

Key Things to Know About the New York LLC Transparency Act

March 18, 2024

New York Governor, Kathy Hochul, signed the amended LLC Transparency Act (NY LLCTA) into law on March 1, 2024.¹ The NY LLCTA is broadly patterned after the Corporate Transparency Act (CTA), which came into effect on January 1, 2024, as part of the Anti-Money Laundering Act of 2020 and was designed to combat the deliberate misuse of legal entities and prevent illicit financial activity. Under the CTA, “reporting companies” are required to report the identities of their “beneficial owners” to the Financial Crimes Enforcement Network (FinCEN).² Beginning on January 1, 2026, the NY LLCTA will impose its own beneficial ownership information (BOI) reporting obligations on existing and newly formed limited liability companies (LLCs) organized in the state of New York or registered to do business in the state of New York.

Although the NY LLCTA incorporates the CTA and related FinCEN regulations by reference, there are key differences from the CTA to be aware of before the NY LLCTA goes into effect.

Differences between the NY LLCTA and the CTA

Unlike the CTA, the NY LLCTA applies only to LLCs. Other business entities, such as limited partnerships or corporations, are not covered by the NY LLCTA. The NY LLCTA will require that LLCs meeting the definition of a “reporting company” under the CTA³ file a BOI disclosure with New York Department of State, disclosing the “beneficial owners” (as determined pursuant to the CTA) of the “reporting company” (also determined pursuant to the CTA). A “beneficial owner” under the CTA is any individual who, directly or indirectly, either exercises “substantial control” over a reporting company or owns or controls at least 25% of the “ownership interest” of a reporting company.

Further, if an LLC falls under one of the CTA’s 23 exemptions to the “reporting company” definition,⁴ the LLC will also be exempt from the NY LLCTA’s BOI reporting requirements. However, unlike the CTA, exempt entities are still required to make a filing that supports its claim for an exemption. Specifically, the NY LLCTA requires electronically filing (under the penalty of perjury) an “attestation of exemption” form designated by the New York Department of State.

The NY LLCTA originally made reported BOI widely available to the public on a searchable database; however, the recent amendment⁵ to the NY LLCTA limited this access. Access to BOI will be confidential except by written consent of or request by the beneficial owner of that LLC or by court order. Government agencies and law enforcement will also have access to BOI. This is similar to the CTA’s

access rules.

Further, the NY LLCTA requires an annual electronic filing with the New York Department of State confirming or updating an LLC's initial BOI or attestation of exemption. Unlike the CTA, where changes to BOI must be reported within 30 days of the date of any such change, this filing is annual and seeks to confirm or update the entity's BOI, street address of its principal executive office, exempt LLC status (if applicable), and any other information designated by the New York Department of State.

Finally, unlike the CTA, violation of the NY LLCTA's reporting obligations is not subject to criminal penalties. Under the NY LLCTA, failure to comply with reporting requirements can result in a past due or delinquent status, a suspension from conducting business in the state, or dissolution of the LLC. The attorney general has great discretion under the NY LLCTA to assess fines up to \$500 for each day an LLC is past due or delinquent in its NY LLCTA BOI filings as well as to bring an action to dissolve or cancel an LLC, or annul an LLC's authorization to do business in New York, for failures to comply or the knowing provision of false or fraudulent BOI.

Complying with the NY LLCTA

LLCs organized or registered to do business in the state of New York that meet the CTA definition of a reporting company must disclose to the New York Department of State a BOI form identifying each beneficial owner and each company applicant.⁶ This form must be filed in the manner directed by the New York Department of State and include the following information for each of its beneficial owners and company applicants:

1. full legal name
2. date of birth
3. current home or business address (as opposed to the CTA's residential address requirement)
4. a unique identifying number from one of the following:
 - an unexpired passport,
 - an unexpired state driver's license, or
 - an unexpired identification card or document issued by a state or local government agency or tribal authority for the purpose of identifying that individual⁸ (unlike the CTA, the NY LLCTA does not require that a copy of this document be submitted with the LLC's filing).

With respect to LLCs formed or applying to do business in New York after the January 1, 2026, effective date, the initial BOI disclosure or attestation of exemption must be filed within 30 days of submitting their articles of organization or with their application to do business in New York, as applicable. For LLCs formed or authorized to conduct business in New York on or prior to the January 1, 2026, effective date, the initial BOI disclosure or attestation of exemption must be filed no later than January 1, 2027.

Takeaway

Once effective, the NY LLCTA will add complexity to the regulatory landscape. It is essential that companies review both the CTA and NY LLCTA to determine their reporting obligations, if any, to

FinCEN and the New York Department of State. Further, New York is only the first state to enact a BOI reporting regime, with both California and Massachusetts proposing, but not yet adopting, their own BOI reporting bills. Thus, it is imperative for companies to stay up to date on BOI reporting laws in their relevant jurisdictions. Sidley will continue to monitor guidance and developments regarding the CTA, the NY LLCTA, and any new BOI reporting laws.

¹ As reflected in Senate Bill 8059, which amended the original version of the NY LLCTA contained in legislative bills S. 995-B and A. 3484 and signed into law by Gov. Hochul on December 22, 2023.

² For more information on the CTA and the BOI reporting requirements, see Sidley [Update](#) dated December 14, 2023.

³ The portion of the CTA's definition of "reporting company" applicable to LLCs includes both domestic and foreign reporting companies, as follows:

- A "domestic reporting company" means any entity that is ... a limited liability company ... created by the filing of a document with a Secretary of State or any similar office under the law of a state or American Indian tribe.
- A "foreign reporting company" means any entity that is (i) a limited liability company (ii) formed under the law of a foreign country and (iii) registered to do business in any state or tribal jurisdiction by the filing of a document with a Secretary of State or any similar office under the law of a state or American Indian tribe.

⁴ See [31 U.S.C. §§ 5336\(a\)\(11\)\(B\)\(i\)-\(xxiv\)](#) for an exhaustive list of exemptions.

⁵ Senate Bill [S08059](#).

⁶ See Sidley [Update](#) dated January 2, 2024, for more information on "company applicants."

⁷ See [S08059](#) § 1107.

CONTACTS

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