STATE OF NEW YORK

3484--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. GALLAGHER, MITAYNES, GONZALEZ-ROJAS, L. ROSENTHAL, EPSTEIN, KIM, THIELE, MAMDANI, SIMON, DAVILA, FORREST, CARROLL, KELLES, SHRESTHA, GLICK, MAGNARELLI, ROZIC, JACOBSON, SHIMSKY, SILLITTI -- 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 and the executive 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 four new subdivisions (ii), (jj), (kk) and (ll) to read as follows:

(ii) "Beneficial owner" shall have the same meaning as defined in 31 U.S.C. § 5336(a)(3), as amended, and any regulations promulgated thereunder.

(jj) "Initial report" shall mean the report required to be filed pursuant to 31 C.F.R. § 1010.380, as amended.

(kk) "Reporting company" shall have the same meaning as defined in 31 U.S.C. § 5336(a)(11)(A), as amended, and any regulations promulgated thereunder, but shall only include limited liability companies and foreign limited liability companies.

(ll) "Exempt company" shall mean a limited liability company or foreign limited liability company not otherwise defined as a reporting company that meets a condition for exemption enumerated in 31 U.S.C. § 5336(a)(11)(B).

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

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§ 3. 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 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) **in the case of an exempt company, a statement signed by a member or manager indicating the provision or provisions of 31 U.S.C. § 5336(a)(11)(B), excluding such company from the definition of a reporting company to file an initial report, or in the case of a reporting company, the beneficial ownership disclosure information as required pursuant to section two hundred fifteen of this article; and**

(8) any other provisions, not inconsistent with law, that the members elect to include in the articles [~~or~~] **of** 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.

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

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

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

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

(11) in the case of a reporting company, any change in the information required to be disclosed pursuant to section two hundred fifteen of this article, or where a reporting company has not filed the disclosure required by such section, such company shall file such disclosure at the time of filing such certificate of amendment.

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

§ 215. Beneficial ownership disclosure. (a) When filing the articles of organization pursuant to section two hundred three of this article or filing an amendment of the articles of organization pursuant to section two hundred eleven of this article, the reporting company shall file with the department of state a beneficial ownership disclosure, and any updates to such information, as may be applicable, identifying each beneficial owner by: (1) full legal name; (2) date of birth; (3) current business street address; and (4) a unique identifying number from an acceptable identification document defined in 31 U.S.C. § 5336 (a)(1). Provided, however, that where an initial report contains the information required herein, a reporting company may submit a copy of the initial

report, submitted to the federal government pursuant to 31 U.S.C. § 5336, to satisfy the requirements of this section.

(b) All personal or identifying information of beneficial owners provided to the department of state under this section not required to be included in the business entity database pursuant to section one hundred-b of the executive law, shall be deemed confidential except for the purposes of law enforcement, or as otherwise required to be disclosed pursuant to a court order. If confidential information associated with a beneficial owner is held electronically, such records shall be encrypted or protected in a substantially similar manner. The department of state shall, upon the filing of each beneficial ownership disclosure, assign each beneficial owner of a limited liability company an anonymized unique identifying number, which shall not be based on any personally identifying number including but not limited to a social security or tax identification number assigned to or associated with such beneficial owner.

(c) (1) Each reporting company formed on or before the effective date of this section shall file the information required under subdivision (a) of this section; and each exempt company formed on or before the effective date of this section shall file a statement signed by a member or manager indicating the provision or provisions of 31 U.S.C. § 5336(a)(11)(B), excluding such company from the definition of a reporting company, with the department of state no later than January first, two thousand twenty-five.

(2) A reporting company which has failed to file the beneficial ownership disclosure as required by this section for a period exceeding thirty days shall be shown to be past due on the records of the department of state until an up-to-date beneficial ownership disclosure is filed with the department.

(3) A reporting company which has failed to file the beneficial ownership disclosure as required by this section for a period exceeding two years shall be shown to be delinquent on the records of the department of state after a notice of delinquency has been mailed to the last known business address of such reporting company, and such company has failed to file such information within sixty days of the mailing of such notice. Such delinquency shall be removed from the records of the department of state upon the filing of an up-to-date beneficial ownership disclosure, and the payment of a civil penalty of two hundred fifty dollars.

§ 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) in the case of an exempt company, a statement signed by a member or manager indicating the provision or provisions of 31 U.S.C. §

5336(a)(11)(B), excluding such company from the definition of a reporting company to file an initial report, or in the case of a reporting company, the beneficial ownership disclosure information required pursuant to section eight 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) In the case of a foreign limited liability company that is also a reporting company, such reporting company shall amend its application for authority upon any change in the beneficial owner information required pursuant to section eight hundred ten of this article.

