

# 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:

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

3 § 1106. Definitions. For the purposes of this section and sections  
4 eleven hundred seven and eleven hundred eight of this article:

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

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

12 (c) "Exempt company" shall mean a limited liability company or foreign  
13 limited liability company not otherwise defined as a reporting company  
14 that meets a condition for exemption enumerated in 31 U.S.C. §  
15 5336(a)(11)(B).

16 (d) "Applicant" shall have the same meaning as defined in 31 U.S.C. §  
17 5336(a)(2), as amended, and any regulations promulgated thereunder, but  
18 shall only include those relating to limited liability companies.

19 § 1107. Beneficial ownership disclosure. (a) All reporting companies  
20 shall file with the department of state a beneficial ownership disclo-  
21 sure in such form and manner as directed by the department of state,  
22 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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1 applicant with respect to that reporting company, by: (1) full legal  
2 name; (2) date of birth; (3) current home or business street address;  
3 and (4) a unique identifying number from: (i) an unexpired passport;  
4 (ii) an unexpired state driver's license; or (iii) an unexpired iden-  
5 tification card or document issued by a state or local government agency  
6 or tribal authority for the purpose of identification of that individ-  
7 ual.

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

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

21 (d) Within thirty days of an initial filing of articles of organiza-  
22 tion or an application for authority pursuant to this chapter, a report-  
23 ing company shall file with the department of state a beneficial owner-  
24 ship disclosure that complies with subdivision (a) of this section.  
25 Within thirty days of an initial filing of articles of organization or  
26 an application for authority pursuant to this chapter, an exempt company  
27 shall file with the department of state an attestation of exemption that  
28 complies with subdivision (b) of this section.

29 (e) Within one year of the effective date of this section, all previ-  
30 ously formed or authorized reporting companies shall file with the  
31 department of state a beneficial ownership disclosure that complies with  
32 subdivision (a) of this section. Within one year of the effective date  
33 of this section, all previously formed or authorized exempt companies  
34 shall file with the department of state an attestation of exemption that  
35 complies with subdivision (b) of this section.

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

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

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

4 § 1108. Violations and Penalties. (a) (1) A reporting company which  
5 has failed to file its beneficial ownership disclosure, attestation of  
6 exemption, or annual statement as required by this article for a period  
7 exceeding thirty days shall be shown to be past due on the records of  
8 the department of state.

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

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

18 (b) (1) A reporting company which has failed to file its beneficial  
19 ownership disclosure, attestation of exemption, or annual statement as  
20 required by this section for a period exceeding two years shall be shown  
21 to be delinquent on the records of the department of state.

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

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

31 (c) It shall be unlawful for any person to knowingly provide, or  
32 attempt to provide, false or fraudulent beneficial ownership informa-  
33 tion, including a false or fraudulent identifying photograph or docu-  
34 ment, to the department of state in accordance with this article. A  
35 person shall not be in violation of this subdivision if such person  
36 voluntarily and promptly, and in no case later than ninety days after  
37 the date after the submission of beneficial ownership information,  
38 provides the corrected information in the form and manner prescribed by  
39 the department of state, unless the false or fraudulent information was  
40 willfully submitted for the purpose of evading the requirements of this  
41 article.

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

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

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

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

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

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

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

22 (g) Any reporting or exempt company that fails to file its beneficial  
23 ownership disclosure or attestation of exemption in accordance with  
24 section 1107 of this article shall be deemed suspended. Any reporting  
25 or exempt company that fails to file its beneficial ownership disclosure  
26 or attestation of exemption in accordance with section 1107 of this  
27 article shall be given notice by the department of state of such suspen-  
28 sion, at least thirty days prior to any change of status. A reporting  
29 company or exempt company that is suspended by operation of this subdivi-  
30 sion shall not conduct business in New York state until its beneficial  
31 ownership disclosure or attestation of exemption has been filed, at  
32 which point the suspension shall be deemed annulled and all corporate  
33 powers, rights, privileges, immunities, duties and liabilities shall be  
34 restored retroactively. The suspension of a reporting or exempt company  
35 shall not limit or impair the validity of any contract or act of such  
36 reporting or exempt company, or any right or remedy of any other party  
37 under or by virtue of any contract, act or omission of such reporting or  
38 exempt company, or the right of any other party to maintain any action  
39 or special proceeding on any such contract, act or omission, or right of  
40 such reporting or exempt company to defend any action or special  
41 proceeding in this state, or result in any member, manager or agent of  
42 such reporting or exempt company becoming liable for the contractual  
43 obligations or other liabilities of the limited liability company.

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

46 § 2. Subdivisions (ii), (jj), (kk) and (ll) of section 102 of the  
47 limited liability company law, as added by a chapter of the laws of 2023  
48 amending the limited liability company law and the executive law relat-  
49 ing to the disclosure of beneficial owners of limited liability compa-  
50 nies, as proposed in legislative bills numbers S. 995-B and A. 3484-A,  
51 are REPEALED.

