal Entities, an exempt entity statement that:

- (1) identifies the Licensed Documentation Agent by name and business or residential street address; and
- (2) contains the signature of the Licensed Documentation Agent, stating that the certification and documentation required in section 3(b)(1)(D) have been obtained.

“(C) Each Covered Legal Entity formed under the laws of a State after the Effective Date shall:

“(i) have a Documentation Agent or Licensed Documentation Agent located within the United States at all times; and

“(ii) provide to the Documentation Agent or Licensed Documentation Agent at the time of formation, a statement of beneficial ownership signed by each Beneficial Owner (in the case of an Licensed Documentation Agent), and a legible and credible copy of a government-issued photo identification document of each Beneficial Owner, to be maintained by the Documentation Agent or Licensed Documentation Agent at all times. In the case of any Beneficial Owner that is neither a citizen nor lawful permanent resident of the United States, the Documentation Agent or Licensed Documentation Agent shall obtain and maintain a legible and credible copy of the page(s) of the government-issued passport bearing a photograph and unique identifying information of such Beneficial Owner.

“(D) Each Exempt Legal Entity formed under the laws of a State after the Effective Date shall:

(i) have a Documentation Agent or Licensed Documentation Agent located within the United States; and

(ii) provide to the Documentation Agent or Licensed Documentation Agent a notarized certification by an officer of the entity stating which of the exemptions set forth in Section 3(a)(6) has been met and stating the basis for such exemption, and a legible and credible copy of a government-issued photo identification document of such officer.

“(E) Each Legal Entity formed under the laws of a State before the Effective Date shall comply with the requirements of subsections (A) through (D) above, as appropriate, by the date that is two years after the Effective Date.

“(F) Except as provided in subsection (G) below, each Covered Legal Entity formed under the laws of a State is required to update its beneficial ownership information statement within 60 days of the date of any change in either beneficial ownership or beneficial ownership information by providing an amended beneficial ownership information statement either to the State (signed by the Documentation Agent), or to the Licensed Documentation Agent, as applicable, and by providing corresponding updated identification documentation to the Documentation Agent or to the Licensed Documentation Agent.

“(G) In the case of any Covered Legal Entity that has been formed, and is controlled, by any person who has formed more than 10 Covered Legal Entities in a State before the Effective Date, the initial transfer of any interest in such Covered Legal Entity by such a person after the Effective Date shall be treated as the formation of the entity, subject to the immediate filing and other information requirements of this section.

“(H) In the case of a change by a Legal Entity of, or a resignation by, a Documentation Agent or Licensed Documentation Agent, a Legal Entity shall, upon the effectiveness of such change, or within 30 days of receipt of notice of such resignation, as the case may be, provide to the State an amended beneficial ownership information statement or licensed documentation agent information statement (in the case of a Covered Legal Entity), or an amended exempt information statement (in the case of an Exempt Legal Entity), signed by the new Documentation Agent or Licensed Documentation Agent, and provide the required documentation to such new Documentation Agent or Licensed Documentation Agent.

“(I) An Exempt Legal Entity may change its certifying officer by submitting to its Designated Agent or Licensed Documentation Agent, an amended exempt entity statement containing the notarized signature of the new certifying officer, and a legible and credible copy of a government-issued photo identification document of such officer.

“(J) Each of the obligations in this subsection (b)(1) that applies to Legal Entities formed under the laws of any State, applies equally to any non-U.S. entity that qualifies to do business under the laws of any State, provided that such non-U.S. entity shall only be required to comply with the obligations in one State.

“(2) OBLIGATIONS OF DOCUMENTATION AGENTS OR LICENSED DOCUMENTATION AGENTS.—

“(A) For all Legal Entities, the relevant Documentation Agent or Licensed Documentation Agent must:

(i) sign and have notarized the beneficial ownership information statement, licensed documentation agent information statement, or exempt information statement pursuant to Section 3(b)(1) of this Act;

(ii) obtain and maintain the information and identification documents required pursuant to Section 3(b)(1)(C) or (D) of this Act at the U.S. address provided on the beneficial ownership information statement, licensed documentation agent information statement, or exempt information statement until the end of the 5-year period beginning on the earlier of the date that: (1) the Legal Entity dissolves under the laws of the State or (2) the Documentation Agent or Licensed Documentation Agent resigns;

(iii) notify the Secretary of State and each Legal Entity for which it serves of any change of name or address or resignation. A Documentation Agent

or Licensed Documentation Agent may resign at any time, and must resign when no longer able to fulfill the obligations set forth above. To change his or her name or address or resign, a Documentation Agent or Licensed Documentation Agent shall deliver to the Secretary of State a statement of change signed by him or her that sets forth the name of the relevant Legal Entity and either his or her new name, or address or a statement that he or she resigns;

(iv) not disclose the existence of any Appropriate Request for beneficial ownership information (other than as necessary to anyone employed by or an agent of the Documentation Agent or Licensed Documentation Agent).

