

# STATE OF NEW YORK

9415--B

## 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 -- again reported from said committee with amendments, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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