STATE OF NEW YORK

8544

IN ASSEMBLY

January 8, 2024

Introduced by M. of A. GALLAGHER -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law, in relation to the disclosure of beneficial owners of limited liability companies; to amend a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, in relation to the effectiveness thereof; and to repeal provisions of the limited liability company law and the executive law, in relation thereto

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

Section 1. The limited liability company law is amended by adding three new sections 1106, 1107 and 1108 to read as follows:

§ 1106. Definitions. For the purposes of this section and sections eleven hundred seven and eleven hundred eight of this article:

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

(b) "Reporting company" shall have the same meaning as defined in 31 U.S.C. § 5336(a)(11), as amended, and any regulations promulgated thereunder, but shall only include limited liability companies formed or authorized to do business in New York state.

(c) "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).

(d) "Applicant" shall have the same meaning as defined in 31 U.S.C. § 5336(a)(2), as amended, and any regulations promulgated thereunder, but shall only include those relating to limited liability companies.

§ 1107. Beneficial ownership disclosure. (a) All reporting companies shall file with the department of state a beneficial ownership disclosure in such form and manner as directed by the department of state, identifying each beneficial owner of the reporting company and each

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

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applicant with respect to that reporting company, by: (1) full legal name; (2) date of birth; (3) current home or business street address; and (4) a unique identifying number from: (i) an unexpired passport; (ii) an unexpired state driver's license; or (iii) an unexpired identification card or document issued by a state or local government agency or tribal authority for the purpose of identification of that individual.

(b) All exempt companies shall electronically file, under penalty of perjury, an attestation of exemption in such form designated by the department of state, which statement shall include the specific exemption claimed and the facts on which such exemption is based. Any company filing an exemption pursuant to this subdivision shall be subject to the annual statement requirement as stated in subdivision (g) of this section in the form prescribed by the department, which statement shall be attested to under penalty of perjury.

(c) All beneficial ownership disclosures, attestations of exemption, and filing fees shall be submitted electronically as prescribed by the department of state. The beneficial ownership disclosure or attestation of exemption shall be signed electronically consistent with the provisions of article three of the state technology law.

(d) Within thirty days of an initial filing of articles of organization or an application for authority pursuant to this chapter, a reporting company shall file with the department of state a beneficial ownership disclosure that complies with subdivision (a) of this section. Within thirty days of an initial filing of articles of organization or an application for authority pursuant to this chapter, an exempt company shall file with the department of state an attestation of exemption that complies with subdivision (b) of this section.

(e) Within one year of the effective date of this section, all previously formed or authorized reporting companies shall file with the department of state a beneficial ownership disclosure that complies with subdivision (a) of this section. Within one year of the effective date of this section, all previously formed or authorized exempt companies shall file with the department of state an attestation of exemption that complies with subdivision (b) of this section.

(f) All information relating to beneficial owners who are natural persons collected by the department of state in accordance with this section shall be maintained in a secure database and shall be deemed confidential except: (1) pursuant to the written request of or by voluntary written consent of the beneficial owner; (2) by court order; (3) to officers or employees of another federal, state or local government agency where disclosure is necessary for the agency to perform its official duties as required by statute or necessary to operate a program specifically authorized by law; or (4) for a valid law enforcement purpose including as relevant to any law enforcement investigation by the office of the attorney general. Any beneficial ownership information disclosed by department of state shall not be further disclosed by any recipient except as authorized in law or as otherwise necessary to the performance of statutory duties.

(g) Once the initial beneficial ownership disclosure has been filed, all reporting companies shall electronically file with the department of state an annual statement confirming or updating: (1) their beneficial ownership disclosure information; (2) the street address of its principal executive office; (3) status as exempt company, if applicable; and (4) such other information as may be designated by the department of state.

(h) The department of state shall establish provisions for sharing information with agencies permitted to access information relating to beneficial owners in accordance with subdivision (f) of this section.

§ 1108. Violations and Penalties. (a) (1) A reporting company which has failed to file its beneficial ownership disclosure, attestation of exemption, or annual statement as required by this article for a period exceeding thirty days shall be shown to be past due on the records of the department of state.

(2) The attorney general may assess a fine of up to five hundred dollars for each day the company has been past due.

(3) In addition to any action brought seeking relief under paragraph two of this subdivision, such past due status shall be removed from the records of the department of state upon the filing of the current statement required by section 1107 of this article, the payment of a fine of two hundred fifty dollars, and verification from the attorney general that any penalties imposed pursuant to paragraph two of this subdivision have been paid.

(b) (1) A reporting company which has failed to file its beneficial ownership disclosure, attestation of exemption, or annual statement 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.

(2) The attorney general may assess a fine of up to five hundred dollars for each day the company has been delinquent.

