



**Corporate Transparency Act:
What Nebraska Farmers &
Ranchers Need to Know**
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New corporate law could impact farmers

Reporting requirement stems from the Corporate Transparency Act.



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🕒 1 Min Read



Farmland. USDA ARS



A new federal reporting requirement aimed at reducing corporate crime will affect some farmers, ranchers and businesses, according to Montana State University Extension.



overview

- The US does not have a national **registry** of who owns corporations; most industrial nations do have these national registries.
- The beneficial ownership registries make it easier for law enforcement to find out who is behind a corporation that is suspected of e.g. money laundering or other criminal activity.
- Lack of US beneficial ownership registry makes it easier for criminals, terrorists to hide in US corporations should they want to. The 2021 Corporate Transparency Act (CTA) establishes a US beneficial ownership registry.
- Most Nebraska corporations will need to file with the CTA registry in 2024, even though they are completely non-criminal.



money laundering

- Al Capone bought commercial clothes laundries and added his \$\$ from illegal liquor sales, gambling, prostitution, etc. to the laundry revenue, claimed it all as laundry revenue, and then was able to use the “laundered” or apparently legitimate money freely without fear of being caught with “dirty” money from criminal operations.
- Apparently Capone didn’t run all the dirty money through the laundries as he eventually was convicted of income tax evasion.
- today criminal proceeds from drugs, protection rackets, and other criminal or terrorist enterprises are “laundered” to make the criminal proceeds (“dirty \$\$”) to be legitimate “clean” \$\$.



bank secrecy laws & dummy corporations

- modern money laundering needs two things to work: **NO bank secrecy laws** (“offshore account” jurisdictions) and the ability to create numerous **dummy corporations**
- US ended bank secrecy in 1970
- **offshore accounts** are in countries with no bank secrecy laws
 - Hong Kong, Switzerland, Belize, Germany, Cayman Islands, Singapore, Panama, United Arab Emirates (UAE).
 - may also be **tax havens** – little or no corporate income tax
- **dummy corporations**: paper corporations that can be used to shuffle dirty money deposited in offshore accounts through several dummy business entities and offshore accounts throughout the world to make it very difficult for law enforcement to trace where the funds came from and whose money it really is
 - dummy corporations are legal and easy to set up in the US ☹



how does money laundering work?

- disclaimer – not financial crimes expert 😊
- criminals create many dummy corporations with the criminal **beneficial ownership** element well hidden
- they also establish many offshore bank accounts in several countries
- then they transfer money through several of the corporations and even more of the offshore bank accounts
- must be very frustrating for laws enforcement to trace \$\$ through the same dummy corporations & the same offshore bank accounts & not be able to get to the criminals 😞
- “where the trail runs cold” [Inspector Lewis episode]
 - “wish we had a **beneficial ownership registry** so we could nail these guys!” 😊



beneficial ownership registry

- more countries have ended bank secrecy (like the US) but not all of them – “offshore bank account” countries
 - Bahamas, Bermuda, Cayman Islands, etc.
- the US is one of the last major industrial countries to establish a beneficial ownership registry to make it harder for criminals or terrorists to hide in dummy corporations
- up until now it has been easy to do in the US because states (inc. Neb) usually require very little information in order to set up corporations, limited liability companies (LLCs) or limited partnerships (LPs).
- FYI: dummy corporations are not always criminal but can be. Widely used by criminal enterprises for money laundering etc.
 - often legitimately used in real estate, business acquisitions



beneficial ownership registries, con't

- most industrialized countries have beneficial ownership registries, where corporations, LLCs & perhaps other limited liability business entities must provide (and regularly update) information regarding the major owners of the corporation or LLC.
- the 2021 Corporate Transparency Act (CTA) will establish a US beneficial ownership registry to get basic information regarding who are the **beneficial owners** of a corporation or LLC.
- Is Neb. corporation buying Neb ag land a front for foreign adversaries? No way to find out without going to court, etc. CTA beneficial ownership registry could help with this.



CTA--what Neb entities are affected?

- [Neb] corporations
- [Neb] limited liability companies--LLCs
- [Neb] limited partnerships –LPs
 - [Neb] limited liability partnerships – only law firms eligible
- some Neb trusts – but not the usual garden variety trusts set up to avoid probate (or used ~like legitimate dummy corps)
- your Neb attorney can help you determine which businesses need to file and how to determine who the **beneficial owners** of the business are
- companies required to file are called **reporting companies**



CTA filing deadlines

- entities established before January 1, 2024: Reports for existing Neb corporations, LLCs & LPs are required beginning on January 1, 2024. Filing deadline is January 1, 2025. No grandfathering
- entities established Jan 1-Dec 31, 2024: Neb corps, LLCs & LPs must file within 90 days of when their initial entity formation paperwork is properly filed with & approved by Neb Secretary Of State.
- entities established on or after Jan. 1, 2025: Neb corps, LLCs & LPs must file within 30 days of organization.
- 23 exceptions but not for small businesses. Charitable, tax exempt, many financial institutions, many securities related & commodity trading firms.
- Basically, exemptions for companies who have already provided this information to the SEC, CFTC, FDIC, etc.



what entities are exempt?

- those **not** created by filing with & approval by Neb Secretary of State, including (1) sole proprietorships, (2) general partnerships & (3) certain trusts (“garden variety” trusts established to avoid probate – file instead with local county court).
- 23 CTA exemptions – next slide (most are already subject to federal beneficial ownership filing requirements).
 - there is no **agricultural** exemption
 - there is no **family owned** business exemption
 - there is no **small business entity** exemption
 - no **subchapter S** exemption 😊
 - no clear exemptions that would get most Neb ag producers, main street businesses, etc. out of having to comply with the CTA.



