Article 14A.

Assumed Business Name Act.

§ 66-71.1. Short title.

This Article may be cited as the "Assumed Business Name Act." (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.2. Statement of purpose.

The purpose of this Article is to afford the public a means of ascertaining the real name of persons engaging in business in this State under an assumed business name by requiring those persons to register the assumed business name as provided in this Article. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.3. Definitions.

The following definitions apply in this Article:

(1) Assumed business name.
   a. In the case of an individual, any name other than a real name of the individual.
   b. In the case of a partnership other than a limited liability partnership or limited partnership, any name other than a real name of each of the general partners of the partnership.
   c. In the case of a limited liability partnership, any name other than the name registered with the Secretary of State.
   d. In the case of a limited partnership, any name other than the name stated in its certificate of limited partnership filed with the Secretary of State.
   e. In the case of a limited liability company, any name other than the name stated in its articles of organization filed with the Secretary of State.
   f. In the case of a corporation, any name other than the corporate name stated in its articles of incorporation filed with the Secretary of State.
   g. In the case of a trust, any name other than the name specified in the trust instrument or, if the trust instrument does not specify a name for the trust, any name other than the name of the trustee and a designation of the trust for which the trustee is acting.
   h. In the case of any other person, any name other than a real name of the person.

(2) Person. – Includes an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.4. Filing of certificate; exception.

(a) Before any person engages in business in this State under an assumed business name, the person must file an assumed business name certificate in the office of the register of deeds of the county in which the person is or will be engaged in business. If the person is or will be engaged in business in multiple counties, filing is required in only one of those counties.

(b) A person who engages in business in this State under more than one assumed business name must file an assumed business name certificate for each assumed business name. The person

may, however, include no more than five assumed business names in one assumed business name certificate if that same person is or will be engaging in business under each of the assumed business names listed in the certificate.

(c) This Article does not apply to a political committee or a referendum committee that has filed a statement of organization with the State Board of Elections or a county board of elections as required by G.S. 163-278.7 or G.S. 163-278.9A, as applicable. (2016-100, s. 2; 2017-6, s. 3; 2017-23, s. 1; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 66-71.5. Contents of certificate.

(a) An assumed business name certificate must include all of the following:

(1) The assumed business name, subject to the requirements of subsection (b) of this section.

(2) A real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include a real name of five general partners or of each general partner, whichever is fewer.

(3) The nature of the business.

(4) The street address of the principal place of business.

(5) Each county where the person uses or will be using the assumed business name to engage in business.

(b) A person may not include in an assumed business name any of the following terms:

(1) "Corporation," "incorporated," "corp.," or "inc.," unless the entity is a corporation organized under Chapter 55 or Chapter 55A of the General Statutes.

(2) "Limited liability company," "L.L.C." or "LLC," or any other similar abbreviation or form of "limited liability company," unless the entity is a limited liability company organized under Chapter 55D of the General Statutes.

(3) "Limited partnership," "L.P." or "LP," or any other similar abbreviation or form of "limited partnership," unless the entity is a limited partnership organized under Chapter 59 of the General Statutes.

(4) "Limited liability partnership," "registered limited liability limited partnership," or any other similar abbreviation or form of those terms, unless the entity is organized or registered as a limited liability partnership under Chapter 59 of the General Statutes. (2016-100, s. 2; 2017-23, s. 1; 2019-117, s. 4.)

§ 66-71.6. Execution of certificate.

An assumed business name certificate must be executed as follows:

(1) In the case of an individual, the certificate must be signed by the individual.

(2) In the case of a partnership or limited partnership, the certificate must be signed by a general partner.

(3) In the case of a corporation or limited liability company, the certificate must be signed in the name of the corporation or limited liability company by an officer of the corporation or a manager of the limited liability company or by another individual authorized by law to act for the corporation or limited liability company.

(4) In the case of any other person, the certificate must be signed in the name of the person by an individual authorized to act for the person. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.7. Amendment of certificate.

Any person that has filed an assumed business name certificate must, within 60 days after a change in any of the information required in the assumed business name certificate, file a certificate of amendment in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name and a real name of the person engaging in business under the assumed business name as stated in the original, or most recently amended, assumed business name certificate.
(2) The book and page number of the original filing.
(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).
(4) How the assumed business name certificate is to be amended. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.8. Withdrawal of assumed business name.

