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 for criminal gain, 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

Mr. LEVIN (for himself, Mr. GRASSLEY, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

This Act may be cited as the “Incorporation Transparency and Law Enforcement Assistance Act”.

SEC. 2. FINDINGS.

Congress finds the following:

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

(2) Very few States obtain meaningful information about the beneficial owners of the corporations and limited liability companies formed under their laws.

(3) A person forming a corporation or limited liability company within the United States typically provides less information to the State of incorporation than is needed to obtain a bank account or driver’s license and typically does not name a single beneficial owner.

(4) Criminals have exploited the weaknesses in State formation procedures to conceal their identities when forming corporations or limited liability companies in the United States, and have then used the newly created entities to commit crimes affecting interstate and international commerce such as terrorism, drug trafficking, money laundering, tax eva-
sion, securities fraud, financial fraud, and acts of foreign corruption.

(5) Law enforcement efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information, as documented in reports and testimony by officials from the Department of Justice, the Department of Homeland Security, the Financial Crimes Enforcement Network of the Department of the Treasury, the Internal Revenue Service, and the Government Accountability Office, and others.

(6) In July 2006, a leading international anti-money laundering organization, the Financial Action Task Force on Money Laundering (in this section referred to as the “FATF”), of which the United States is a member, issued a report that criticizes the United States for failing to comply with a FATF standard on the need to collect beneficial ownership information and urged the United States to correct this deficiency by July 2008.

(7) In response to the FATF report, the United States has repeatedly urged the States to strengthen their incorporation practices by obtaining beneficial ownership information for the corporations and lim-
ited liability companies formed under the laws of such States.

(8) Many States have established automated procedures that allow a person to form a new corporation or limited liability company within the State within 24 hours of filing an online application, without any prior review of the application by a State official. In exchange for a substantial fee, 2 States will form a corporation within 1 hour of a request.

(9) Dozens of Internet websites highlight the anonymity of beneficial owners allowed under the incorporation practices of some States, point to those practices as a reason to incorporate in those States, and list those States together with offshore jurisdictions as preferred locations for the formation of new corporations, essentially providing an open invitation to criminals and other wrongdoers to form entities within the United States.

(10) In contrast to practices in the United States, all countries in the European Union are required to identify the beneficial owners of the corporations they form.

(11) To reduce the vulnerability of the United States to wrongdoing by United States corporations
and limited liability companies with unknown owners, to protect interstate and international commerce from criminals misusing United States corporations and limited liability companies, to strengthen law enforcement investigations of suspect corporations and limited liability companies, to set minimum standards for and level the playing field among State incorporation practices, and to bring the United States into compliance with its international anti-money laundering obligations, Federal legislation is needed to require the States to obtain beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.

SEC. 3. TRANSPARENT INCORPORATION PRACTICES.

(a) TRANSPARENT INCORPORATION PRACTICES.—

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

“SEC. 2009. TRANSPARENT INCORPORATION PRACTICES.

“(a) INCORPORATION SYSTEMS.—

“(1) IN GENERAL.—To protect the security of the United States, each State that receives funding from the Department under section 2004 shall, not later than the beginning of fiscal year 2012, use an
incorporation system that meets the following requirements:

“(A) Each applicant to form a corporation or limited liability company under the laws of the State is required to provide to the State during the formation process a list of the beneficial owners of the corporation or limited liability company that—

“(i) identifies each beneficial owner by name and current address; and

“(ii) if any beneficial owner exercises control over the corporation or limited liability company through another legal entity, such as a corporation, partnership, or trust, identifies each such legal entity and each such beneficial owner who will use that entity to exercise control over the corporation or limited liability company.

“(B) Each corporation or limited liability company formed under the laws of the State is required by the State to update the list of the beneficial owners of the corporation or limited liability company by providing the information described in subparagraph (A)—
“(i) in an annual filing with the State;

or

“(ii) if no annual filing is required under the law of that State, each time a change is made in the beneficial ownership of the corporation or limited liability company.

“(C) Beneficial ownership information relating to each corporation or limited liability company formed under the laws of the State is required to be maintained by the State until the end of the 5-year period beginning on the date that the corporation or limited liability company terminates under the laws of the State.

“(D) Beneficial ownership information relating to each corporation or limited liability company formed under the laws of the State shall be provided by the State upon receipt of—

“(i) a civil or criminal subpoena or summons from a State agency, Federal agency, or congressional committee or subcommittee requesting such information; or

“(ii) a written request made by a Federal agency on behalf of another country under an international treaty, agreement,
or convention, or section 1782 of title 28, United States Code.

“(2) NON-UNITED STATES BENEFICIAL OWNERS.—To further protect the security of the United States, each State that accepts funding from the Department under section 2004 shall, not later than the beginning of fiscal year 2012, require that, if any beneficial owner of a corporation or limited liability company formed under the laws of the State is not a United States citizen or a lawful permanent resident of the United States, each application described in paragraph (1)(A) and each update described in paragraph (1)(B) shall include a written certification by a formation agent residing in the State that the formation agent—

“(A) has verified the name, address, and identity of each beneficial owner that is not a United States citizen or a lawful permanent resident of the United States;

“(B) has obtained for each beneficial owner that is not a United States citizen or a lawful permanent resident of the United States a copy of the page of the government-issued passport on which a photograph of the beneficial owner appears;
“(C) will provide proof of the verification described in subparagraph (A) and the photograph described in subparagraph (B) upon request; and

“(D) will retain information and documents relating to the verification described in subparagraph (A) and the photograph described in subparagraph (B) until the end of the 5-year period beginning on the date that the corporation or limited liability company terminates, under the laws of the State.

