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New Bill Introduced in the U.S. Senate to Require the Disclosure of Ultimate Beneficial Owners of Corporations and LLCs Formed or Registered in the United States

On August 2, 2017, United States Senators Marco Rubio (R-FL) and Ron Wyden (D-OR) jointly introduced Senate Bill 1717, entitled the “Corporate Transparency Act of 2017” (the “Act”). The Act was referred to the U.S. Senate Committee on Banking, Housing and Urban Affairs. The Act would amend Title 31 of the United States Code, to require the collection of beneficial ownership information for corporations and limited liability companies (“LLCs”) formed or registered in the United States. A companion bill was introduced in the House of Representatives on June 28, 2017, by Representative Carolyn B. Maloney (D-NY), and was referred to the House Committee on Financial Services.

The recitals in the Act note that few states obtain meaningful information about the beneficial owners of the corporations and LLCs formed under their laws, and that criminals have exploited these weaknesses in state formation procedures to conceal their identities when forming corporations or LLCs in the United States, and have used the newly created entities to commit crimes such as terrorism, drug trafficking, money laundering, tax evasion, securities fraud, financial fraud, and acts of foreign corruption.

The Act would direct the U.S. Department of the Treasury to issue regulations requiring entities formed or registered in the United States to **declare their beneficial owners – natural persons who, directly or indirectly, exercise substantial control over the company or have a substantial interest in, or receive substantial economic benefit from, the company.** The Act would require that beneficial owners: (i) be identified by name; (ii) disclose a current residential or business street address; and (iii) provide a unique identifying number from a non-expired U.S. passport or a non-expired U.S. driver’s license (foreign persons must provide a copy of their non-expired foreign government-issued passport).

The Act would apply to **both new and currently existing corporations and LLCs**. However, the Act exempts a number of businesses that already provide beneficial ownership information in their normal course of business. Examples of businesses exempt from the Act include companies registered under Section 12 of the Securities Exchange Act of 1934, depository institutions, credit unions, bank holding companies, broker-dealers, exchange/clearing agencies, investment companies, insurance companies, public accounting firms, entities registered with the Commodity Futures Trading Commission, and businesses that employ more than 20 full-time employees in the United States, have more than \$5,000,000 in gross receipts or sales, and have a physical office in the United States.

The Act would allow for states to participate in the collection of beneficial ownership information **voluntarily**. However, companies or LLCs formed in states that will not collect beneficial owner information as described above would be required to **disclose** information regarding their beneficial owners **directly to the U.S. Department of the Treasury, Financial Crimes Enforcement Network**.

Congress has made previous attempts to pass similar ultimate beneficial ownership legislation, but these have never made it past a committee of either house. It is unclear whether this bill will have a better chance of passing.

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