

1 **TITLE: CORPORATE FORMATIONS**

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3 **COMMITTEE: NCSL STANDING COMMITTEE ON COMMUNICATIONS,**
4 **FINANCIAL SERVICES & INTERSTATE COMMERCE**

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6 **TYPE: DRAFT - POLICY STATEMENT**

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8 A corporation is defined as a legal entity or structure created under the authority of a
9 state's laws, consisting of a person or group of persons who become shareholders. The
10 entity's existence is considered separate and distinct from that of its members. A
11 corporation can enter into contracts, sue and be sued, pay taxes separately from its
12 owners, and do the other things necessary to conduct business

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14 The ability to regulate and set standards for incorporation law had long resided within
15 the individual states. Many states rely on the revenue generated by incorporation fees,
16 corporate taxes and other fees as a way to fund many of their public needs. States
17 determine what the articles of incorporation need to involve and have the ability to both
18 tighten and lift barriers for corporate formation.

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20 One of the key reasons for forming a corporation is the limited liability protection
21 provided to its owners. Because a corporation is considered a separate legal entity, the
22 shareholders have limited liability for the corporation's debts. The personal assets of
23 shareholders are not at risk for satisfying corporate debts or liabilities.

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25 In 2001, after the terrorist attack on the United States, the U.S. Treasury Department
26 was tasked with tracking the funding of terrorists cells and groups. One of the findings
27 of these early studies was the concern that state corporate formation statutes may have

28 allowed terrorists and other criminals in laundering money and hiding assets. In 2002, a
29 number of states were identified by the Treasury Department as having insufficient
30 requirements for the identification of members, managers or the beneficial owners of the
31 corporation or other limited liability entities.

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33 In 2006, the General Accounting Office (GAO) and the Money Laundering Threat
34 Assessment Working Group of the U.S. Treasury Department released studies
35 regarding what they considered the lax corporate formation requirements by states.
36 Almost every state was cited by the GAO report for inadequate corporate formation
37 information requirements.

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39 In late 2006, the Permanent Subcommittee on Investigations of the United States
40 Senate Homeland Security and Governmental Affairs held a hearing on the reports and
41 what the Subcommittee claimed was the states failure to respond. In February 2007,
42 some in Congress served noticed that if the states failed to address the findings of the
43 studies, then Congress would set a national standard for corporate formation and
44 registration. In doing so, Congress would preempt most states' corporate formation
45 statutes and seriously impact the revenues of many states.

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47 A special Task Force was established by the Executive Committee of the National
48 Conference of State Legislatures to study the federal reports, and the congressional
49 hearing and to determine if the concerns were valid. After a year of meetings and
50 hearings, the NCSL Task Force has found that while some state statutes may lack

51 some of the transparency demanded by the federal agencies, the wholesale preemption
52 of state corporate formation statutes is unwarranted and unnecessary. However, NCSL
53 is committed to working with the National Association of Secretaries of State, American
54 Bar Association, and the National Conference of Commissioners of Uniform State Laws
55 to enhance the transparency of current state corporate formation laws.

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57 Therefore, the National Conference of State Legislatures will oppose any unwarranted
58 effort at the federal level to preempt state incorporation laws without proper justification
59 that such laws have led to criminal or terror activities.