“(b) Penalties for False Beneficial Ownership Information.—In addition to any civil or criminal penalty that may be imposed by a State, any person who affects interstate or foreign commerce by knowingly providing, or attempting to provide, false beneficial ownership information to a State, by intentionally failing to provide beneficial ownership information to a State upon request, or by intentionally failing to provide updated beneficial ownership information to a State—

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

“(2) may be fined under title 18, United States Code, imprisoned for not more than 3 years, or both.
(c) Funding Authorization.—To carry out this section—

“(1) a State may use all or a portion of the funds made available to the State under section 2004; and

“(2) the Administrator may use funds appropriated to carry out this title, including unobligated or reprogrammed funds, to enable a State to obtain and manage beneficial ownership information for the corporations and limited liability companies formed under the laws of the State, including by funding measures to assess, plan, develop, test, or implement relevant policies, procedures, or system modifications.

(d) State Compliance Report.—Nothing in this section authorizes the Administrator to withhold from a State any funding otherwise available to the State under section 2004 because of a failure by that State to comply with this section. Not later than June 1, 2013, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security 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.

“(e) DEFINITIONS.—In this section:

“(1) BENEFICIAL OWNER.—The term ‘benef-
cicial owner’ means an individual who has a level of
control over, or entitlement to, the funds or assets
of a corporation or limited liability company that, as
a practical matter, enables the individual, directly or
indirectly, to control, manage, or direct the corpora-
tion or limited liability company.

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

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

“(B) do not include any business concern
that is an issuer of a class of securities reg-
istered under section 12 of the Securities Ex-
change 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)), or any corporation
or limited liability company formed by such a
business concern;

“(C) do not include any business concern
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 under the laws of the United States; and

“(D) do not include any individual business concern or class of business concerns which a State, after obtaining the written concurrence of the Administrator and the Attorney General of the United States, has determined in writing should be exempt from the requirements of subsection (a), because requiring beneficial ownership information from the business concern would not serve the public interest and would not assist law enforcement efforts to detect, prevent, or punish terrorism, money laundering, tax evasion, or other misconduct.

“(3) FORMATION AGENT.—The term ‘formation agent’ means a person who, for compensation, acts on behalf of another person to assist in the formation of a corporation or limited liability company under the laws of a State.”.

(2) TABLE OF CONTENTS.—The table of contents in section 1 of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 2008 the following:
(b) Effect on State Law.—

(1) In general.—This Act and the amendments made by this Act do not supersede, alter, or affect any statute, regulation, order, or interpretation in effect in any State, except where a State has elected to receive funding from the Department of Homeland Security under section 2004 of the Homeland Security Act of 2002 (6 U.S.C. 605), and then only to the extent that such State statute, regulation, order, or interpretation is inconsistent with this Act or an amendment made by this Act.

(2) Not inconsistent.—A State statute, regulation, order, or interpretation is not inconsistent with this Act or an amendment made by this Act if such statute, regulation, order, or interpretation—

(A) requires additional information, more frequently updated information, or additional measures to verify information related to a corporation, limited liability company, or beneficial owner, than is specified under this Act or an amendment made by this Act; or

(B) imposes additional limits on public access to the beneficial ownership information obtained by the State than is specified under this Act or an amendment made by this Act.
SEC. 4. ANTI-MONEY LAUNDERING OBLIGATIONS OF FORMATION AGENTS.

(a) Anti-Money Laundering Obligations of Formation Agents.—Section 5312(a)(2) of title 31, United States Code, is amended—

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

(2) by redesignating subparagraph (Z) as subparagraph (AA); and

(3) by inserting after subparagraph (Y) the following:

“(Z) any person involved in forming a corporation, limited liability company, partnership, trust, or other legal entity; or”.

(b) Deadline for Anti-Money Laundering Rule for Formation Agents.—

(1) Proposed rule.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Attorney General of the United States, the Secretary of Homeland Security, and the Commissioner of the Internal Revenue Service, shall publish a proposed rule in the Federal Register requiring persons described in section 5312(a)(2)(Z) of title 31, United States Code, as amended by this section, to establish
anti-money laundering programs under subsection (h) of section 5318 of that title.

(2) Final rule.—Not later than 270 days after the date of enactment of this Act, the Secretary of the Treasury shall publish the rule described in this subsection in final form in the Federal Register.

SEC. 5. STUDY AND REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report—

(1) identifying each State that has procedures that enable persons to form or register under the laws of the State partnerships, trusts, or other legal entities, 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 section 2009 of the Homeland Security Act of 2002, 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 mis-
conduct; and

(B) has impeded investigations into enti-
ties 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.