

Small Businesses: Keep the Corporate Transparency Act on Your Radar

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If the federal legislature passes a controversial new proposal, more information will be required when forming or transferring ownership of certain business entities.

The [Corporate Transparency Act of 2017](#) has been introduced in both the House and Senate, generating more momentum than any past, similar proposal. The momentum is in response to foreign political and economic influence in the U.S., as the bill aims to prevent the use of anonymous shell companies to funnel money and weapons to terrorist organizations. It also intends to disrupt various forms of money laundering and fraud.

Should this bill go forward as-is, small businesses could be negatively affected, as the new law would only affect entities with fewer than twenty employees. Any problems with your required disclosures under this law could be very costly for your business and for you personally.

The proposal would require the [U.S. Department of the Treasury](#) to issue regulations containing minimum disclosure standards for states. These standards would require disclosure of names, addresses, and passport or driver's license numbers of key people involved with the formation of a limited liability company or corporation in the U.S. Those people include anyone who would control, benefit from or have a stake in the new company. Adoption of the standards would be voluntary for the states, but entities in states choosing not to adopt the standards would have to register with the [Financial Crimes Enforcement Network](#). The bills provide for civil and criminal penalties for failure to comply with these disclosure requirements.

Under the bill, "knowingly" participating in three separate behaviors related to these disclosures could result in criminal charges:

- Trying to form an entity with false information
- Failure by a formation agent to keep up-to-date records
- Revealing a request for beneficial ownership information without authorization

Detractors believe that the "knowingly" standard is too low of a bar because it may punish unintentional, mistaken violations. A fourth criminal offense -failing to provide complete or updated beneficial ownership information -would be subject to a higher "willfully" standard of culpability. Violations would result in fines of up to \$10,000 and three years in prison.

The bills' proponents insist the purpose is not to punish unwitting violators. They believe that the mix of lower and higher standards with prosecutorial discretion would be enough to prevent the prosecution of those who violate the

requirements accidentally.

Not the entire business world opposes this initiative. The proposals only affect businesses with fewer than twenty employees. Therefore, larger companies see them as protection against unintentional transactions with bad actors. Banks specifically have supported these proposals, as they already must collect similar information.

Passage of these proposals into law could bring major consequences for small business owners using the corporate and limited liability company forms. Accuracy in disclosure and continued recordkeeping would be more important than ever, as even unintentional discrepancies might bring a company under scrutiny, putting unwanted strain on limited resources.

If you have any questions on these possible laws and how it could affect your business, please [contact me](#) or any of the attorneys in our [Business Practice Group](#).