

STATE OF NEW YORK

9415--A

IN ASSEMBLY

March 7, 2022

Introduced by M. of A. GALLAGHER, MITAYNES, GONZALEZ-ROJAS, L. ROSENTHAL, EPSTEIN, KIM, THIELE, GALEF, GOTTFRIED, MAMDANI, SIMON, DAVILA, FORREST -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the limited liability company law, the tax law, the administrative code of the city of New York, and the executive law, in relation to the disclosure of beneficial owners of limited liability companies and certain other business entities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "LLC transparency act".

3 § 2. Section 102 of the limited liability company law is amended by
4 adding a new subdivision (ii) to read as follows:

5 (ii) (1) "Beneficial owner" means a natural person who, directly or
6 indirectly, (A) holds a membership interest in a limited liability
7 company; (B) exercises substantial control over the decisions of a
8 membership interest in a limited liability company; or (C) has been
9 assigned a membership interest in a limited liability company. The iden-
10 tification of beneficial owners shall not be deemed an unwarranted inva-
11 sion of personal privacy pursuant to article six of the public officers
12 law. For the purposes of this subdivision and for any references to
13 beneficial owners of any limited liability company, the term "limited
14 liability company" shall include, where applicable, foreign limited
15 liability companies and authorized foreign limited liability companies.

16 (2) The term "beneficial owner" shall not include: (A) a minor child;
17 (B) a person acting as a nominee, intermediary, custodian, or agent on
18 behalf of another person; (C) a person acting solely as an employee of a
19 limited liability company and whose control over or economic benefits
20 from the limited liability company derives solely from the employment
21 status of the person; (D) a person whose only interest in a limited
22 liability company is through a right of inheritance, unless the person
23 also meets the requirements of paragraph one of this subdivision; (E) a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 creditor of a limited liability company, unless the creditor also meets
2 the requirements of paragraph one of this subdivision; or (F) any
3 natural person whose membership interest in a limited liability company
4 derives solely from his or her employment by such limited liability
5 company and such limited liability company's organization as an employ-
6 ee-owned business or worker cooperative, as evidenced by such limited
7 liability company's by-laws or articles of organization.

8 (3) If a beneficial owner of a limited liability company indirectly
9 meets the requirements of subparagraph (A), (B), or (C) of paragraph one
10 of this subdivision, and such company is required to disclose its bene-
11 ficial owners, such beneficial owner shall identify each and every enti-
12 ty or person linking such beneficial owner to the limited liability
13 company, including by identifying every intermediary by name and
14 explaining the nature of the legal or economic relationship of the bene-
15 ficial owner to each such intermediary and how each such intermediary is
16 linked to every other intermediary and to the limited liability company.
17 The beneficial owner may be permitted or required to provide a diagram
18 to meet this disclosure requirement. If indirect beneficial ownership is
19 exercised through a publicly traded entity, a REIT, a UPREIT, or a mutu-
20 al fund, the requirements of this paragraph shall only apply to benefi-
21 cial owners holding or controlling twenty-five percent or more of the
22 equity in such limited liability company. This subdivision shall apply
23 until full disclosure of beneficial ownership by natural persons is
24 achieved.

25 (4) If indirect beneficial ownership is exercised through a trust or
26 similar arrangement which holds or controls, directly or indirectly,
27 twenty-five percent or more of the equity in the limited liability
28 company or exercises substantial control over such company, the limited
29 liability company shall identify as a beneficial owner each natural
30 person serving as: (A) a trustee of the trust, a trust protector, or any
31 other individual with authority, directly or indirectly, to dispose of
32 trust income, assets, or principal; (B) a trust beneficiary with the
33 right, directly or indirectly, to receive, demand, or withdraw any trust
34 income, assets, or principal; and (C) a grantor or settlor with the
35 right, directly or indirectly, to revoke the trust or to receive,
36 demand, or withdraw trust income, assets or principal.

