

Public Database Stripped From New York's LLC Transparency Act

POSTED ON DEC. 27, 2023

New York Gov. Kathy Hochul (D) has signed an amended version of the LLC Transparency Act that strikes those provisions that would have created the nation's first public database of beneficial ownership information.

Based on the federal Corporate Transparency Act (CTA), the New York measure ([A. 3484A/S. 995B](#)) — signed December 23, with the State Legislature to approve the change through a chapter amendment — will require some limited liability companies formed or registered to do business in New York to identify their true owners to the secretary of state. The law takes effect 365 days after enactment.

As passed by the State Legislature, the proposal would have departed from the CTA by authorizing New York's secretary of state to publish the legal names and current business addresses of LLC beneficial owners in its [online database](#) of active corporations. The CTA, in contrast, limits access to the federal ownership database developed by Treasury's Financial Crimes Enforcement Network to intelligence, law enforcement, and regulatory agencies, as well as to financial institutions performing customer due diligence.

According to the governor's office, the compromise language, which is not yet available, strikes the public database component of the proposal. The agreement "will allow members of law enforcement and regulatory authorities to uncover misconduct, while addressing legitimate privacy concerns," Hochul's office said in a December 23 [release](#) announcing the bill's signing.

In the last hours of the 10-day window for Hochul to act on the measure, *The Buffalo News* reported [anxiety among](#) legislative staff and local transparency advocates that the governor might be seeking amendments to strike the public database component.

Ashley Ranslow, the New York state director of the National Federation Independent of Business (NFIB), forwarded to *Tax Notes* the veto request that the federation submitted to

Hochul. “The most glaring and troubling difference between the CTA and this bill is a database that is accessible to the public,” Ranslow wrote.

The Real Estate Board of New York opposed the public database component of the proposal, as well.

“Federal law already requires certain LLCs to confidentially disclose ownership information to regulators and law enforcement, and we are not opposed to that same information being confidentially shared with the State of New York,” the board said in a statement emailed to *Tax Notes* before the compromise was announced. “However, the legislation put forth in New York includes the unnecessary and harmful step of creating a publicly available database, which would create privacy and identity theft risks for New Yorkers and risks weakening New York’s economy.”

Those sentiments echo points [made by](#) Severiano E. Ortiz of MNF Legal LLC in November comments to *Tax Notes*. Ortiz said clients are generally comfortable with the U.S. government knowing who they are, but that even with the CTA clients are concerned by “how easy or difficult it is for another country, usually one with a questionably stable government, to make a qualified request to the U.S. government and obtain access to that information.”

“If states are going to start publicizing that information, then that might raise a whole new threat level for certain international clients who have legitimate concerns with their home governments,” Ortiz added.

End of Trend?

Before it was removed, the public database component made the New York proposal landmark legislation. Versions of it have already served as models for beneficial ownership information transparency bills introduced in California and Massachusetts.

But the sponsors of New York’s LLC Transparency Act remain upbeat. In the announcement of the compromise agreement, they vowed “to continue the fight for transparency.”

“With today’s signing, New York now leads the nation in tackling the rise of secret shell companies that abuse tenants and workers and defraud businesses and the government. I

have seen up close the frustration and harm wrought by anonymous LLCs in my district,” said state Rep. Emily Gallagher (D). “Today marks the first step to ending that impunity.”

Like the CTA, New York’s law is presented as an anti-money-laundering and anti-corruption measure designed to curb financial crimes enabled by the use of anonymous shell companies. New York Attorney General Letitia James (D) and Manhattan District Attorney Alvin Bragg (D) are among the elected state and local officials who [publicly urged](#) Hochul to sign the bill.

The lack of transparency in New York real estate transactions has been of particular concern to sponsors and supporters of the LLC Transparency Act, who include tenant organizers, labor leaders, and transparency advocates. [Research](#) by Reinvent Albany shows that 37 percent of Manhattan properties are owned by LLCs — a figure that the transparency watchdog group said is more than five times the state’s average.

In California, opposition to a public ownership database has been more on the record than in New York. Points raised in bill analyses of [S.B. 594](#) for legislative committees include whether states could impede the federal government’s implementation of the CTA by making beneficial ownership information public. Groups opposing the bill include the California Association of Realtors, the Institute of Real Estate Management, and several housing and apartment management and building owners groups.

In its veto request to Hochul, the NFIB laid out additional arguments that could resurface in other states.

While the New York measure as passed by the State Legislature “purports to expose wrongdoers engaged in criminal behavior,” its requirements duplicate those of the CTA, which would already capture criminal enterprises, the NFIB letter said.

“The real intent of this legislation is to ‘name and shame’ small businesses,” the NFIB said. That is because only LLCs with 20 or fewer U.S.-based employees would be subject to the proposed disclosure requirements, Ranslow wrote. Also, as defined by both the CTA and the New York measure, beneficial owners are individuals who, directly or indirectly, exercise substantial control over a reporting company or own or control at least 25 percent of the ownership interests of a reporting company.

In the context of small businesses, that means that the pre-compromise New York measure would have subjected owners — and potentially their employees in managerial positions — “to unnecessary and potentially devastating hazards” in an era of doxxing, cancel culture, and online harassment.

“Unfortunately, disgruntled customers, employees, activists, political opponents, or any bad actor could use that information for perverse reasons, putting a small business owner at risk,” the veto request said. The NFIB added that this has long been a concern at the federal level, citing 2019 testimony to the Senate Judiciary Committee from national security and cybersecurity experts during consideration of the CTA.

The veto request also addressed the fact that proponents of public databases of beneficial ownership information “often invoke the European Union’s public register as a talking point.”

“However, they neglect to recognize that the European Union’s highest court struck down the beneficial ownership register over privacy and personal data protection concerns,” the veto request said, referring to a November 22, 2022, [judgment of the Court of Justice of the European Union](#).

In the joined cases, the Court decided that the register was too loosely framed and provided “overly wide public access,” the veto request said. The Court wrote that “the potential consequences for the data subjects resulting from possible abuse of their personal data are exacerbated by the fact that, once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated.”

DOCUMENT ATTRIBUTES

JURISDICTIONS	NEW YORK
SUBJECT AREAS / TAX TOPICS	TRANSPARENCY LIMITED LIABILITY COMPANIES LEGISLATION AND LAWMAKING INFORMATION DISCLOSURE TAX HAVENS
MAGAZINE CITATION	TAX NOTES STATE, JAN. 1, 2024, P. 87 111 TAX NOTES STATE 87 (JAN. 1, 2024)
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