

# Legal Commentary

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## Han Kun Legal Updates on the Corporate Transparency Act (CTA)

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### Nationwide preliminary injunction suspends CTA enforcement

On December 3, 2024, the United States District Court for the Eastern District of Texas issued a nationwide preliminary injunction in *Texas Top Cop Shop, Inc. et al. v. Garland*, temporarily halting the enforcement of the Corporate Transparency Act (CTA) and its implementing regulations. This development has significant implications for reporting companies required to file Beneficial Ownership Information (BOI) reports under the CTA. Below is an analysis of the key aspects of this ruling and its implications.

### Overview of reporting obligations under the CTA

The CTA, effective January 1, 2024, introduces new disclosure requirements for many U.S. entities. A **reporting company** is broadly defined as any domestic or foreign entity created by filing a document with a secretary of state or similar office, or registered to do business in the United States, unless exempt. Key reporting obligations include:

#### I. Who must report

Reporting companies, unless exempt, include corporations, LLCs, and similar entities. Exempt entities include publicly traded companies, certain regulated entities (e.g., banks, credit unions, insurance companies), and entities meeting specific operational criteria (e.g., at least 20 full-time employees and \$5 million in gross receipts).

#### II. What to report

Reporting companies must provide:

- **Beneficial owners:** Individuals owning or controlling at least 25% of the reporting company or exercising substantial control.
- **Company applicants:** Individuals responsible for filing the reporting company's formation or registration documents.

#### III. When to report

- Reporting companies formed **before January 1, 2024**, must file their initial BOI report by **January**

1, 2025.

- Reporting companies formed **on or after January 1, 2024**, must file their BOI report within **90 calendar days of formation or registration**.
- Reporting companies formed **on or after January 1, 2025**, must comply with the **30-day filing requirement**.

## Penalties for non-filing

Failure to comply with the CTA's BOI reporting requirements can lead to significant penalties:

1. **Civil penalties:** As of 2024, a reporting company that fails to file, submits false information, or fails to update its BOI as required may face civil penalties of up to **\$591 per day** for each day the violation continues.
2. **Criminal penalties:** Willful failure to report accurate BOI or knowingly submitting false or fraudulent information can result in **criminal fines of up to \$10,000** and/or imprisonment for up to **two years**.

## Court's grounds for the ruling

The court granted the preliminary injunction based on the following:

1. **Federal overreach:** The CTA interferes with state authority over corporate governance, violating the Tenth Amendment.
2. **Compelled disclosure:** Requiring sensitive ownership data disclosure infringes on First Amendment rights.
3. **Privacy violations:** The CTA mandates disclosures without adequate safeguards, violating Fourth Amendment protections.
4. **Overbroad scope:** The Act imposes disproportionate burdens on small businesses unrelated to financial crimes.
5. **Likelihood of unconstitutionality:** The court found a strong basis to conclude the CTA likely violates constitutional protections.

## Impact of the injunction

1. **Compliance obligations on hold:** Reporting companies are temporarily relieved from filing BOI reports until further legal proceedings determine the outcome of the injunction.
2. **Suspension of penalties:** Civil and criminal penalties for non-compliance are paused during the injunction period.
3. **Future developments:** If the injunction is overturned, reporting companies may need to act quickly to meet compliance obligations. Maintaining accurate ownership records is strongly advised.

**Looking ahead**

The preliminary injunction provides temporary relief but does not diminish the significance of the CTA's objectives. Reporting companies should remain vigilant and prepared for potential changes in enforcement. Han Kun Law Offices will monitor developments and provide timely updates as the situation evolves.

## **Important Announcement**

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