Any person filing an assumed business name certificate as required by this Article may, upon ceasing to engage in business in this State under the assumed business name, withdraw the assumed business name by filing a certificate of withdrawal in the office of the register of deeds of the county in which the assumed business name certificate was filed. The certificate must be executed in the same manner as required under G.S. 66-71.6 for the execution of an assumed business name certificate and must set forth:

(1) The assumed business name being withdrawn.
(2) The book and page number of the original filing.
(3) The identification number assigned to the assumed business name by the Secretary of State (SOS ID).
(4) A real name of the person engaging in business under the assumed business name and that person's current address.
(5) A statement that the person has ceased engaging in business under the assumed business name.
(6) The effective date of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.9. Secretary of State to maintain a centralized, statewide database of assumed business name information.

(a) The Secretary of State shall develop, implement, and maintain a searchable online database of assumed business name information reported under G.S. 66-71.10. The system must allow information to be entered and retrieved from the system by the registers of deeds and must be available for searches by the public.

(b) The Secretary of State may adopt rules to implement the statewide online database. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.10. Register of deeds to index certificates; transmission of data to central database.

(a) The register of deeds of each county must index in accordance with Article 2 of Chapter 161 of the General Statutes every assumed business name with respect to which an assumed business name certificate, a certificate of amendment, or a certificate of withdrawal has been filed in that county.

(b) Not later than 30 days after the date a certificate under this Article is filed, the register of deeds must transmit a scanned image of the certificate to the Secretary of State and enter into the central database maintained by the Secretary of State under G.S. 66-71.9 the assumed business name, the real name of each person engaging in business under that name, the type of certificate, the county in which the certificate was filed, and, in the case of a certificate of amendment or certificate of withdrawal, the identification number assigned to the assumed business name by the Secretary of State (SOS ID). (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.11. Forms.

(a) The Land Records Management Advisory Committee established under G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this Article, but their use is not mandatory.

(a1) An Assumed Business Name Certificate that substantially complies with the following form may be used and shall be sufficient to satisfy the requirements of G.S. 66-71.5:

"ASSUMED BUSINESS NAME CERTIFICATE (NCGS § 66-71.5)

1. The assumed business name is: _____
(You may include no more than five (5) assumed business names on this form.)

2. The real name of the person or entity engaging in business under the assumed business name is: _____
(Corporations, limited liability companies, limited partnerships must provide the exact name registered with the NC Secretary of State's office and the SOSID number assigned at the time of formation.)

3. The nature/type of the business is: _____

4. The street address of the principal place of business is: _____
(Post office boxes are not acceptable.)

5. The mailing address, if different from the street address, is: _____

6. The counties where the assumed business name will be used to engage in business are:
_____ (Can indicate all 100 North Carolina counties)

This certificate is signed by the owner/legal representative of the person or entity named above, this _____ day of _____, 20_____.

Signature: _____

Printed/Typed Name: _____
Title: _____"

(a2) An Amendment of Assumed Business Name Certificate that substantially complies with the following form may be used and shall be sufficient to satisfy the requirements of G.S. 66-71.7:

"AMENDMENT OF ASSUMED BUSINESS NAME CERTIFICATE (NCGS § 66-71.7)

1. The assumed business name previously registered is: _____

2. The real name of the person or entity engaging in business under the assumed business name is: _____ (Corporations, limited liability companies, limited partnerships must provide the exact name registered with the NC Secretary of State's office and the SOSID number assigned at the time of formation.)

3. The book and page number of the initial filing that is being amended is: Book _____, Page _____, _____ County Registry.

4. The identification number assigned to the assumed business name by the Secretary of State (SOSID) is: _____

5. The current mailing address of the business: _____

6. The certificate of assumed business name should be amended by changing the following information:
(Check all that apply and provide new information in the space provided below.):
□ Change assumed business name
□ Add real name of person engaging in business under assumed business name
□ Delete real name of person engaging in business under assumed business name
□ Change nature of business
□ Change street address of principal place of business
□ Change mailing address
□ Add counties where assumed business name will be used to engage in business
□ Delete counties where assumed business name will be used to engage in business

7. Provide new information here:
□ Add: _____
□ Delete: _____
□ Change: _____

This certificate is signed by the owner/legal representative of the person or entity named above, this _____ day of _____, 20_____.