37 § 3. Paragraphs 6 and 7 of subdivision (e) of section 203 of the
38 limited liability company law, as added by chapter 470 of the laws of
39 1997, are amended to read as follows:

40 (6) if all or specified members are to be liable in their capacity as
41 members for all or specified debts, obligations or liabilities of the
42 limited liability company as authorized pursuant to section six hundred
43 nine of this chapter, a statement that all or specified members are so
44 liable for such debts, obligations or liabilities in their capacity as
45 members of the limited liability company as authorized pursuant to
46 section six hundred nine of this chapter; [and]

47 (7) a document identifying the beneficial owners of the limited
48 liability company in accordance with subdivision (a) of section two
49 hundred fifteen of this article; and

50 (8) any other provisions, not inconsistent with law, that the members
51 elect to include in the articles [of] of organization for the regulation
52 of the internal affairs of the limited liability company, including, but
53 not limited to, (A) the business purpose for which the limited liability
54 company is formed, (B) a statement of whether there are limitations on
55 the authority of members or managers or a class or classes thereof to
56 bind the limited liability company and (C) any provisions that are

1 required or permitted to be included in the operating agreement of the
2 limited liability company pursuant to section four hundred seventeen of
3 this chapter.

4 § 4. Section 209 of the limited liability company law is amended to
5 read as follows:

6 § 209. Filing with the department of state. A signed articles of
7 organization and any signed certificate of amendment or other certifi-
8 cates filed pursuant to this chapter or of any judicial decree of
9 amendment or cancellation shall be delivered to the department of state.
10 If the instrument that is delivered to the department of state for
11 filing complies as to form with the requirements of law and the filing
12 fee required by any statute of this state in connection therewith has
13 been paid, the instrument shall be filed and indexed by the department
14 of state. The department of state shall not review such articles or
15 certificates for legal sufficiency, except that it may review such arti-
16 cles or certificates for legal sufficiency with regard to requirements
17 pertaining to beneficial owners pursuant to sections two hundred three
18 and two hundred eleven of this article; its review shall be otherwise
19 limited to determining that the form has been completed.

20 § 5. Paragraphs 8, 9, and 10 of subdivision (d) of section 211 of the
21 limited liability company law, paragraph 10 as added by section 18 of
22 part KK of chapter 56 of the laws of 2021, are amended and a new para-
23 graph 11 is added to read as follows:

24 (8) the discovery of a materially false or inaccurate statement in the
25 articles of organization; ~~and~~

26 (9) the decision to change any other statement in the articles of
27 organization~~[-]~~;

28 (10) to specify, change or delete the email address to which the
29 secretary of state shall email a notice of the fact that process against
30 the limited liability company has been electronically served upon him or
31 her~~[-]~~; and

32 (11) a change in the beneficial owners of such limited liability
33 company or the information required to be provided relating to each
34 beneficial owner pursuant to section two hundred three of this article.

35 § 6. The limited liability company law is amended by adding a new
36 section 215 to read as follows:

37 § 215. Beneficial ownership disclosure. (a) A limited liability
38 company, when disclosing its beneficial owners, shall identify each
39 beneficial owner by: (1) name; (2) date of birth; (3) current residen-
40 tial or business street address; (4) a unique identifying number from a
41 non-expired passport issued by the United States or a non-expired driv-
42 er's license or identification card issued by this or another state
43 or, if none, a legible and credible copy of the pages of a non-expired
44 foreign passport bearing a photograph, date of birth, and unique iden-
45 tifying information for the beneficial owner; (5) a federal or state
46 taxpayer identification number or, if none, a legal entity identifier
47 issued by the Global Legal Entity Identifier Foundation; and (6) the
48 nature of the legal or economic relationship between the beneficial
49 owner and the limited liability company.

50 (b) Each limited liability company organized under the laws of this
51 state shall also file beneficial ownership information with the federal
52 registry formed under the corporate transparency act, 31 U.S.C. section
53 5336.

54 (c) A limited liability company, when disclosing its beneficial owners
55 to the department of state or department of taxation and finance, may
56 submit a copy of the beneficial ownership information such company

1 submitted to the federal government pursuant to 31 U.S.C. section 5336
2 in order to satisfy state disclosure requirements, provided that such
3 federal registration is current and contains all information required by
4 state law.

