STATE OF NEW YORK

995

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. HOYLMAN, 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

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 the requirements of paragraph one of this subdivision; or (F) any

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

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natural person whose membership interest in a limited liability company derives solely from his or her employment by such limited liability company and such limited liability company's organization as an employee-owned business or worker cooperative, as evidenced by such limited liability company's by-laws or articles of organization.

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

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

§ 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) a document identifying the beneficial owners of the limited liability company in accordance with subdivision (a) of 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 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) a change in the beneficial owners of such limited liability company or the information required to be provided relating to each beneficial owner pursuant to section two hundred three of this article.

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

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

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

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

§ 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) a document identifying the beneficial owners of the foreign limited liability company in accordance with subdivision (a) of 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) Every foreign limited liability company that has received a filing receipt entitled "Certificate of authority of .... (name of foreign limited liability company) under section eight hundred five of the Limited Liability Company Law," evidencing authority as provided herein shall amend its application for authority upon a change in beneficial ownership or the information required to be provided relating to each beneficial owner pursuant to section eight hundred two of this article within ninety days of such change.

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

§ 810. Beneficial ownership disclosure. (a) A foreign limited liability company, when disclosing its beneficial owners, shall identify each beneficial owner by: (1) name; (2) date of birth; (3) current residential or business street address; (4) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license or identification card issued by this or another state or, if none, a legible and credible copy of the pages of a non-expired foreign passport bearing a photograph, date of birth, and unique identifying information for the beneficial owner; (5) a federal or state taxpayer identification number or, if none, a legal entity identifier issued by the Global Legal Entity Identifier Foundation.

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

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

§ 9. 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.