(3) In addition to any action brought seeking relief under paragraph two of this subdivision, such delinquency shall be removed from the records of the department of state upon the filing of the current statement required by section 1107 of this article, the payment of a fine of two hundred fifty dollars, and verification from the attorney general that any penalties imposed pursuant to paragraph two of this subdivision have been paid.

(c) It shall be unlawful for any person to knowingly provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to the department of state in accordance with this article. A person shall not be in violation of this subdivision if such person voluntarily and promptly, and in no case later than ninety days after the date after the submission of beneficial ownership information, provides the corrected information in the form and manner prescribed by the department of state, unless the false or fraudulent information was willfully submitted for the purpose of evading the requirements of this article.

(d) In addition to any existing authority, the New York state attorney general may investigate any violation of subdivision (c) of this section and any limited liability company that fails to file its beneficial ownership disclosure, annual statements, or attestation of exemption as required by section eleven hundred seven of this article. The department of state may refer, for an investigation, to the attorney general any limited liability company for any violation of the provisions of this article. The New York state attorney general may seek a fine of up to five hundred dollars for each day the company has been past due in filing its beneficial ownership disclosure or attestation of exemption.

(e) (1) The New York state attorney general may bring an action under this section to dissolve or cancel any entity that is delinquent in filing it's beneficial ownership disclosure or attestation of exemption or has violated provisions of subdivision (c) of this section. If in the court's discretion it shall appear that the limited liability company

should be dissolved and cancelled or the foreign limited liability company's authority to do business in this state should be annulled, it shall make a judgment or final order dissolving the limited liability company or annulling the authority of the foreign limited liability company.

(2) If the judgment or final order shall provide for a dissolution and cancellation of the limited liability company or the annulment of authority of the foreign limited liability company, the court may, in its discretion, provide therein for the distribution of the property of the limited liability company to those entitled thereto according to their respective rights.

(3) The clerk of the court or such other person as the court may direct shall transmit certified copies of the judgment or final order of dissolution to the department of state.

(4) Upon filing by the department of state, the limited liability company shall be dissolved and its articles of organization cancelled or the authority of the foreign limited liability company shall be annulled.

(f) Any penalties provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty otherwise provided for in law.

(g) Any reporting or exempt company that fails to file its beneficial ownership disclosure or attestation of exemption in accordance with section 1107 of this article shall be deemed suspended. Any reporting or exempt company that fails to file its beneficial ownership disclosure or attestation of exemption in accordance with section 1107 of this article shall be given notice by the department of state of such suspension, at least thirty days prior to any change of status. A reporting company or exempt company that is suspended by operation of this subdivision shall not conduct business in New York state until its beneficial ownership disclosure or attestation of exemption has been filed, at which point the suspension shall be deemed annulled and all corporate powers, rights, privileges, immunities, duties and liabilities shall be restored retroactively. The suspension of a reporting or exempt company shall not limit or impair the validity of any contract or act of such reporting or exempt company, or any right or remedy of any other party under or by virtue of any contract, act or omission of such reporting or exempt company, or the right of any other party to maintain any action or special proceeding on any such contract, act or omission, or right of such reporting or exempt company to defend any action or special proceeding in this state, or result in any member, manager or agent of such reporting or exempt company becoming liable for the contractual obligations or other liabilities of the limited liability company.

(h) The secretary of state may promulgate regulations necessary to effectuate the provisions of this article.

§ 2. Subdivisions (ii), (jj), (kk) and (ll) of section 102 of the limited liability company law, as added by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, are REPEALED.

§ 3. Paragraphs 6, 7, and 8 of subdivision (e) of section 203 of the limited liability company law, as amended by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability

companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, 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 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, 10 and 11 of subdivision (d) of section 211 of the limited liability company law, as amended by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, are amended to read as follows:

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

(9) the decision to change any other statement in the articles of organization; **and**

(10) to specify, change or delete the email address to which the [~~**department**~~] **secretary** 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. Section 215 of the limited liability company law, as added by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, is REPEALED.

§ 6. Paragraphs 7, 8 and 9 of subdivision (a) of section 802 of the limited liability company law, as amended by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, are amended 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. Subdivision (c) of section 804 of the limited liability company law, as added by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, is REPEALED.

§ 8. Section 810 of the limited liability company law, as added by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, is REPEALED.

§ 9. Section 100-b of the executive law, as added by a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, is REPEALED.

§ 10. Section 10 of a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, is amended to read as follows:

§ 10. This act shall take effect [~~on the three hundred sixty-fifth day after it shall have become a law~~] **January 1, 2026**. 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.

§ 11. This act shall take effect immediately; provided, however, sections one, two, three, four, five, six, seven, eight, and nine of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the limited liability company law and the executive law relating to the disclosure of beneficial owners of limited liability companies, as proposed in legislative bills numbers S. 995-B and A. 3484-A, takes effect.