5 (d) Any person who: (1) knowingly provides false or fraudulent benefi-
6 cial ownership information; or (2) willfully fails to provide complete
7 or updated information shall be guilty of a misdemeanor and liable to
8 the state for a civil penalty of not more than ten thousand dollars and
9 shall be prohibited from organizing, forming, registering, or managing
10 any limited liability company or partnership in the state of New York
11 for a period not less than one year or greater than five years. The
12 department of state may withdraw or prohibit the authority of such enti-
13 ty to do business within the state for at least two years.

14 § 7. Paragraphs 7 and 8 of subdivision (a) of section 802 of the
15 limited liability company law are amended and a new paragraph 9 is added
16 to read as follows:

17 (7) a statement that the foreign limited liability company is in
18 existence in the jurisdiction of its formation at the time of the filing
19 of such application; **[and]**

20 (8) the name and address of the authorized officer in the jurisdiction
21 of its formation where a copy of its articles of organization is filed
22 or, if no public filing of its articles of organization is required by
23 the law of the jurisdiction of formation, a statement that the foreign
24 limited liability company shall provide, on request, a copy thereof with
25 all amendments thereto (if such documents are in a foreign language, a
26 translation in English thereof under oath of the translator shall be
27 attached thereto), and the name and post office address of the person
28 responsible for providing such copies~~[-]~~; and

29 (9) a document identifying the beneficial owners of the foreign limit-
30 ed liability company in accordance with subdivision (a) of section eight
31 hundred ten of this article.

32 § 8. Section 804 of the limited liability company law is amended by
33 adding a new subdivision (c) to read as follows:

34 (c) Every foreign limited liability company that has received a filing
35 receipt entitled "Certificate of authority of (name of foreign
36 limited liability company) under section eight hundred five of the
37 Limited Liability Company Law," evidencing authority as provided herein
38 shall amend its application for authority upon a change in beneficial
39 ownership or the information required to be provided relating to each
40 beneficial owner pursuant to section eight hundred two of this
41 article within ninety days of such change.

42 § 9. The limited liability company law is amended by adding a new
43 section 810 to read as follows:

44 § 810. Beneficial ownership disclosure. (a) A foreign limited liabil-
45 ity company, when disclosing its beneficial owners, shall identify each
46 beneficial owner by: (1) name; (2) date of birth; (3) current residen-
47 tial or business street address; (4) a unique identifying number from a
48 non-expired passport issued by the United States or a non-expired driv-
49 er's license or identification card issued by this or another state
50 or, if none, a legible and credible copy of the pages of a non-expired
51 foreign passport bearing a photograph, date of birth, and unique iden-
52 tifying information for the beneficial owner; (5) a federal or state
53 taxpayer identification number or, if none, a legal entity identifier
54 issued by the Global Legal Entity Identifier Foundation; and (6) the
55 nature of the legal or economic relationship between the beneficial
56 owner and the limited liability company.

(b) Each foreign limited liability company registered to transact business in this state shall also file beneficial ownership information with the federal registry formed under the corporate transparency act, 31 U.S.C. section 5336.

(c) A foreign limited liability company, when disclosing its beneficial owners to the department of state or department of taxation and finance, may submit a copy of the beneficial ownership information such company submitted to the federal government pursuant to 31 U.S.C. section 5336 in order to satisfy state disclosure requirements, provided that such federal registration is current and contains all information required by state law.

(d) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information or (2) willfully fails to provide complete or updated information shall be guilty of a misdemeanor and liable to the state for a civil penalty of not more than ten thousand dollars and shall be prohibited from organizing, forming, registering, or managing any limited liability company or partnership in the state of New York for a period not less than one year or greater than five years. The department of state may withdraw or prohibit the authority of such entity to transact business within the state of New York for at least two years.

