STATE OF NEW YORK

995--A

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. HOYLMAN-SIGAL, 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the limited liability company law, the tax law, the administrative code of the city of New York, 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 a new subdivision (ii) to read as follows:

(ii) (1) "Beneficial owner" means the same as such term is defined in 31 C.F.R. § 1010.380 (d).

(2) "Initial report" means the same as such term is defined in 31 C.F.R. § 1010.380 (b).

(3) "Reporting company" means a limited liability company that does not meet a condition for exemption enumerated in 31 C.F.R. § 1010.380 (c)(2).

(4) "Exempt company" means a limited liability company that meets a condition for exemption enumerated in 31 C.F.R. § 1010.380 (c)(2).

(5) 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.

§ 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:

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

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(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 which exemption or exemptions the company claims against its obligation to file an initial report, or in the case of a reporting company, an initial report; 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) in the case of a reporting company, a change in the information required to be included in an initial report or a change to 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) full legal name; (2) date of birth; (3) current residential street address; (4) a unique identifying number and the issuing jurisdiction from one of the following documents: (i) a non-expired passport issued to the individual by the United States government; or, if none, (ii) a non-expired identification document issued to the individual by a state, local government, or Indian tribe for the purpose of identifying the individual; or, if none, (iii) a non-expired driver's license issued to the individual by a state; or, if none, (iv) a non-expired passport issued by a foreign government to the individual; and (5) an image of the document from which the unique identifying number in paragraph four of this subdivision was obtained.

(b) A limited liability company, when filing an initial report, a portion thereof, or any amendment or correction thereto pursuant to section two hundred three or two hundred eleven of this article, or when

disclosing its beneficial owners to the department of state or department of taxation and finance, may submit a copy of the report such company submitted to the federal government pursuant to 31 C.F.R. § 1010.380 in order to satisfy such reporting requirements, provided that such federal report is current and contains all information required by state law.

(c) The identification and disclosure of the name, business address, date of birth, and associated limited liability companies 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.

(d) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information; or (2) willfully fails to provide complete or updated information shall be guilty of a misdemeanor and liable to the state for a civil penalty of not more than ten thousand dollars and shall be prohibited from organizing, forming, registering, or managing any limited liability company or partnership in the state of New York for a period not less than one year or greater than five years. The department of state may withdraw or prohibit the authority of such entity to do business within the state for at least two years.

§ 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 which exemption or exemptions the company claims against its obligation to file an initial report, or in the case of a reporting company, an initial report including 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 reporting 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 the information required to be included in an initial report or a change to the beneficial owners of such limited liability company 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) full legal name; (2) date of birth; (3) current residential street address; (4) a unique identifying number and the issuing jurisdiction from one of the following documents: (i) a non-expired passport issued to the individual by the United States government; or, if none, (ii) a non-expired identification document issued to the individual by a state, local government, or Indian tribe for the purpose of identifying the individual; or, if none, (iii) a non-expired driver's license issued to the individual by a state; or, if none, (iv) a non-expired passport issued by a foreign government to the individual; and (5) an image of the document from which the unique identifying number in paragraph four of this subdivision was obtained.

(b) A foreign limited liability company, when filing an initial report, a portion thereof, or any amendment or correction thereto pursuant to this section or section eight hundred four of this article, or when disclosing its beneficial owners to the department of state or department of taxation and finance, may submit a copy of the report such company submitted to the federal government pursuant to 31 C.F.R. § 1010.380 in order to satisfy reporting requirements, provided that such federal report is current and contains all information required by state law.

(c) The identification and disclosure of the name, business address, date of birth, and associated limited liability companies 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.

(d) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information; or (2) willfully fails to provide complete or updated information shall be guilty of a misdemeanor and liable to the state for a civil penalty of not more than ten thousand dollars and shall be prohibited from organizing, forming, registering, or managing any limited liability company or partnership in the state of New York for a period not less than one year or greater than five years. The department of state may withdraw or prohibit the authority of such entity to transact business within the state of New York for at least two years.

§ 9. Paragraph 2 of subdivision (a) of section 1409 of the tax law, as amended by section 3 of part O of chapter 59 of the laws of 2021, is amended to read as follows:

(2) When the grantor or grantee of a deed for a building used as residential real property [~~containing up to four family dwelling units~~] is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the [~~names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the~~

~~members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, a UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved~~] **beneficial owners of such limited liability company in accordance with section two hundred fifteen or eight hundred ten of the limited liability company law, as applicable**. For purposes of this subdivision, the terms [~~"members", "managers", "authorized person",~~] **"beneficial owners" and** "limited liability company" [~~and "other business entity"~~] shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 10. Subdivision h of section 11-2105 of the administrative code of the city of New York, as amended by chapter 555 of the laws of 2022, is amended to read as follows:

h. When the grantor or grantee of a deed for a building used as residential real property [~~containing up to four family dwelling units~~] is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the [~~names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, an UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved~~] **beneficial owners of such limited liability company in accordance with section two hundred fifteen or eight hundred ten of the limited liability company law, as applicable**. For purposes of this subdivision, the terms [~~"members", "managers", "authorized person",~~] **"beneficial owners" and** "limited liability company" [~~and "other business entity"~~] shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 11. The tax law is amended by adding a new section 171-x to read as follows:

§ 171-x. Information sharing with the department of state regarding beneficial owners of limited liability companies. Notwithstanding subdivision (a) of section fourteen hundred eighteen of this chapter or any other law, the commissioner shall release to the department of state information regarding beneficial owners of limited liability companies which is reported to the department either on a form issued by the department or any other method of report to the department. For purposes of this section, the terms "beneficial owners" and "limited

liability company" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

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

§ 100-b. Corporation and business entity database; information on beneficial owners. 1. The secretary of state shall assign each beneficial owner of a limited liability company an anonymized unique identifying number and publish such number in relation to any affiliated companies, in addition to such beneficial owner's name, date of birth, and business address, in the corporation and business entity database or any subsequent database which is maintained by the division of corporations within the department of state. Data associated with every limited liability company registered to transact business in New York state shall be published online in a downloadable spreadsheet format at least once annually, or otherwise in any manner compatible with the requirements of executive order ninety-five, dated March eleventh, two thousand thirteen. Such data shall also include the name, date of birth, business address, and anonymized unique identifying number of every beneficial owner of each limited liability company. If a beneficial owner has been issued a waiver pursuant to subdivision two of this section, only the anonymized unique identifying number associated with such beneficial owner shall be published in relation to each affiliated limited liability company. For purposes of this section, the terms "beneficial owner" and "limited liability company" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

2. The department shall establish, through regulations, procedures to allow beneficial owners with significant privacy interests to apply for a waiver to withhold all personal or identifying information from public disclosure. The issuance of a waiver shall be upon good cause shown and in the public interest. If 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, such beneficial owner shall be presumed to have good cause and privacy in the public interest. The limited liability company may submit documentation indicating such status to the department, and the department shall provide guidance on its website indicating what documentation is acceptable as proof of such status or other good cause for issuance of a waiver. The department shall also provide notice on its website that beneficial owners not in receipt of such a waiver may be publicly identified and guidance on its website regarding compliance with beneficial ownership disclosure requirements.

§ 13. By January 1, 2025, each reporting company created on or before the effective date of this act shall file an initial report with the department of state and each exempt company shall file with the department of state a statement signed by a member or manager indicating the specific exemption or exemptions such exempt company claims against its obligation to file an initial report.

§ 14. 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.