



Newsletters

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Opinion

Opinion: A costly, complicated and unconstitutional anti-small business law

By Brian Calley



Credit: Crain's Detroit Business

Small businesses like your local bowling alley are being treated like criminals under a new federal disclosure law, writes SBAM President and CEO Brian Calley.

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The so-called Corporate Transparency Act is an obnoxiously vague and overly complex law that treats millions of law-abiding small business owners like criminals.

The Small Business Association of Michigan, together with the Chaldean American Chamber of Commerce, [filed a lawsuit](#) this week against the federal government to protect entrepreneurs. A big step, but a necessary one to protect hundreds of thousands of small businesses across Michigan

Brian Calley is president and CEO of SBAM. from extensive overreach by a federal entity known as FinCEN: the Financial Crimes Enforcement Network, situated within the U.S. Department of Treasury.

Beginning on Jan. 1, 2024, most small businesses in the U.S. must report sensitive and private information about their “beneficial owners.” True to form, the feds are defining “beneficial owner” in an overly complex, yet vague way. Only in federal law could you be considered a “beneficial owner” without having any ownership interests at all.

How's that? Under this unconstitutional law, non-owner employees with certain titles are considered “beneficial owners.” It also goes on to include “important decision makers” and anyone with “substantial control” as “beneficial owners.” At what point does authority exercised by non-owner management become “substantial control”? Who knows?

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But you better get it right because failure to comply comes with heavy financial penalties and is a two-year felony.

Once you figure out who is subject to the law, then you must file sensitive information such as their Social Security number, driver's license, passport number and address annually with FinCEN. And you must file a new report within 30 days of any change. So, if an employee moves, retires or is promoted to a position featuring “substantial control,” a new reporting requirement is triggered.

They say that this law was created to make it harder for bad actors to hide. But invading privacy and treating small business owners and their employees like suspects is not a reasonable way to root out financial crimes.

Whether you are a small business owner or not, take a moment to think who small business owners are. Yoga studios, the corner grocer, veterinarians, brewers, farmers. Even the guy renting paddle boards at the beach must report to FinCEN annually. Is this really necessary under threat of prison time?

Want to study up on what you need to do to comply? No worries. Start with the 47-page guide on the FinCEN website consisting of six chapters, seven charts, and more than 25 checklists. The density of this federal legalese may surprise small businesses expecting FinCEN to “minimize burdens on reporting companies associated with the collection of beneficial ownership information” as set forth in the “Sense of Congress” when enacting the CTA.

In exasperation and a desire to protect themselves from fines and prison time, most small business owners will likely pay attorneys thousands of dollars to file and amend reports each and every year. FinCEN’s own estimate of the aggregate cost of this law over the next 10 years is \$55.7 billion to \$64.8 billion. All so that they can make sure that small businesses like your local bowling alley aren’t financing a terrorist plot.

A lawsuit filed in Alabama by the National Small Business Association was successful, with the court finding that Congress lacked authority to pass this law within its enumerated powers. It issued an injunction barring enforcement of the CTA, but only for the parties named in the lawsuit. Until Congress walks back the CTA, or unless our lawsuit is successful, those who own and operate small businesses in Michigan still have the burden of full compliance.

Like the NSBA, we are arguing that Congress lacked the authority to pass this law, but additionally, we believe there are very serious violations of our Fourth and Fifth Amendment rights.

If the goal of this law is to have a chilling effect on the smallest, most-loved businesses that employ millions of Michiganders, Congress has succeeded. It is unreasonable and insulting to treat small businesses and their employees this way. Moreover, it isn’t constitutional to require private citizens to disclose highly personal information to federal government entities without the slightest presumption of wrongdoing.

For more information on the CTA and SBAM’s lawsuit, visit sbam.org.

Brian Calley is president and CEO of the Small Business Association of Business and former lieutenant governor of Michigan.

By Brian Calley

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