§ 10. Paragraph 2 of subdivision (a) of section 1409 of the tax law, as amended by section 3 of part 0 of chapter 59 of the laws of 2021, is amended to read as follows:

(2) When the grantor or grantee of a deed for a building used as residential real property ~~[containing up to four family dwelling units]~~ is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the ~~[names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, a UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved]~~ beneficial owners of such limited liability company. For purposes of this subdivision, the terms ~~["members", "managers", "authorized person",]~~ "beneficial owners" and "limited liability company" ~~[and "other business entity"]~~ shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 11. Subdivision h of section 11-2105 of the administrative code of the city of New York, as added by chapter 297 of the laws of 2019, is amended to read as follows:

h. When the grantor or grantee of a deed for residential real property ~~[containing one to four family dwelling units]~~ is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the ~~[names and business addresses of all members, managers, and any other authorized persons, if~~

1 ~~any, of such limited liability company and the names and business~~
2 ~~addresses or, if none, the business addresses of all shareholders,~~
3 ~~directors, officers, members, managers and partners of any limited~~
4 ~~liability company or other business entity that are to be the members,~~
5 ~~managers or authorized persons, if any, of such limited liability compa-~~
6 ~~ny. The identification of such names and addresses shall not be deemed~~
7 ~~an unwarranted invasion of personal privacy pursuant to article six of~~
8 ~~the public officers law. If any such member, manager or authorized~~
9 ~~person of the limited liability company is itself a limited liability~~
10 ~~company or other business entity, the names and addresses of the share-~~
11 ~~holders, directors, officers, members, managers and partners of the~~
12 ~~limited liability company or other business entity shall also be~~
13 ~~disclosed until full disclosure of ultimate ownership by natural persons~~
14 ~~is achieved]~~ beneficial owners of such limited liability company. For
15 purposes of this subdivision, the terms [~~"members", "managers", "author-~~
16 ~~ized person",~~] "beneficial owners" and "limited liability company" [~~and~~
17 ~~"other business entity"~~] shall have the same meaning as those terms are
18 defined in section one hundred two of the limited liability company law.
19 § 12. Subdivision (h) of section 1418 of the tax law, as amended by
20 section 4 of part 0 of chapter 59 of the laws of 2021, is amended to
21 read as follows:

22 (h) Notwithstanding the provisions of subdivision (a) of this section,
23 the commissioner may furnish information relating to real property
24 transfers obtained or derived from returns filed pursuant to this arti-
25 cle in relation to the real estate transfer tax, to the extent that such
26 information is also required to be reported to the commissioner by
27 section three hundred thirty-three of the real property law and section
28 five hundred seventy-four of the real property tax law and the rules
29 adopted thereunder, provided such information was collected through a
30 combined process established pursuant to an agreement entered into with
31 the commissioner pursuant to [~~paragraph viii of~~] subdivision one-e of
32 section three hundred thirty-three of the real property law. The commis-
33 sioner may redisclose such information to the extent authorized by
34 section five hundred seventy-four of the real property tax law. [~~The~~
35 ~~commissioner may also disclose any information reported pursuant to~~
36 ~~paragraph two of subdivision (a) of section fourteen hundred nine of~~
37 ~~this article.~~]

38 § 13. Section 1418 of the tax law is amended by adding a new subdivi-
39 sion (j) to read as follows:

40 (j) Notwithstanding the provisions of subdivision (a) of this section,
41 the commissioner or any officer or employee of the department of taxa-
42 tion and finance may furnish to the department of state information
43 relating to beneficial ownership that is obtained or derived from
44 returns filed pursuant to this article.

45 § 14. The tax law is amended by adding a new section 171-x to read as
46 follows:

47 § 171-x. Information sharing with the department of state regarding
48 beneficial owners of limited liability companies. Notwithstanding any
49 other law, the commissioner shall release to the department of state
50 information regarding beneficial owners of limited liability companies
51 which is reported to the department either on a form issued by the
52 department or any other method of report to the department. For
53 purposes of this section, the terms "beneficial owners" and "limited
54 liability company" shall have the same meaning as those terms are
55 defined in section one hundred two of the limited liability company law.