Signature: _____

Printed/Typed Name: _____
Title: _____"

(b) Any person, including the registers of deeds, may make available the forms developed under subsection (a) of this section. The authorization of the use of the forms in subsections (a1) and (a2) of this section does not preclude the use of other forms as long as the form complies with the requirements of G.S. 66-71.5, G.S. 66-71.7, and this Article. (2016-100, s. 2; 2017-23, s. 1; 2019-117, s. 5.)

§ 66-71.12. Effect of filing certificate.

(a) An assumed business name certificate filed under this Article is effective upon filing and remains in effect until withdrawn under G.S. 66-71.8.

(b) Compliance with this Article does not confer any exclusive rights to the use of an assumed business name in this State. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.13. Copy of certificate prima facie evidence.

A copy of a certificate filed under this Article, duly certified by the register of deeds of the office in which it was filed, is prima facie evidence of the facts required to be stated in the certificate. (2016-100, s. 2; 2017-23, s. 1.)

§ 66-71.14. Consequences of signing false certificate or violating Article.

(a) A person signing a certificate under this Article that the person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing is guilty of a Class 1 misdemeanor.

(b) A person failing to file an assumed business name certificate or a certificate of amendment as required by this Article is liable to any person injured by the failure for the reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a reasonable purpose, the information required to be stated in the assumed business name certificate or certificate of amendment. Notwithstanding this subsection, a person is not liable for expenses caused by an error or ambiguity in describing the nature of the business in an assumed business name certificate under G.S. 66-71.5 or a certificate of amendment under G.S. 66-71.7. (2016-100, s. 2; 2017-23, s. 1; 2017-102, s. 14.3.)

§ 66-71.15. Expiration of certificates filed under Article 14; transition provisions.

(a) All certificates of assumed name filed under former Article 14 of this Chapter expire December 1, 2022, and the provisions of that former Article continue to apply to them until that date except as provided in this section. On or after that date, any person that (i) is listed as an owner of the business in a certificate of assumed name filed under that former Article and (ii) desires to continue engaging in business in this State under the assumed business name after that date must file an assumed business name certificate under this Article.

(b) At least one person listed as an owner of the business in a certificate of assumed name under former Article 14 of this Chapter must file an assumed business name certificate before the certificate of assumed name expires under subsection (a) of this section if any of the following occur:

(1) A general partnership would have been required to file a new certificate of assumed name under former G.S. 66-68(c) due to the withdrawal or addition of a partner.

(2) Any of the information in the certificate of assumed name required under former G.S. 66-68(a) has changed, and the person desires to continue engaging in business in this State.

(c) No person shall file a new certificate of assumed name under former Article 14 of this Chapter on or after December 1, 2017. Any document or other record filed on or after that date to register an assumed business name is deemed to be filed under this Article, even if it is described as a certificate of assumed name rather than an assumed business name certificate, or if it expressly refers to former Article 14 of this Chapter.

(d) A person that filed a certificate of assumed name that has not expired may withdraw the assumed name under the provisions of former G.S. 66-68(f). Any such withdrawal is deemed to be a withdrawal under former G.S. 66-68(f), even if it is described as a withdrawal under this Article.

(e) No person shall file a certificate of amendment under this Article to a certificate of assumed name filed under former Article 14 of this Chapter. If any such amendment is nevertheless filed, it is not effective as a certificate of amendment or as an assumed business name certificate under this Article.

(f) The register of deeds shall not transmit a scanned image to the Secretary of State, or enter any of the information required by G.S. 66-71.10 into the central database maintained by the Secretary of State, of any withdrawal or transfer of an assumed name or any amendment to a certificate of assumed name when the certificate of assumed name to which the withdrawal, transfer, or amendment relates was filed before December 1, 2017.

(g) Other than this section, this Article does not apply to a certificate of assumed name or a withdrawal of an assumed name under former Article 14 of this Chapter. (2016-100, s. 2; 2017-23, ss. 1, 2.)