



Gatekeeper Regulations on Lawyers

ABA Objects to the “Incorporation Transparency and Law Enforcement Assistance Act” and Other Similar Anti-Money Laundering Legislation

The American Bar Association supports all reasonable and necessary domestic and international efforts to combat money laundering and terrorist financing. However, the ABA opposes enactment of legislation like S. 569 and H.R. 6098, introduced by Sen. Carl Levin (D-MI) and Rep. Carolyn Maloney (D-NY) in the previous 111th Congress, and any other legislation that would unnecessarily burden lawyers, impose government-mandated suspicious activity reporting on the legal profession, and over-regulate states’ incorporation practices.

Legislation like S. 569 and H.R. 6098, also known as the “Incorporation Transparency and Law Enforcement Assistance Act,” should not be enacted into law because:

- **The legislation establishes a new class of financial institutions subject to extensive regulation under U.S. anti-money laundering law, which is likely to include lawyers.** Under the legislation, any “formation agent” is required to adopt certain enhanced anti-money laundering compliance mechanisms to detect possible money laundering activities in the formation of entities. Because the definition of formation agents in the legislation appears to include many lawyers engaged in the practice of law, it would impose anti-money laundering compliance requirements on the legal profession and treat lawyers as though they were banks.
- **The legislation could potentially impose onerous suspicious activity reporting (SAR) requirements on lawyers.** If lawyers are included in the legislation’s definition of “formation agents” and hence deemed to be “financial institutions” under the Bank Secrecy Act, the Treasury Department could have the authority to impose extensive SAR requirements on lawyers. These SAR requirements could compel lawyers to disclose certain confidential client information to government officials, thereby eroding the attorney-client privilege, harming the lawyer-client relationship, conflicting with existing state bar ethical obligations of lawyers, and undermining traditional state court regulation of the legal profession.
- **The legislation places unnecessary burdens on lawyers, their clients, businesses, and states.** Under the legislation, lawyers would be subject to burdensome and intrusive gatekeeper regulations, including key anti-money laundering compliance provisions of the Bank Secrecy Act, which would harm both clients and their lawyers. The legislation would also impose undue burdens on legitimate businesses and state authorities at a time when the U.S. financial system and the domestic economy are under severe stress. In addition, federal regulation of state incorporation practices is premature and not the most effective means for addressing money laundering and terrorist threats in the United States.

While opposed to federal legislation like the Incorporation Transparency and Law Enforcement Assistance Act, the ABA will continue to promote efforts by states and the legal profession to fight money laundering and terrorist financing. In addition, the ABA will continue to support legislative efforts to combat these illegal activities in ways that do not compromise the attorney-client privilege, lawyer confidentiality, or traditional state court regulation of the legal profession, and that minimize the burden on our economy and on states.