



National Association of Secretaries of State  
**State Business Entity Law Survey:  
Executive Summary**

June 9, 2008

## EXECUTIVE SUMMARY

### Background

The completed survey (March 2008) of state business entity laws, which can be found on the NASS website, resulted from the release of the NASS Company Formation Task Force Report and Recommendations in July 2007. That report, released for state and federal consideration, includes a recommendation involving the periodic compilation of a comprehensive list of state business entity laws for the benefit, of among others, the international and domestic law enforcement community.

With nearly two million corporations and limited liability companies (LLCs) currently being formed within the United States each year, the states generally register these companies without asking for the identity of the corporation's beneficial owners. It is this practice that has drawn the attention of Congress and other federal agencies who claim that this lack of beneficial ownership information has impeded efforts by law enforcement to track individuals involved in tax evasion, money laundering, terrorist activities or other misconduct.

In 2006, two major federal government reports and subsequent congressional activity attempted to gather government-wide analysis of issues related to company formation laws and criminal wrongdoing. Specifically, federal officials raised concerns that more could be done by states to obtain beneficial ownership information for the corporations formed under their laws and to provide law enforcement with access to this information under a writ of subpoena or summons.

With Secretaries of State in 41 states<sup>1</sup> responsible for overseeing corporate registration and filing activities, the NASS Corporate Formation Task Force was formed in January 2007 to help states respond to some of the emerging issues involving corporate formation and disclosure laws. Co-chaired by North Carolina Secretary of State Elaine Marshall and Nebraska Secretary of State John Gale, the task force was charged with examining existing company formation processes among several states and compiling recommendations that would offer reasonable solutions to address the concerns of Members of Congress and other federal officials.

### Scope of Survey

The summary that follows is a compilation of the company formation laws of all fifty U.S. states, as well as the District of Columbia. The information covers how each statute treats the collection of ownership information, filing requirements, and period reporting requirements. It also explains how law enforcement can access ownership and other pertinent information. The International Association of Commercial Administrators (IACA) assisted NASS with the task of reviewing all laws referenced in this document for accuracy.<sup>1</sup>

In compiling the relevant state business laws, the entities covered include corporations, limited liability companies (LLCs), limited partnerships (LPs), and limited liability partnerships (LLPs).

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<sup>1</sup>The membership of the National Association of Secretaries of State (NASS) includes the Lieutenant Governors of Alaska and Utah, as well as their counterparts in the U.S. territories of Guam, Puerto Rico and the Virgin Islands. All of these offices have responsibility for the registration of corporations in their respective states or territories.

*For more on the NASS Company Formation Task Force Report and Recommendations, visit*

[www.nass.org](http://www.nass.org).

The main areas of focus were as follows: articles of incorporation, certificate of authority, certificate of limited partnership, annual, biannual, and biennial reports, registered office/registered agent, records of shareholders, and access by law enforcement.

### **Filing & Reporting Requirements**

State laws vary regarding the types of information that must be provided, however, the majority of these states (36), require a minimum of the name and address of the corporation, the name of a registered agent(s), and a list of principal officers or directors. This information is generally considered public record.

In examining state company formation laws, forty-six (46) states reported statute language dealing with different types of reporting concerning corporations, as well as other business entities such as limited liability companies, limited liability partnerships, and limited partnerships.

Thirty-eight (38) states require corporations to file *annual* reports. Six states require that corporations provide *biennial* reports, while the District of Columbia requires *biannual* reports. Six states that responded to the survey did not mention what, if any, reporting requirements exist.

Beyond corporations, many states also require annual, biennial, or biannual reporting on the part of other business entities, such as LLCs, LLPs, and LPs. While some states in this survey did not mention reporting requirements for all entities, a general picture of reporting requirements is available. Thirty-seven (37) states require at least one or more of the above mentioned business entities to submit an annual, biennial or biannual report. Several states require reports from all entities mentioned.

### **Collection of Ownership Information**

Most states do not collect ownership information that goes beyond nominee officers or that which is included in annual reports or other routine submissions under state law. For many of the states, this practice is a matter that has been determined by case law. However, forty-four (44) states require corporations to keep a list of all members or shareholders of record, in most cases at their principal office.

Three states (Alaska, Arizona and Montana) currently require that corporations submit a list of shareholders of record as part of their annual or biennial reports. However, there are some conditions that apply when reporting shareholder names. Both Alaska and Arizona mandate a minimum percentage of shares that a person must own before their name is provided in a report. Montana requires the reporting of shareholders of record in cases where the corporation's board of directors has been dissolved.

No state currently collects nonobjecting beneficial ownership (NOBO) information from corporations. Again, this is largely a matter of case law.

### **Law Enforcement**

One of the chief aims of the NASS Company Formation Task Force Report and Recommendations was to help states promote public safety by cooperating with law enforcement agencies looking into criminal activity. This survey explored the methods by which law enforcement bodies and courts can request or subpoena documents needed in an investigation.

Eleven (11) states directly outline the legal options available to courts and law enforcement entities that are interested in procuring documents needed in an investigation. Seven of these state offices outline their own legal limitations in this process, while four states provide a clear overview of their statutory responsibility and authority to procure ownership and other information from registered businesses within their state.

Three states (Nevada, Massachusetts, and Wyoming) designate certain powers to Secretaries of State to request information from businesses as part of a criminal investigation.

### **Other NASS Company Formation Task Force Recommendations**

In addition to creating this compilation of state corporation laws, the NASS Company Formation Task Force issued the following recommendations:

1. NASS will send a letter to Office of Foreign Assets Control (OFAC) regarding state promotion of compliance with the Trading with the Enemy Act and to request a meeting.
2. States will agree to engage in educational public outreach about checking the OFAC Specially Designated Nationals (SDN) List.
3. NASS will request that ABA and NCCUSL, with respect to the historical precedent of confidentiality in company ownership laws, develop language to amend Model or Uniform Business Entity Act laws requiring entities to file a periodic report that includes a name and address of a natural person in the United States who has responsibility for providing access to the list of owners of record for a business. That name would be part of the public record.
4. States should examine their statutes and requirements for annual or biennial reporting by business entities to determine what amendments or additional language may needed, and to identify specific individuals who may be contacted by federal law enforcement authorities with regard to investigations about owners of record for a business.
5. NASS recommends a two-pronged approach to “bearer shares and interests held in bearer form.” First, NASS will request in letters to ABA and NCCUSL that they address clarifying Model and Uniform Entity Laws that bearer shares and interests held in bearer form are not permitted. In the interest of time, states should also review their statutes to clarify prohibitions on bearer shares and interests held in bearer form.

The full NASS Company Formation Task Force Report and Recommendations, along with the complete survey of State Business Entity Laws are available online at [www.nass.org](http://www.nass.org)