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

§ 810. Beneficial ownership disclosure. (a) When filing the application for authority pursuant to section eight hundred two of this article or filing any amendments to an application for authority pursuant to section eight hundred four of this article, a reporting company shall file with the department of state a beneficial ownership disclosure, or any updates to such information, as may be applicable, identifying each beneficial owner by: (1) full legal name; (2) date of birth; (3) current business street address; and (4) a unique identifying number from an acceptable identification document defined in 31 U.S.C. § 5336(a)(1). Provided, however, that where an initial report contains the information required herein, such foreign limited liability company shall submit a copy of the initial report such company submitted to the federal government pursuant to 31 U.S.C. § 5336 in order to satisfy the requirements of this section.

(b) All personal or identifying information of beneficial owners provided to the department of state under this section not required to be included in the business entity database pursuant to section one hundred-b of the executive law, shall be deemed confidential except for the purposes of law enforcement, or as otherwise required to be disclosed pursuant to a court order. If confidential information associated with a beneficial owner is held electronically, such records shall be encrypted or protected in a substantially similar manner. The department of state shall, upon the filing of each beneficial ownership disclosure, assign each beneficial owner of a foreign limited liability company an anonymized unique identifying number, which shall not be based on any personally identifying number including but not limited to a social security or tax identification number assigned to or associated with such beneficial owner.

(c) (1) Each reporting company formed pursuant to section eight hundred two of this chapter, on or before the effective date of this section shall file the information required under subdivision (a) of this section; and each exempt company shall file a statement signed by a member or manager indicating the provision or provisions of 31 U.S.C. § 5336(a)(11)(B) excluding such company from the definition of a reporting company, with the department of state no later than January first, two thousand twenty-five.

(2) A reporting company which has failed to file its beneficial ownership disclosure as required by this section, for a period exceeding thirty days, shall be shown to be past due on the records of the department of state until an up-to-date beneficial ownership disclosure is filed with the department.

(3) A reporting company which has failed to file its beneficial ownership disclosure as required by this section for a period exceeding two years shall be shown to be delinquent on the records of the department

of state after a notice of delinquency has been mailed to the last known business address of such company and such company has failed to file such information within sixty days of the mailing of such notice. Such delinquency shall be removed from the records of the department of state upon the filing of an up-to-date beneficial ownership disclosure required by this section, and the payment of a civil penalty of two hundred fifty dollars.

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

§ 100-b. Business entity database. 1. The secretary of state shall maintain a publicly available database on its website for each business entity organized in New York state and each foreign business entity with authority to do business in the state, that includes but is not limited to, the following information:

(a) the name of the business entity;

(b) the history of such name and changes to such name, where applicable;

(c) the current business street address and the county associated with such business street address;

(d) the duration or date of dissolution of the business entity, where applicable;

(e) where the business entity is a limited liability company, the date of initial filing of the articles of organization, or where the business entity is a foreign limited liability company, the application for authority;

(f) the date of the most recent filing;

(g) the filing history associated with such entity; and

(h) any other information pertaining to such business entity as may be determined by the secretary of state and in accordance with applicable state and federal laws, rules, and regulations.

2. (a) In addition to the information required to be included in the database pursuant to subdivision one of this section, the secretary of state shall also include the full legal name or names of each beneficial owner, for every limited liability company and foreign limited liability company where such companies are also reporting companies.

(b) The secretary of state shall establish, through regulations, procedures to allow beneficial owners of limited liability companies and foreign limited liability companies who are also reporting companies who cite significant privacy interests to apply for a waiver to withhold the name and/or business address associated of a beneficial owner from the database established in subdivision one of this section where such name and/or business address discloses personal or identifying information of such beneficial owner, no amendment to such information mitigates such disclosure, and such disclosure serves no public interest. Significant privacy interests shall include, but not be limited to, where a beneficial owner is a natural person participating in an address confidentiality program, or is a 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. The secretary of state shall issue a waiver to a beneficial owner upon a demonstration that a significant privacy interest exists and shall provide guidance on its website indicating what documentation is acceptable as proof for issuance of a waiver. If the secretary of state grants a beneficial owner a waiver pursuant to this subdivision, the secretary of state shall disclose the anonymized unique identifying number assigned by the secretary of state to each beneficial owner or owners

pursuant to section two hundred fifteen or section eight hundred ten of the limited liability company law, as may be applicable to the database established in subdivision one of this section. The secretary of state shall also provide information on its website regarding compliance with beneficial ownership disclosure requirements and how and where such information may be used and disclosed.

§ 10. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law. 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.