

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 473

Short Title: Limited Liability Companies.

(Public)

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Sponsors: Representatives R. Hunter; Redwine and Buchanan.

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Referred to: Judiciary I.

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March 15, 1995

A BILL TO BE ENTITLED

1  
2 AN ACT TO MAKE PROCEDURAL CHANGES AND TECHNICAL CORRECTIONS  
3 TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT, TO  
4 ALLOW RETROACTIVE INDEMNIFICATION OF A MANAGER OR MEMBER  
5 OF A LIMITED LIABILITY COMPANY, AND TO EXTEND THE USURY  
6 EXEMPTION TO LIMITED LIABILITY COMPANIES AND PARTNERSHIPS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 57C-1-03(14) reads as rewritten:

9 "(14) Member. – A person who has been admitted to membership in the  
10 limited liability company as provided in G.S. 57C-3-01 until the  
11 person's membership ceases as provided in ~~G.S. 57C-3-02~~ G.S. 57C-3-  
12 02 or G.S. 57C-5-02."

13 Sec. 2. G.S. 57C-1-03(17) reads as rewritten:

14 "(17) Person. – An individual, a trust, an estate, or a domestic ~~corporation, a or~~  
15 foreign corporation, a domestic or foreign professional corporation, a  
16 domestic or foreign partnership, a domestic or foreign limited  
17 partnership, a domestic or foreign limited liability company, a foreign  
18 limited liability company, an unincorporated association, or another  
19 entity."

20 Sec. 3. G.S. 57C-2-30(e) reads as rewritten:

1       "(e) Neither the reservation nor registration of a name, the organization of a limited  
2 liability company, nor the obtaining by a foreign limited liability company of a certificate  
3 of authority shall authorize the use in this State of a name in violation of the rights of any  
4 third party under the federal trademark act, the trademark act of this State, or other  
5 statutory or common law, or be a defense to an action for violation of ~~any such~~ those  
6 rights."

7       Sec. 4. G.S. 57C-2-41 is amended by adding a new subsection to read:

8       "(c) A limited liability company may change its registered office or registered agent  
9 by including in its annual report required by G.S. 57C-2-23 the information and any  
10 written consent required by subsection (a) of this section."

11       Sec. 5. G.S. 57C-3-02(7) reads as rewritten:

12       "(7) Unless otherwise provided in the articles of organization or a written  
13 operating agreement or with the consent of all other members, in the  
14 case of a member that is a domestic or foreign partnership-partnership, a  
15 domestic or foreign limited partnership, or another domestic or foreign  
16 limited liability company, the dissolution and commencement of  
17 winding up of the partnership-partnership, limited partnership, or limited  
18 liability company;".

19       Sec. 6. G.S. 57C-3-02(8) reads as rewritten:

20       "(8) Unless otherwise provided in the articles of organization or a written  
21 operating agreement or with the consent of all other members, in the  
22 case of a member that is a domestic or foreign corporation, the  
23 dissolution of the corporation or the revocation of its charter; or".

24       Sec. 7. G.S. 57C-3-21(3) reads as rewritten:

25       "(3) Upon designation as manager in a written operating agreement and the  
26 person's consent to such designation, the designated person shall serve  
27 as manager until the earliest to occur of (i) the person's resignation, (ii)  
28 any event described in ~~G.S. 57C-3-02(3)~~ G.S. 57C-3-02 with respect to  
29 the manager, (iii) any event specified in the articles of organization or  
30 written operating agreement that results in a manager ceasing to be a  
31 manager, or (iv) the amendment of the written operating agreement  
32 removing the person's designation as a manager."

33       Sec. 8. G.S. 57C-3-32(a)(2) reads as rewritten:

34       "~~If approved by all the members, provide~~ Provide for indemnification of a  
35 manager or member for judgments, settlements, penalties, fines, or  
36 expenses incurred in a proceeding to which the member or manager is a  
37 party because he is or was a manager or member. For purposes of this  
38 subdivision, the words 'expenses', 'proceeding', and 'party' shall have the  
39 meanings set forth in G.S. 55-8-50(b)."

