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COMMENTARY

Unveiling Anonymity: The Impact of the Corporate Transparency Act on Business Ownership and Privacy in the United States

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Each year, more than 2,000,000 corporations and limited liability companies ("LLC(s)") are established in the United States in accordance with their respective state laws.[1] Typically, entrepreneurs and business owners opt to establish their corporations or LLCs within their home state to avoid drudgery of the extensive research needed to find the most advantageous location or because it genuinely offers the best conditions for their business endeavors.[2] However, more experienced business founders, aiming to benefit from states with business-friendly administrative and regulatory environments, frequently choose Delaware, Wyoming, Nevada, or New Mexico. [3] Now, you might wonder what common attributes make these four states attractive to business owners seeking to establish and protect their companies under their laws. Beyond offering tax advantages—such as income, environmental, and franchise tax benefits, or reduced annual administrative fees—the primary draw is the level of anonymity they allow. Specifically, these states permit the formation of "anonymous LLCs," which enables business owners to maintain a significant degree of privacy.[4] In today's digital age, marked by rapid technological advancements, safeguarding privacy and assets has become paramount. The states mentioned provide for this protection by either sealing beneficial owners' names and addresses from public records or permitting their omission, thereby ensuring

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[1] Corporate Transparency Act, sec. 6402, in Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. F, tit. LXIV (2021).

[2] Belle Wong, *Best States to Form an LLC in 2024*, FORBES (Dec. 14, 2023), https://www.forbes.com/advisor/business/best-state-form-llc/.

[3] *Id.*

[4] Jeannine Mancini, *Optimizing Business Privacy: Anonymous LLC States*, DOOLA (May 9, 2023), https://www.doola.com/blog/anonymous-llc-states.

complete anonymity of identification.[5] However, in typical human fashion, measures designed to offer protection from negative publicity, predatory creditors, or the desire for privacy have been quickly manipulated and exploited by malign actors.[6] Through the exploitation of these protective measures, these individuals have facilitated illicit activities such as money laundering, terrorism financing, significant tax fraud, human and drug trafficking, counterfeiting, piracy, securities and financial fraud, as well as actions that jeopardize the national security interests of the United States and its allies. [7]

Through complex corporate schemes, these individuals have managed to evade detection by layering companies akin to Russian Matryoshka dolls, commonly known as nesting dolls, spreading them across multiple secretive jurisdictions.[8] In cases where an investigator managed to obtain ownership records, they would often find that the newly identified entity was yet another corporate entity, leading to a repetitive and fruitless cycle of investigation. To combat black market activities such as money laundering, terrorist financing, and tax fraud, and to enhance national security, Congress enacted the Corporate Transparency Act ("CTA") on January 1, 2021, as part of the National Defense Authorization Act.[9] Starting January 1, 2024, all domestic and, where applicable, foreign entities formed through filings with any governmental entity must submit a Beneficial Owner Information Report ("BOI Report") to the Financial Crimes Enforcement Network of the Department of the Treasury.[10] Companies registered to operate in the U.S. after January 1, 2024, are given a 90-day window from their registration with the secretary of state to submit their BOI Report. Meanwhile, existing companies that were formed or registered before January 1, 2024, have until 2025 to disclose the details of their current beneficial owners.[11] Under the statute, a beneficial owner of an entity is defined as any individual who, directly or indirectly, either holds 25% or more of the entity's equity interests or exercises substantial control over the entity's activities.[12] Once one or more beneficial owners are identified, the company must collect and report basic information about these individuals, including their name, date of birth, address, and driver's license or passport information.[13] To intensify efforts and demonstrate the Department of Treasury's commitment to combatting illicit activities and enforcing the new legislation, the law stipulates that any individual who willfully fails to comply or deliberately

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[5] *Id.*

[6] *Anonymous LLC States: Everything You Need to Know*, UPCOUNSEL (Feb. 1, 2023), https://www.upcounsel.com/anonymous-llc-states.

[7] Corporate Transparency Act, *supra* note 1.

[8] *Id.*

[9] *The Corporate Transparency Act (CTA)*, IACA, https://www.iaca.org/about-iaca/corporate-transparency-act/ (last visited Mar. 12, 2024).

[10] Taylor A. Stockemer, *Corporate Transparency Act: 5 Things to Know*, 41 ARK. BUS. 21 (2024).

[11] Taylor A. Stockemer, *Understanding the Corporate Transparency Act*, 39 ARK. BUS. 29 (2022).

[12] Corporate Transparency Act, § 5336(b)(3)(A), in National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (2021).

[13] Stockemer, *supra* note 10.

provides false information can face civil penalties up to $500 per day and criminal penalties reaching up to $10,000 and two years in prison.[14]

This raises the question: Who will truly bear the impact of the CTA? While designed to thwart the complex strategies of sophisticated enterprises, historical trends suggest that small business owners, especially those lacking legal representation, may disproportionately bear the brunt of this legislation. The future remains a canvas yet to be painted, and as we proceed beyond 2024, founders of business entities established prior to this milestone will benefit from a one-year period of leniency. In contrast, the typical annual cohort of 2,000,000 individuals embarking on the formation of corporations and LLCs will confront a significantly narrower window of opportunity. For these entrepreneurs, a mere ninety days may separate the inception of their venture from potential fiscal liabilities reaching up to $10,000, alongside the specter of up to two years of incarceration.

[14] Stockemer, *supra* note 11.