“(B) For all Covered Legal Entities, the relevant Documentation Agent or Licensed Documentation Agent must:

(i) file with the Secretary of State the beneficial ownership information statement (in the case of a Documentation Agent) or a licensed documentation agent information statement certifying that he or she is the Licensed Documentation Agent for the Covered Legal Entity and has possession of the beneficial ownership information statement containing the name of the Beneficial Owner(s) and the documentation required under section 3(b)(1)(C) above (in the case of a Licensed Documentation Agent); and

(ii) not disclose beneficial ownership information except upon receipt of an Appropriate Request and as directed by such request.

“(C) For all Exempt Legal Entities, the relevant Documentation Agent or Licensed Documentation Agent must:

(i) maintain a notarized certification and documentation required by section 3(b)(1)(D) of this Act;

(ii) file with the Secretary of State the exempt entity statement that complies with the requirements set out in Section 3(b)(1)(A)(ii) or (B)(ii) of this Act.

“(3) OBLIGATIONS OF THE STATES OF FORMATION.—

“(A) For each Legal Entity formed under its laws after the Effective Date, each State shall maintain a beneficial ownership information statement, licensed documentation agent information statement, or exempt information statement that:

(i) includes all required information;

(ii) has been signed by all persons or entities required to do so; and

(iii) in the case of a Documentation Agent, includes a notarized signature.

“(B) For each Legal Entity formed under its laws before the Effective Date, by the date that is two years after the Effective Date, a State shall maintain a beneficial ownership information statement, licensed documentation agent information statement, or exempt information statement that:

- (i) includes all required information;
- (ii) has been signed by all persons or entities required to do so; and
- (iii) in the case of a Documentation Agent, includes a notarized.

“(C) A State must maintain the beneficial ownership information statement, licensed documentation agent information statement, or the exempt information statement until the end of the 5-year period beginning on the date that the Legal Entity terminates under the laws of the State.

“(D) A State shall not disclose beneficial ownership information except upon receipt of an Appropriate Request, or as directed by such request.

“(E) Neither a State nor any of its employees shall disclose the existence of an Appropriate Request for beneficial ownership information (other than to other employees of the State).

“(F) A State shall administratively dissolve any Legal Entity that fails to comply with its obligations set forth in Section (b) of this Act for 60 consecutive days.

“(G) Any State that licenses Licensed Documentation Agents pursuant to State law or regulation must subject such Agents to (i) registration, (ii) “fit and proper” licensing requirements of the managers and beneficial owners (including at a minimum identification, verification and physical presence requirements, absence of convictions for crimes of dishonesty or fraud, or regulatory proceedings that raise honesty or integrity concerns), (iii) effective and regular monitoring for compliance, and (iv) sanctions for noncompliance.

“(H) Each of the obligations in this subsection (b)(3) that applies to Legal Entities formed under the laws of any State, applies equally to any non-U.S. entity that qualifies to do business under the laws of any State, provided that such non-U.S. entity shall only be required to comply with the obligations in one State.

“(4) OBLIGATIONS OF BENEFICIAL OWNERS.—

“(A) Each Beneficial Owner of a Covered Legal Entity shall sign either the beneficial ownership information statement of such entity (in the case of a Covered Legal Entity using a Documentation Agent) or a statement of beneficial ownership referred to in section 3(b)(1)(C)(ii) of this Act (in the case of a Covered Legal Entity using a Licensed Documentation Agent).

“(B) Each Beneficial Owner of a Covered Legal Entity shall provide to such Covered Legal Entity a legible and credible copy of a government-issued photo identification document of such Beneficial Owner, to be provided to and maintained by the Documentation Agent or Licensed Documentation Agent at all times. In the case of any Beneficial Owner that is neither a citizen nor lawful

permanent resident of the United States, such document shall be a legible and credible copy of the page(s) of the government-issued passport bearing a photograph and unique identifying information of such Beneficial Owner.

SEC. 4. PENALTIES FOR NON-COMPLIANCE WITH BENEFICIAL OWNERSHIP INFORMATION REQUIREMENTS.

