

**Examining State Business Incorporation Practices:  
A Discussion of the Incorporation Transparency and Law Enforcement  
Assistance Act**

Chairman Joseph Lieberman:

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**AS PREPARED FOR DELIVERY**

Good afternoon and welcome to our hearing today on the Incorporation Transparency and Law Enforcement Assistance Act – a bill that results from the persistent work of the Permanent Subcommittee on Investigations.

I want to thank my good friend and colleague Senator Levin, who chairs the subcommittee, for introducing this legislation after an intensive review of state incorporation procedures. The PSI staff has dedicated many hours to this issue, dating back more than nine years. The subcommittee held a hearing in November 2006 and has identified numerous law enforcement problems caused by the use of U.S. shell companies for illicit purposes. I commend them for their work.

Each year, nearly two million new corporations and limited liability companies are established in the 50 states and the District of Columbia. That's more than 5,000 new businesses per day. This is the American way - capitalism at its best: generating revenue and creating jobs.

But, each year, some new businesses are incorporated for improper or illegal purposes. Criminals may try to use registered corporations to defraud innocent people, to cheat tax authorities, to hide the true nature of their transactions, or to launder ill-gotten funds. No one can put a figure on the number of corporations set up for illegal purposes, but some experts have estimated that billions of dollars may flow through such corporations every year.

Right now, a majority of states require some basic information from those seeking to establish a corporation. Most require the name and address of the company, the name of a “registered agent” who represents the company, and a list of “officers” or “directors.” This information is typically considered a public record.

It is also customary, however, for states to allow the individuals with actual ownership interest – including the investors who control the corporation or partnership – to remain anonymous to state authorities. This can become a problem for law enforcement officials who may have cause to investigate a suspicious company. Often, the trail goes cold when they search public records or contact a Secretary of State’s office, because the

state has no record of the real people behind the incorporation – the people who may be using the business for illicit purposes.

Senator Levin’s bill is designed with these law enforcement investigations in mind. His bill would set a national minimum standard intended to force states to collect and maintain information about a corporation’s underlying owners to help law enforcement in its work. The bar is set higher for foreign owners, whose identities must be verified by the company’s registered agent before the state can process the forms and set up the corporation. The bill gives states the authority to decide whether to keep the beneficial ownership information private or to make it a matter public record.

This is a transparency requirement, plain and simple, with stiff new penalties for providing false or insufficient information. Justice Lewis Brandeis famously said, “sunshine is the best disinfectant” - and since PSI held a hearing on this issue in 2006, opening the curtains to let the sun flood in, at least two states have revised their beneficial ownership laws to make them more transparent.

But a well-intended desire for more “sunshine” must be weighed against other factors, including the privacy rights of those making personal investment decisions, the potential costs of administration and enforcement that would fall on companies and state governments, and the real impact the law would have on both investigations and prosecutions.

Senator Levin’s bill, for example, would not force states to verify the accuracy of information provided before granting a new entity its legal status -- a potential loophole that criminals could continue to exploit even if this legislation was adopted.

The Uniform Law Commission, represented by one of our witnesses today, has drafted an alternative proposal that would leave companies in charge of maintaining the required information. Forty-four out of the 50 states already require corporations to keep on file lists of all members or shareholders of record at their principal offices. The Uniform Law Commission’s approach would seek to strengthen and update that practice.

So today, we’ll try to better identify and understand the problem, as well as discuss the potential solutions. We have an array of witnesses well

schooled in business incorporations and in corporate investigations. I look forward to their testimony as we try to limit illegal operations, without damaging the smooth flow of commerce for legitimate corporations and corporate purposes.

Senator Collins?