

STATE OF NEW YORK

8439 --A

IN SENATE

March 1, 2022

Introduced by Sens. HOYLMAN, BIAGGI, BRISPORT, KRUEGER, MYRIE, RIVERA -- read twice and ordered printed, and when printed to be committed 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, in relation to the disclosure of beneficial owners of limited liability companies

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
24 creditor of a limited liability company, unless the creditor also meets
25 the requirements of paragraph one of this subdivision; or (F) any

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

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1 natural person whose membership interest in a limited liability company
2 derives solely from his or her employment by such limited liability
3 company and such limited liability company's organization as an employ-
4 ee-owned business or worker cooperative, as evidenced by such limited
5 liability company's by-laws or articles of organization.

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

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

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

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

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

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

1 limited liability company pursuant to section four hundred seventeen of
2 this chapter.

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

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

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

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

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

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

20 § 215. Beneficial ownership disclosure. (a) A limited liability
21 company, when disclosing its beneficial owners, shall identify each
22 beneficial owner by: (1) name; (2) date of birth; (3) current residen-
23 tial or business street address; (4) a unique identifying number from a
24 non-expired passport issued by the United States or a non-expired driv-
25 er's license or identification card issued by this or another state
26 or, if none, a legible and credible copy of the pages of a non-expired
27 foreign passport bearing a photograph, date of birth, and unique iden-
28 tifying information for the beneficial owner; (5) a federal or state
29 taxpayer identification number or, if none, a legal entity identifier
30 issued by the Global Legal Entity Identifier Foundation.

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

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

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

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

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

§ 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 beneficial ownership 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, when disclosing its beneficial owners, shall identify each beneficial owner by: (1) name; (2) date of birth; (3) current residential or business street address; (4) 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 or, if none, a legible and credible copy of the pages of a non-expired foreign passport bearing a photograph, date of birth, and unique identifying information for the beneficial owner; (5) a federal or state taxpayer identification number or, if none, a legal entity identifier issued by the Global Legal Entity Identifier Foundation.

(b) 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.

§ 9. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law; provided further, however, that if part KK of chapter 56 of the laws of 2021 shall not have taken effect on or before such date then section four of this act shall take effect on the same date and in the same manner as such part of such chapter of the laws of 2021 takes effect. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.