23 CTA exemptions

1. Securities reporting issuer
2. Governmental authority
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business
7. Broker or dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
21. **Large operating company** ??
 - \$5 million gross income, at least 20 FTEs
22. Subsidiary of certain exempt entities
23. Inactive entity



what must be registered

- this info all comes from the **Small Entity Compliance Guide**.
- reporting companies must register the **beneficial owners** of the company
- beneficial owners include
 - any individual who directly or indirectly exercises **substantial control** over the reporting company, **or**
 - any individual who directly or indirectly owns or controls at least 25% of the ownership interest of the company
 - e.g. stock shares, LLC interests, etc.



substantial control

- reporting company must register **all individuals** who exercise **substantial control** over the company. Must meet one of the following criteria:
 - 1. individual is a senior officer
 - 2. individual is authorized to appoint or remove certain officers or a majority of company directors
 - individual is an important company decision maker
 - individual has any other form of substantial control
- **Don't need an ownership interest to exercise substantial control**



substantial control, con't

- **senior officer:** president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any individual regardless of title who performs similar functions
- **important decisionmaker:** determines or substantially influences important company decisions regarding:
 - **business operations:** *strategic direction:* nature, scope, entry into new directions & exit, significant contracts
 - **finances:** loans, sale of assets, operating budget approval, **or**
 - **structure:** reorganization, dissolution, merger, amending governing documents (articles of incorporation, etc.)
- important decisionmakers need not be beneficial owners



beneficial owner exemptions

- 1. minor children
- 2. nominee, intermediary, custodian or agent
 - the person whom the nominee etc. represents is likely a beneficial owner
 - criminal example: Al Capone mouthpiece, etc.
- 3. employees (who are not **senior officers**)
- 4. inheritor (future interest, not present beneficial owner)
 - as soon as they inherit, they are no longer exempt
- 5. creditor.



reporting company required info

- 1. full legal name
- 2. any trade name or *doing business as* name
- 3. complete current US address (principal business address)
- 4. jurisdiction of entity formation (e.g. state where incorporated, organized, etc.).
- 5. IRS taxpayer ID number (including employer identification number).
- this info not necessarily on file with the Neb SOS



beneficial owner required info

- 1. full legal name
- 2. date of birth
- 3. complete current address (residential)
- 4. unique ID number, issuing jurisdiction & image of one of the following:
 - US passport
 - state driver's license
 - state identification card
 - unique ID # is e.g. drivers license number, etc.
- No financial info required.
- this info not necessarily on file with the Neb SOS



optional FinCEN identifiers

- FinCEN: Financial Crimes Enforcement Network, US Treasury Department
- reporting companies can get a company FinCEN ID number
- reporting companies can get a FinCEN ID number for beneficial owners
- so if you are a beneficial owner of more than one reporting company, you can put in the FinCEN identifier & not have to re-enter the same information over and over again.



how do I report?

- beneficial ownership information can be filed electronically beginning January 1, 2024.
- <https://www.fincen.gov/boi>
- electronic filing info will be on FinCEN's beneficial ownership information webpage
- **Small Entity Compliance Guide** walks you through the online filing process
- Penalties: fines of \$500 per day up to \$10,000 and up to two years in prison for **willful** (~deliberate) violations.



must I use an attorney or CPA to file?

- FinCEN says no but I would as a minimum go through the FinCEN BOI **Small Entity Compliance Guide** first (pencil & paper—57 pages). If you can't answer all the questions you will need help.
- **FinCEN answer:** “No. FinCEN expects that many, if not most, reporting companies will be able to submit their beneficial ownership information to FinCEN on their own using the guidance FinCEN has issued. Reporting companies that need help meeting their reporting obligations can consult with professional service providers such as lawyers or accountants.”
- if you are a corp, LLC or LP but don't think you need to file, you need to contact your attorney, because you probably do need to file.



“Under the CTA, who can access beneficial ownership information?”

- “FinCEN will permit Federal, State, local, and Tribal officials, as well as certain foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to **national security, intelligence, and law enforcement**. Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the reporting company.”
- FinCEN has not developed these regulations yet; high priority to protect information security & confidentiality.
- Our law enforcement officials will want/need access to foreign beneficial ownership registries & they will want/need access to ours.



litigation

- on March 1, 2024, the federal district court (N.D. Alabama) ruled that the CTA was unconstitutional. *National Small Business United, et al. v. Yellen*.
 - almost certainly to be reversed on appeal IMO.
 - FinCEN has since said that NSBU members did not need to register but encouraged them to do so anyway.
- On Sep. 20, 2024, the federal district court for Oregon ruled that the CTA was constitutional. *Firestone, et al.. v Janet Yellen, et al.*
- other cases challenging CTA are ongoing
- No court has said that Nebraska reporting companies do not need to register. 😊



final comments

- I expect that the vast majority of Nebraska registered business entities will not be criminal, but they still must file. I hope the CTA registry will make it easier to track down the bad guys.
- will the CTA end money laundering? No but the US will no longer be a legal haven for dummy corporations or LLCs so money laundering will be more difficult. Hopefully more criminals will be caught.
- The CTA beneficial ownership registry could be used in the future to help identify foreign/alien participants in business entities purchasing Nebraska agricultural land.



for further information

- FinCEN Beneficial Ownership home page
<https://www.fincen.gov/boi>
- includes **Small Entity Compliance Guide**
 - frequently asked questions
 - short introductory video 😊
 - link to subscribe to update info
- if you have questions about how to comply with the new CTA beneficial ownership requirements, consult your attorney
- Any questions? Thank you 😊



questions? 😊

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Thank you! 😊