

CLIENT ALERT

# New York Governor Signs Amended Version of the LLC Transparency Act into Law

JANUARY 17, 2024

On December 23, 2023, New York Governor Kathy Hochul signed the LLC Transparency Act (S.995-B/A.3484-A) (the Act) into law, with a chapter amendment to be approved by the State legislature. The Act, which goes into effect on or around December 22, 2024, establishes an obligation for limited liability companies (LLCs) formed in New York or registered to do business in New York to file beneficial ownership reports with the New York Department of State. In the meantime, the New York Secretary of State will promulgate regulations and procedures regarding compliance with the Act.

The Act aims to tighten the loose disclosure requirements of LLC ownership to curb wage theft, tax evasion, money laundering, terrorism, tenant and employee mistreatment, and other unlawful activity. It does not apply to limited partnerships or corporations.

## EFFECT OF AMENDMENT

The amended version of the Act is a product of legislative compromise, eliminating provisions that contemplated a publicly searchable database to assuage detractors' privacy and security concerns. Instead, the beneficial ownership reports required by the Act will only be accessible by law enforcement agencies, or pursuant to a court order.

The original Act provided for a mechanism, to be fleshed out through New York Secretary of State regulations, by which LLCs could apply for a waiver to withhold the name and/or business address associated with a Beneficial Owner from the database. To qualify for the waiver, an LLC must show that there are "significant privacy interests" at stake, including, but not limited, to situations in which a beneficial owner is an individual participating in an address confidentiality program or is a member of an LLC acting as a relator in a qui tam action filed pursuant to section 190 of the New York State Finance Law or the federal False Claims Act. It is unclear how this waiver mechanism will function given the scaled-down version of the Act.

## REPORTING REQUIREMENTS

The Act borrows beneficial ownership reporting concepts from the federal [Corporate Transparency Act](#) (CTA) and related U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) regulations. An individual is a "Beneficial Owner" under the Act if he or she is a Beneficial Owner under the CTA.<sup>[1]</sup> Each Beneficial Owner

must be identified by their full legal name, date of birth, current residential address, and certain unique information from an applicable identification document identified in the CTA.<sup>[2]</sup> Similarly, an entity is a “Reporting Company” or “Exempt Company” under the Act if it is a Reporting Company or exempt entity under the CTA,<sup>[3]</sup> except the Act’s definitions are narrowed to only include LLCs. While the Act mandates a reporting obligation to the New York Department of State that is separate from the CTA’s reporting obligation to FinCEN, the Act permits an LLC to file the same reports with both bodies.

## DEADLINES AND PENALTIES

Each Reporting Company formed or registered to do business in the State of New York on or before the Act’s effective date must file a beneficial ownership report no later than January 1, 2025. Likewise, each exempt LLC formed or registered to do business in the state on or before the Act’s effective date must file a statement indicating the exemption relied upon no later than January 1, 2025. Each Reporting Company (or exempt LLC) formed after the Act’s effective date must file a beneficial ownership report (or statement of exemption) at the time it is formed or registered with the State of New York. All information must be kept up to date. A Reporting Company that fails to comply for more than 30 days will be shown to be past due on the records of the Department of State until compliance is achieved. A Reporting Company that fails to comply for more than two years will be mailed a notice of delinquency to its last known business address. If the Reporting Company is still non-compliant 60 days after the mailing, the LLC will be shown to be delinquent on the records of the Department of State until compliance is achieved and a \$250 civil penalty is paid.

## PATTERN EMERGING?

New York’s LLC Transparency Act may be the first in a series of state laws aiming to emulate the CTA’s beneficial ownership reporting regimes. In 2023, the California State Senate introduced (1) SB738, which would require beneficial ownership reporting by foreign corporations and LLCs; and (2) SB594, which would require such reports by both domestic and foreign corporations and LLCs. Also in 2023, the Massachusetts House of Representatives introduced H.3566, which would require beneficial ownership reporting by domestic and foreign LLCs. All of the bills contemplate that the information would be publicly available.

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■ Per the CTA, a Beneficial Owner is any individual who, directly or indirectly, either:

- exercises “substantial control” over the Reporting Company; or
- owns or controls 25% or more of the “ownership interests” of the Reporting Company.

■ Per the CTA, such documents include:

- a non-expired U.S. passport or driver’s license;
- a non-expired identification document issued by a State, local government, or Indian tribe; or,
- if the individual does not have any of the above, a non-expired passport issued by a foreign government.

■ Per the CTA, a Reporting Company is any non-exempt entity that is:

- created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian tribe; or
- formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian tribe.

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