STATE OF NEW YORK

2255

2019-2020 Regular Sessions

IN SENATE

January 23, 2019

Introduced by Sens. HOYLMAN, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law, in relation to requiring limited liability companies to amend their articles of organization to include a list of beneficial owners and provide certain information relating to each beneficial owner

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

Section 1. Section 102 of the limited liability company law is amended by adding a new subdivision (d-1) to read as follows:

(d-1) (1) "Beneficial owner" means a natural person who, directly or indirectly, (A) holds a membership interest in a limited liability company or a foreign limited liability company; or (B) has been assigned a membership interest in a limited liability company or a foreign limited liability company.

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

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

(6) if all or specified members are to be liable in their capacity as members for all or specified debts, obligations or liabilities of the

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

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limited liability company as authorized pursuant to section six hundred nine of this chapter, a statement that all or specified members are so liable for such debts, obligations or liabilities in their capacity as members of the limited liability company as authorized pursuant to section six hundred nine of this chapter; [~~and~~]

(7) **a list of the beneficial owners of the limited liability company that identifies each beneficial owner by (A) name; (B) current residential or business street address; and (C) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license or identification card issued by this or another state; and**

(8) any other provisions, not inconsistent with law, that the members elect to include in the articles or organization for the regulation of the internal affairs of the limited liability company, including, but not limited to, (A) the business purpose for which the limited liability company is formed, (B) a statement of whether there are limitations on the authority of members or managers or a class or classes thereof to bind the limited liability company and (C) any provisions that are required or permitted to be included in the operating agreement of the limited liability company pursuant to section four hundred seventeen of this chapter.

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

§ 209. Filing with the department of state. A signed articles of organization and any signed certificate of amendment or other certificates filed pursuant to this chapter or of any judicial decree of amendment or cancellation shall be delivered to the department of state. If the instrument that is delivered to the department of state for filing complies as to form with the requirements of law and the filing fee required by any statute of this state in connection therewith has been paid, the instrument shall be filed and indexed by the department of state. The department of state shall not review such articles or certificates for legal sufficiency**, except that it shall review such articles or certificates for legal sufficiency with regard to requirements pertaining to beneficial owners pursuant to sections two hundred three and two hundred eleven of this article**; its review shall be **otherwise** limited to determining that the form has been completed.

§ 4. Paragraphs 8 and 9 of subdivision (d) of section 211 of the limited liability company law are amended to read as follows:

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

(9) **a change in the list of beneficial owners or the information required to be provided relating to each beneficial owner pursuant to section two hundred three of this article; and**

(10) the decision to change any other statement in the articles of organization.

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

§ 215. Beneficial ownership disclosure. (a) A limited liability company whose original articles of organization were filed with the secretary of state and effective prior to the effective date of this section shall have one year from the effective date of this section to amend its articles of organization to include a list of beneficial owners and the information required to be provided relating to each beneficial owner pursuant to section two hundred three of this article.

(b) Starting one year after the effective date of this section, each limited liability company organized in this state shall submit to the department of state an annual filing, in such format as the secretary of state shall require, containing the list of beneficial owners of the limited liability company and the information required to be provided relating to each beneficial owner pursuant to section two hundred three of this article.

(c) The department of state shall establish and maintain a database identifying beneficial owners by name and current residential or business street address if they are the beneficial owners of two or more limited liability companies required by this article to report its beneficial owners to such department. Such database shall be made available to the public on the department of state's website no later than seven days after such information has been received by the secretary of state. Such department shall also establish, through regulations, procedures to allow beneficial owners with significant privacy interests to apply for a waiver from the requirements of this subdivision.

(d) Beneficial ownership information relating to each limited liability company formed under the laws of this state is required to be maintained by the secretary of state until the end of the five year period beginning on the date that the limited liability company terminates pursuant to this chapter.

(e) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information; (2) willfully fails to provide complete or updated information; or (3) discloses the existence of a subpoena, summons, or other request for beneficial ownership information shall be liable to the state for a civil penalty of not more than ten thousand dollars and may be imprisoned for not more than three years or both.

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

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

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

(9) a list of the beneficial owners of the foreign limited liability company that identifies each beneficial owner by (A) name; (B) current residential or business street address; and (C) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license or identification card issued by this or another state.

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

(c) Every foreign limited liability company that has received a filing receipt entitled "Certificate of authority of .... (name of foreign limited liability company) under section eight hundred five of the Limited Liability Company Law," evidencing authority as provided herein, shall amend its application for authority upon a change in the list of

beneficial owners or the information required to be provided relating to each beneficial owner pursuant to section eight hundred two of this article, within ninety days of such change.

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

§ 810. Beneficial ownership disclosure. (a) A foreign limited liability company whose certificate of authority was filed with the secretary of state and effective prior to the effective date of this section shall have one year from the effective date of this section to amend its certificate of authority to include a list of beneficial owners and the information required to be provided relating to each beneficial owner pursuant to section eight hundred two of this article.

(b) Starting one year after the effective date of this section, each foreign limited liability company organized in this state shall submit to the department of state an annual filing, in such format as the secretary of state shall require, containing the list of beneficial owners of the foreign limited liability company and the information required to be provided relating to each beneficial owner pursuant to section eight hundred two of this article.

(c) The department of state shall establish and maintain a database identifying beneficial owners by name and current residential or business street address if they are the beneficial owners of two or more limited liability companies required by this article to report its beneficial owners to such department. Such database shall be made available to the public on the department of state's website no later than seven days after such information has been received by the secretary of state. Such department shall also establish, through regulations, procedures to allow beneficial owners with significant privacy interests to apply for a waiver from the requirements of this subdivision.

(d) Beneficial ownership information relating to each foreign limited liability company formed under the laws of this state is required to be maintained by the secretary of state until the end of the five year period beginning on the date that the foreign limited liability company terminates pursuant to this chapter.

(e) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information; (2) willfully fails to provide complete or updated information; or (3) discloses the existence of a subpoena, summons, or other request for beneficial ownership information shall be liable to the state for a civil penalty of not more than ten thousand dollars and may be imprisoned for not more than three years or both.

§ 9. This act shall take effect immediately.