Oregon Secretary of State
Testimony on HB 2191

The Secretary of State strongly supports cracking down on money laundering, tax evasion, and other financial crimes. House Bill 2191 attempts to fight these problems by changing the Secretary of State's business registry program from a ministerial function into a regulatory function. The current approach of HB 2191 needs significant additional vetting to ensure that it is complementary to federal solutions to this problem without creating outsized enforcement costs or unnecessary burdens on legitimate businesses.

The broad scope of House Bill 2191 will have a considerable impact on the Secretary of State's business operations and workload, requiring eleven new positions (11 FTE) as well as changes to business processes and computer systems. The overall fiscal impact is expected to be $1,562,658 in 2017-19 and $1,869,145 in 2019-21. Better targeting of the measures in the bill could help reduce these costs.

A 2006 report by the US Department of Treasury found that several states, including Oregon, were appealing for forming "shell" companies. However, when this report was updated in 2016, Oregon was no longer singled out as problematic. Further, Oregon should be careful to align with the changes made by the federal government since 2006 to help prevent fraudulent use of such companies. In many cases, the federal government is best equipped to stop money laundering and tax evasion, especially schemes that rely on electronic money transfers.

To be effective, the current approach in HB 2191 would require all 49 other states and District of Columbia to implement similar changes to regulate large registered agents and collect the names, addresses, and identification information of the beneficial owners of corporations and limited liability companies. Otherwise, businesses may choose to organize in other states with fewer regulatory hurdles. Federal law enforcement could then request information from each of the 50 states by subpoena, but would not have a central repository of beneficial owner information.

This is why the National Association of Secretaries of State (NASS) continues to promote a federal solution to these type of problems, and President Obama's FY 2017 White House Budget included language concurring with the NASS approach. NASS believes that any past obstacles that federal law enforcement officials faced in accessing entity ownership information held by the IRS and other federal agencies do not serve as a sufficient justification for creating a new patchwork of 50+ channels for this purpose.

Fortunately, a centralized federal solution already exists. To address the need of federal law enforcement agencies for a central repository of corporate beneficial owner information, the US Treasury through the Internal Revenue Service began requiring a Federal Employer Identification Number (EIN) for every business and corporate entity, and required each business to provide the name and tax ID number of the company's responsible party. The responsible party is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds or assets.

Additionally, the US Treasury under the Bank Secrecy Act requires persons, including corporate entities with a financial interest in or signature authority over a foreign financial account to file annually a Report of Foreign Bank and Financial Accounts (FBAR). The FBAR is a tool to help the United States government identify persons who may be using foreign financial accounts to circumvent United States law. US Treasury's Financial Crimes Enforcement Network (FinCEN) also requires financial institutions to follow Customer Due Diligence requirements that require banks to verify beneficial owners of legal entities when opening accounts.

These solutions are already in place and provide federal law enforcement agencies with a central repository of beneficial owner information through the US Treasury Department, thereby ensuring that beneficial ownership information is readily available for investigations related to fraud, money laundering, tax evasion, and corruption.

Because House Bill 2191 is not carefully aligned with federal solutions, it will have a major impact on Oregon's business community through increased regulations, reporting and licensing requirements, and new fees in the case of commercial registered agents. Such burdens can only be justified if they are narrowly targeted to align with federal solutions going after illegal activity and do not cast a net so wide as to burden Oregon businesses that create jobs, produce tax revenue, and drive our economy.

If policy makers desire to move forward with a separate, parallel Oregon solution to the problem of money laundering and tax evasion, a preferred course of action would be to convene a work group of experts from the business community, law enforcement, consumer advocates, and Department of Revenue to review the issues and concerns and make a recommendation on proposed legislative solutions. Suggested participants include representatives from the Secretary of State's Corporation Division, Department of Justice, Oregon State Bar, Oregon Law Commission, Registered Agents Association, District Attorneys, Department of Revenue, large and small businesses, and consumer advocates. Any solutions should balance the need to fight money laundering, tax evasion, and other financial crimes while minimizing the negative impact on Oregon's economy and intrusiveness on honest and legitimate Oregon businesses.

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