§ 15. The executive law is amended by adding a new section 100-b to read as follows:

§ 100-b. Corporation and business entity database; information on beneficial owners. 1. The secretary of state shall assign each beneficial owner of a limited liability company an anonymized unique identifying number and publish such number in relation to any affiliated companies, in addition to such beneficial owner's name, year of birth, and business address, in the corporation and business entity database or any subsequent database which is maintained by the division of corporations within the department of state. Data, including the name, year of birth, business address, and unique identifying number of every beneficial owner of every limited liability company registered to transact business in New York state, shall be published online in a downloadable spreadsheet format at least once annually. The identification and publication of the names, years of birth, and business addresses of beneficial owners shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. The department shall also establish, through regulations, procedures to allow beneficial owners with significant privacy interests to apply for a waiver to withhold their names, years of birth and business addresses from public disclosure pursuant to this or any other law. The issuance of a waiver shall be upon good cause shown and in the public interest, and the department shall determine that the recipient demonstrates minimal risk of money laundering, tax evasion, or other financial crime; provided, however, that a natural person participating in an address confidentiality program or who is the sole member of a limited liability company acting as a relator in a qui tam action filed pursuant to section one hundred ninety of the state finance law or 31 U.S.C. section 3729 shall be presumed to have good cause and privacy in the public interest. For purposes of this section, the terms "beneficial owners" and "limited liability company" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

2. The secretary of state, in cooperation with the commissioner of taxation and finance and the office of the comptroller, shall issue a report no later than July first, two thousand twenty-five describing: the degree of compliance among limited liability companies with beneficial ownership information reporting and any efforts undertaken to enforce compliance; the efforts to verify beneficial ownership information; recommendations for improvements to existing systems and laws concerning the collection and verification of beneficial ownership information; the effects that beneficial ownership disclosure and reporting requirements for limited liability companies have had on business formation or investment practices, if any, through other legal entities or arrangements; and, the public policy merits and demerits, if any, of expanding beneficial ownership disclosure requirements to other types of corporate or legal entities. The secretary of state shall solicit comments or testimony from the public concerning the matters covered by the report and include a summary of comments received in such report, provided that any submission of comments or testimony is protected against automated or robotic submissions.

3. The secretary of state, in cooperation with the commissioner of the department of taxation and finance, may verify the beneficial ownership information included in returns pursuant to subdivision two-b of section two hundred eleven of the tax law using beneficial ownership information submitted to the department of state pursuant to section two hundred two

1 or eight hundred two of the limited liability company law in order to
2 identify fraud or suspicious activities and may, at his or her own
3 discretion, refer such fraud to appropriate authorities.

4 § 16. Section 211 of the tax law is amended by adding a new subdivi-
5 sion 2-b to read as follows:

6 2-b. (a) The commissioner shall prescribe regulations and instructions
7 requiring returns of information to be made and filed in conjunction
8 with the reports required to be filed pursuant to this article, relating
9 to beneficial owners of limited liability companies. For purposes of
10 this section, the terms "beneficial owners" and "limited liability
11 company" shall have the same meaning as those terms are defined in
12 section one hundred two of the limited liability company law.

13 (b) No report shall be accepted by the department if the information
14 required to be included in the return pursuant to paragraph (a) of this
15 subdivision is not included in such report.

16 (c) The commissioner, in cooperation with the secretary of state, may
17 verify the beneficial ownership information included in returns pursuant
18 to this subdivision using beneficial ownership information submitted to
19 the department of state pursuant to section two hundred two or eight
20 hundred two of the limited liability company law in order to identify
21 fraud or suspicious activities and may at his or her own discretion
22 refer such fraud to appropriate authorities. The information included in
23 returns pertaining to the names and business addresses of beneficial
24 owners shall be transmitted to the secretary of state to keep beneficial
25 ownership information up to date, including with respect to the business
26 entity database or any subsequent database maintained by the division of
27 corporations within the department of state pursuant to section one
28 hundred-b of the executive law.

29 (d) The information required to be included with returns pursuant to
30 this subdivision shall be filed and shall be in such form as the commis-
31 sioner may prescribe.

32 § 17. This act shall take effect on the three hundred sixty-fifth day
33 after it shall have become a law; provided further, however, that if
34 part KK of chapter 56 of the laws of 2021 shall not have taken effect on
35 or before such date then section five of this act shall take effect on
36 the same date and in the same manner as such part of such chapter of the
37 laws of 2021 takes effect. Effective immediately, the addition, amend-
38 ment and/or repeal of any rule or regulation necessary for the implemen-
39 tation of this act on its effective date are authorized to be made and
40 completed on or before such effective date.