

# STATE OF NEW YORK

8439--B

Cal. No. 1192

## IN SENATE

March 1, 2022

Introduced by Sens. HOYLMAN, BIAGGI, BRISPORT, CLEARE, KRUEGER, MYRIE, RIVERA, SALAZAR -- 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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

(ii) (1) "Beneficial owner" means a natural person who, directly or indirectly, (A) holds a membership interest in a limited liability company; (B) exercises substantial control over the decisions of a membership interest in a limited liability company; or (C) has been assigned a membership interest in a limited liability company. For the purposes of this subdivision and for any references to beneficial owners of any limited liability company, the term "limited liability company" shall include, where applicable, foreign limited liability companies and authorized foreign limited liability companies.

(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; (E) a creditor of a limited liability company, unless the creditor also meets

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

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

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

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

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

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

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

49 (8) any other provisions, not inconsistent with law, that the members  
50 elect to include in the articles [~~of~~] of organization for the regulation  
51 of the internal affairs of the limited liability company, including, but  
52 not limited to, (A) the business purpose for which the limited liability  
53 company is formed, (B) a statement of whether there are limitations on  
54 the authority of members or managers or a class or classes thereof to  
55 bind the limited liability company and (C) any provisions that are  
56 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 (c) The identification and disclosure of the name, business address,  
39 and year of birth of a beneficial owner shall not be deemed an unwar-  
40 ranted invasion of personal privacy pursuant to article six of the  
41 public officers law. All other personal or identifying information of  
42 such beneficial owner shall be deemed confidential except for the  
43 purposes of law enforcement. If confidential information associated with  
44 a beneficial owner is held electronically, such records shall be  
45 encrypted.

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

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

52 (8) the name and address of the authorized officer in the jurisdiction  
53 of its formation where a copy of its articles of organization is filed  
54 or, if no public filing of its articles of organization is required by  
55 the law of the jurisdiction of formation, a statement that the foreign  
56 limited liability company shall provide, on request, a copy thereof with

1 all amendments thereto (if such documents are in a foreign language, a  
2 translation in English thereof under oath of the translator shall be  
3 attached thereto), and the name and post office address of the person  
4 responsible for providing such copies[-]; and

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

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

10 (c) Every foreign limited liability company that has received a filing  
11 receipt entitled "Certificate of authority of .... (name of foreign  
12 limited liability company) under section eight hundred five of the  
13 Limited Liability Company Law," evidencing authority as provided herein  
14 shall amend its application for authority upon a change in beneficial  
15 ownership or the information required to be provided relating to each  
16 beneficial owner pursuant to section eight hundred two of this  
17 article within ninety days of such change.

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

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

38 (c) The identification and disclosure of the name, business address,  
39 and year of birth of a beneficial owner shall not be deemed an unwar-  
40 ranted invasion of personal privacy pursuant to article six of the  
41 public officers law. All other personal or identifying information of  
42 such beneficial owner shall be deemed confidential except for the  
43 purposes of law enforcement. If confidential information associated with  
44 a beneficial owner is held electronically, such records shall be  
45 encrypted.

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