52 § 3. Paragraphs 6, 7, and 8 of subdivision (e) of section 203 of the  
53 limited liability company law, as amended by a chapter of the laws of  
54 2023 amending the limited liability company law and the executive law  
55 relating to the disclosure of beneficial owners of limited liability

1 companies, as proposed in legislative bills numbers S. 995-B and A.  
2 3484-A, are amended to read as follows:

3 (6) if all or specified members are to be liable in their capacity as  
4 members for all or specified debts, obligations or liabilities of the  
5 limited liability company as authorized pursuant to section six hundred  
6 nine of this chapter, a statement that all or specified members are so  
7 liable for such debts, obligations or liabilities in their capacity as  
8 members of the limited liability company as authorized pursuant to  
9 section six hundred nine of this chapter; and

10 (7) [~~in the case of an exempt company, a statement signed by a member  
11 or manager indicating the provision or provisions of 31 U.S.C. §  
12 5336(a)(11)(B), excluding such company from the definition of a report-  
13 ing company to file an initial report, or in the case of a reporting  
14 company, the beneficial ownership disclosure information as required  
15 pursuant to section two hundred fifteen of this article; and~~

16 ~~(8)~~] any other provisions, not inconsistent with law, that the members  
17 elect to include in the articles of organization for the regulation of  
18 the internal affairs of the limited liability company, including, but  
19 not limited to, (A) the business purpose for which the limited liability  
20 company is formed, (B) a statement of whether there are limitations on  
21 the authority of members or managers or a class or classes thereof to  
22 bind the limited liability company and (C) any provisions that are  
23 required or permitted to be included in the operating agreement of the  
24 limited liability company pursuant to section four hundred seventeen of  
25 this chapter.

26 § 4. Paragraphs 8, 9, 10 and 11 of subdivision (d) of section 211 of  
27 the limited liability company law, as amended by a chapter of the laws  
28 of 2023 amending the limited liability company law and the executive law  
29 relating to the disclosure of beneficial owners of limited liability  
30 companies, as proposed in legislative bills numbers S. 995-B and A.  
31 3484-A, are amended to read as follows:

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

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

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

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

45 § 5. Section 215 of the limited liability company law, as added by a  
46 chapter of the laws of 2023 amending the limited liability company law  
47 and the executive law relating to the disclosure of beneficial owners of  
48 limited liability companies, as proposed in legislative bills numbers S.  
49 995-B and A. 3484-A, is REPEALED.

50 § 6. Paragraphs 7, 8 and 9 of subdivision (a) of section 802 of the  
51 limited liability company law, as amended by a chapter of the laws of  
52 2023 amending the limited liability company law and the executive law  
53 relating to the disclosure of beneficial owners of limited liability  
54 companies, as proposed in legislative bills numbers S. 995-B and A.  
55 3484-A, are amended to read as follows:

1 (7) a statement that the foreign limited liability company is in  
2 existence in the jurisdiction of its formation at the time of the filing  
3 of such application; and

4 (8) the name and address of the authorized officer in the jurisdiction  
5 of its formation where a copy of its articles of organization is filed  
6 or, if no public filing of its articles of organization is required by  
7 the law of the jurisdiction of formation, a statement that the foreign  
8 limited liability company shall provide, on request, a copy thereof with  
9 all amendments thereto (if such documents are in a foreign language, a  
10 translation in English thereof under oath of the translator shall be  
11 attached thereto), and the name and post office address of the person  
12 responsible for providing such copies[~~, and~~

13 ~~(9) in the case of an exempt company, a statement signed by a member~~  
14 ~~or manager indicating the provision or provisions of 31 U.S.C. §~~  
15 ~~5336(a)(11)(B), excluding such company from the definition of a report-~~  
16 ~~ing company to file an initial report, or in the case of a reporting~~  
17 ~~company, the beneficial ownership disclosure information required pursu-~~  
18 ~~ant to section eight hundred ten of this article].~~

19 § 7. Subdivision (c) of section 804 of the limited liability company  
20 law, as added by a chapter of the laws of 2023 amending the limited  
21 liability company law and the executive law relating to the disclosure  
22 of beneficial owners of limited liability companies, as proposed in  
23 legislative bills numbers S. 995-B and A. 3484-A, is REPEALED.

24 § 8. Section 810 of the limited liability company law, as added by a  
25 chapter of the laws of 2023 amending the limited liability company law  
26 and the executive law relating to the disclosure of beneficial owners of  
27 limited liability companies, as proposed in legislative bills numbers S.  
28 995-B and A. 3484-A, is REPEALED.

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

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

39 § 10. This act shall take effect [~~on the three hundred sixty-fifth day~~  
40 ~~after it shall have become a law] January 1, 2026. Effective immediate-  
41 ly, the addition, amendment and/or repeal of any rule or regulation  
42 necessary for the implementation of this act on its effective date are  
43 authorized to be made and completed on or before such effective date.~~

44 § 11. This act shall take effect immediately; provided, however,  
45 sections one, two, three, four, five, six, seven, eight, and nine of  
46 this act shall take effect on the same date and in the same manner as a  
47 chapter of the laws of 2023 amending the limited liability company law  
48 and the executive law relating to the disclosure of beneficial owners of  
49 limited liability companies, as proposed in legislative bills numbers S.  
50 995-B and A. 3484-A, takes effect.