40       Sec. 9. G.S. 57C-3-32(b) reads as rewritten:

41       "(b) No provision permitted under subsection (a) of this section shall limit,  
42 eliminate, or indemnify against the liability of a manager for (i) acts or omissions that the  
43 manager knew at the time of the acts or omissions were clearly in conflict with the

1 interests of the limited liability company, (ii) any transaction from which the manager  
2 derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date  
3 the provision became ~~effective.~~ effective, except that indemnification pursuant to  
4 subdivision (2) of subsection (a) of this section may be provided if approved by all the  
5 members. As used in this subsection, 'improper personal benefit' does not include  
6 reasonable compensation or other reasonable incidental benefit for or on account of  
7 service as a manager, an officer, an employee, an independent contractor, an attorney, or  
8 a consultant of the limited liability company.

9 No provision permitted under subsection (a) of this section shall limit or eliminate the  
10 liability of a member or manager for any taxes owed by the limited liability company  
11 under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General  
12 Statutes."

13 Sec. 10. G.S. 57C-6-02(a) reads as rewritten:

14 "(a) On application by or for a member, the court may decree dissolution of a  
15 limited liability company whenever it is not reasonably practicable to carry on the  
16 business in conformity with the articles of organization or an operating agreement. The  
17 clerk of court shall deliver a certified copy of the decree to the Secretary of State, who  
18 shall file it."

19 Sec. 11. G.S. 24-9 reads as rewritten:

20 **"§ 24-9. Loans to ~~corporations~~ certain entities organized for profit not subject to**  
21 **claim or defense of usury.**

22 Notwithstanding any other provision of this Chapter or any other provision of law,  
23 any foreign or domestic ~~corporation~~ corporation, limited liability company, or partnership  
24 substantially engaged in ~~commercial, manufacturing or industrial~~ commercial pursuits for  
25 pecuniary gain may agree to pay, and any lender or other person may charge and collect  
26 from ~~such corporation, interest~~ the entity, interest, fees, and other charges at any rate which  
27 ~~such corporation~~ the entity may agree or be required to pay ~~in writing,~~ and as to any such  
28 transaction the claim or defense of usury by ~~such corporation~~ the entity and its successors  
29 or anyone else in its behalf is prohibited."

30 Sec. 12. G.S. 24-9.2 is repealed.

31 Sec. 13. G.S. 55B-4(2) reads as rewritten:

32 "(2) All of the shares of stock of the corporation shall be owned and held by  
33 a licensee, or licensees, as hereinabove defined in ~~G.S. 55B-2(2).~~ G.S.  
34 55B-2(2). ~~Provided, that as to professional corporations rendering services as~~  
35 ~~defined in Chapters 83A, 89A, 89C, and 89E, limited ownership of shares by~~  
36 ~~non-licensees shall be permitted as set forth~~ except as otherwise permitted  
37 in G.S. 55B-6."

38 Sec. 14. G.S. 55B-6(a) reads as rewritten:

39 "(a) Except as provided in subsection (b), a professional corporation may issue  
40 shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder  
41 may voluntarily transfer such shares of stock issued to him only to another such licensee.  
42 No share or shares of any stock of such corporation shall be transferred upon the books of  
43 the corporation unless the corporation has received a certification of the appropriate

1 licensing board that the transferee of such shares is a licensee. Provided, it shall be  
2 lawful in the case of professional corporations rendering services as defined in Chapters  
3 83A, 89A, 89C, and 89E, for non-licensed employees of such corporation to own not  
4 more than one-third of the total issued and outstanding shares of such corporation.  
5 Provided further, subject to any additional conditions that the appropriate licensing board  
6 may by rule or order impose in the public interest, it shall be lawful for individuals who  
7 are not licensees but who perform professional services on behalf of a professional  
8 corporation in another jurisdiction in which the corporation maintains an office, and who  
9 are duly licensed to perform professional services under the laws of the other jurisdiction,  
10 to be shareholders of the corporation so long as there is at least one shareholder who is a  
11 licensee as defined in G.S. 55B-2, and the corporation renders its professional services in  
12 the State only through those shareholders that are licensed in North Carolina. Upon the  
13 transfer of any shares of such corporation to a non-licensed employee of such  
14 corporation, the corporation shall inform the appropriate licensing board of the name and  
15 address of the transferee and the number of shares issued to such nonprofessional  
16 transferee. Any share of stock of such corporation issued or transferred in violation of  
17 this section shall be null and void. No shareholder of a professional corporation shall  
18 enter into a voting trust agreement or any other type of agreement vesting in another  
19 person the authority to exercise the voting power of any or all of his stock."

20           Sec. 15. This act becomes effective July 1, 1995.