Any person who affects interstate or foreign commerce by:

(a) knowingly providing information related to the beneficial ownership of a Legal Entity to a State, Documentation Agent, or Licensed Documentation Agent that the person knows to be false or fraudulent; or

(b) knowingly providing a copy of a government-issued photo identification document to a Documentation Agent or Licensed Documentation Agent that the person knows to be false or fraudulent; or

(c) willfully failing to provide updated beneficial ownership information to a State, Documentation Agent, or a Licensed Documentation Agent as required by this act; or

(d) in the case of a Documentation Agent or Licensed Documentation Agent, willfully failing to obtain or maintain a credible and legible copy of a government-issued photo identification document of the beneficial owner(s) of a Legal Entity as required by this Act; or

(e) knowingly disclosing the existence of an Appropriate Request for information related to a Legal Entity, except as specifically authorized by this Act;

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

“(2) shall be fined under title 18, United States Code, or imprisoned not more than 3 years, or both.

SEC. 5. COMPLIANCE AND FUNDING.

(a) **STATE COMPLIANCE REPORT.**— Not later than [June 1, 2013], the Comptroller General of the United States shall submit to the [XX] of the Senate and the [XX] of the House of Representatives a report identifying which States are in compliance with this section and, for any State not in compliance, what measures must be taken by that State to achieve compliance with this section.

(b) **[FRESH FUNDS AUTHORIZATION.]** [*Explanatory Note:* State-based authorities and other stakeholders have argued that the federal government should finance the reasonable costs of implementing this Act, given the national security importance of addressing this issue and the current financial stress on State budgets. Preliminary estimates of implementation costs average approximately one million dollars per State (one-time payment for initial start-up cost).]

(c) **[WITHHOLDING OF FUNDS.]** [*Explanatory Note:* Because Congress is generally not constitutionally permitted to compel the States to enact or administer a regulatory program, the Act will rely on Congress’ spending power. This section will identify a federal program that provides funding to the States and provide that States that fail to comply with the Act will lose a

portion of such funding. (See, e.g., *South Dakota v. Dole*, 483 U.S. 302 (1987), affirming Congress' ability to require States to enact a minimum drinking age in exchange for federal highway funds.)

SEC. 6. STUDIES TO BE CONDUCTED AND REPORTED BY THE GOVERNMENT ACCOUNTABILITY OFFICE.

(a) **REPORT ON TRUSTS AND UNCOVERED LEGAL ENTITIES.** Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct and submit to the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, a study—

(1) identifying each State that has procedures that enable persons to form or register under the laws of the State unregistered partnerships, trusts, or other legal entities not addressed as Legal Entities under this Act, and the nature of those procedures;

(2) identifying each State that requires persons seeking to form or register partnerships, trusts, or other legal entities under the laws of the State to provide information about the Beneficial Owners (as that term is defined in [XX] of the [XX], as added by this Act) or beneficiaries of such entities, and the nature of the required information;

(3) evaluating whether the lack of available beneficial ownership information for partnerships, trusts, or other legal entities—

(A) raises concerns about the involvement of such entities in terrorism, money laundering, tax evasion, securities fraud, or other misconduct; and

(B) has impeded investigations into entities suspected of such misconduct; and

(4) evaluating whether the failure of the United States to require beneficial ownership information for partnerships and trusts formed or registered in the United States has elicited international criticism and what steps, if any, the United States has taken or is planning to take in response.

(b) **REPORT ON EFFECTIVENESS OF TRANSPARENT INCORPORATION PRACTICES IN ADDRESSING ABUSE OF COVERED LEGAL ENTITIES.** Not later than [June 1, 2013], the Comptroller General of the United States shall conduct and submit to the [XX] of the Senate and the [XX] of the House of Representatives, the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, a study assessing the effectiveness of transparent incorporation practices implemented pursuant to this Act in regards to improving ease of access to, quality, quantity, reliability, and operational security of information required by law enforcement during the course of their investigations, or otherwise affecting law enforcement's ability to combat the abuse of covered legal entities.

SEC. 7. RECORD KEEPING AND STATISTICS

Any State or federal law enforcement agency requesting access to beneficial ownership information pursuant to an Appropriate Request as authorized by this Act shall maintain a record of all such requests and the results thereof for a period of five years beginning from the date of

the request. In addition, all Secretaries of State shall maintain a record of all requests received for a period of five years beginning from the date the request was received.