

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 660
RATIFIED BILL

AN ACT TO AMEND THE LAW GOVERNING LIMITED LIABILITY COMPANIES TO CLARIFY CERTAIN DEFINITIONS OF TERMS, TO PROVIDE MORE FLEXIBILITY WITH REGARD TO ORGANIZERS, TO CLARIFY THAT THE FILING OF THE ARTICLES OF ORGANIZATION IS CONCLUSIVE EVIDENCE OF THE FORMATION OF A COMPANY, TO REVISE THE CIRCUMSTANCES AND RESTRICTIONS REGARDING FORMATION OF A COMPANY, TO PROVIDE FOR THE INDEXING OF REAL ESTATE RECORDS TO REFLECT MERGERS AND CONVERSIONS OF BUSINESS ENTITIES, TO ALLOW ALTERNATIVE MANAGEMENT STRUCTURES, TO PROVIDE FOR WITHDRAWAL FROM A COMPANY ONLY AS PERMITTED BY THE ARTICLES OF ORGANIZATION OR WRITTEN OPERATING AGREEMENT, TO REVISE THE PERMITTED GROUNDS FOR DISSOLUTION, AND TO CLARIFY THAT A COMPANY MAY ENGAGE IN A BUSINESS UNDER AN ASSUMED NAME.

The General Assembly of North Carolina enacts:

PART I. DEFINITIONS.

Section 1. G.S. 57C-1-03 reads as rewritten:

"§ 57C-1-03. Definitions.

The following definitions apply in this Chapter, unless otherwise specifically provided:

- (1) Articles of organization. – The document filed under G.S. 57C-2-20 of this Chapter for the purpose of forming a limited liability company, as amended or restated.
- (2) Bankrupt. – Bankrupt under the United States Bankruptcy Code, as amended, or insolvent under State insolvency laws.
- (3) Business. – Any lawful trade, occupation, investment, or other purpose or commercial activity activity, whether or not such trade, investment, purpose, or activity is carried on engaged in for gain or profit.
- (4) Corporation. – Has the same meaning as in G.S. 55-1-40(4).
- (5) Court. – Includes every court and judge having jurisdiction in the case.
- (6) Distribution. – A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their membership interests.
- (7) Foreign corporation. – Has the same meaning as in G.S. 55-1-40(10).
- (8) Foreign limited liability company. – An unincorporated organization formed under laws other than the laws of this State, that affords to each of its members, pursuant to the laws under which it is formed, limited liability with respect to the liabilities of the organization.
- (9) Foreign limited partnership. – Has the same meaning as in G.S. 59-102(5).
- (10) Individual. – A human being.
- (10a) Liabilities, debts, and obligations. – Have one and the same meaning and are used interchangeably throughout this Chapter. Reference to 'liabilities,' 'debts,' or 'obligations' whether individually or in any

- combination, is deemed to reference 'all liabilities, debts, and obligations, whether arising in contract, tort, or otherwise.'
- (11) Limited liability company or domestic limited liability company. – An entity formed and existing under this Chapter.
- (12) Limited partnership or domestic limited partnership. – Has the same meaning as in G.S. 59-102(8).
- (13) Manager. – Has the following meanings: (i) with respect to a limited liability company that has set forth in its articles of organization that it is to be or may be managed by persons other than members, any person designated in accordance with G.S. 57C-3-20(a), (ii) with respect to any other limited liability company, its members, and (iii) with respect to a foreign limited liability company, any person authorized to act for and bind the foreign limited liability company.
- (14) Member. – A person who has been admitted to membership in the limited liability company as provided in G.S. 57C-3-01 until the person's membership ceases as provided in G.S. 57C-3-02 or G.S. 57C-5-02.
- (15) Membership interest or interest. – All of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management.
- (16) Operating agreement. – Any agreement, written or oral, of the members with respect to the affairs of a limited liability company and the conduct of its business that is binding on all the members. An operating agreement shall include, in the case of a limited liability company with only one member, any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.
- (16a) Organizer. – A person who executes the articles of organization of a limited liability company in the capacity of an organizer.
- (17) Person. – An individual, a trust, an estate, or a domestic or foreign corporation, a domestic or foreign professional corporation, a domestic or foreign partnership, a domestic or foreign limited partnership, a domestic or foreign limited liability company, an unincorporated association, or another entity.
- (18) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

PART II. FORMATION.

Section 2.1. G.S. 57C-1-20(f)(3) reads as rewritten:

- "(3) If the limited liability company has not been ~~formed~~, formed or if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by an organizer; or".

Section 2.2. G.S. 57C-2-20 reads as rewritten:

"§ 57C-2-20. Formation.

- (a) One or more persons may ~~organize~~ form a limited liability company by delivering executed articles of organization to the Secretary of State for filing.
- (b) (1) When the filing by the Secretary of State ~~files~~ of the articles of organization, ~~organization~~ becomes effective, the proposed organization becomes a limited liability company subject to this Chapter and to the purposes, conditions, and provisions stated in the ~~articles, and the persons executing the articles of organization~~

~~become members of the limited liability company. articles of organization.~~

- (2) Filing of the articles of organization by the Secretary of State is conclusive evidence of the ~~organization formation~~ of the limited liability company, except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the limited liability company.

(c) If initial members are not identified in the articles of organization of a limited liability company in the manner provided in G.S. 57C-3-01(a), the organizers shall hold one or more meetings at the call of a majority of the organizers to identify the initial members of the limited liability company. Unless otherwise provided in this Chapter or in the articles of organization of the limited liability company, all decisions to be made by the organizers at such meetings shall require the approval, consent, agreement, or ratification of a majority of the organizers. Unless otherwise provided in the articles of organization, the organizers may, in lieu of a meeting, take action as described in this subsection by written consent signed by all of the organizers. The written consent may be incorporated in, or otherwise made part of, the initial written operating agreement of the limited liability company.

(d) A limited liability company may also be formed through the conversion of another business entity in accordance with Part 1 of Article 9 of this Chapter."

Section 2.3. G.S. 57C-2-21(a) reads as rewritten:

- "(a) The articles of organization must set forth:
- (1) A name for the limited liability company that satisfies the provisions of G.S. 57C-2-30;
 - (2) ~~The latest date on which~~ If the limited liability company is to dissolve, dissolve by a specific date, the latest date on which the limited liability company is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company;
 - (3) ~~The name and address of each person executing the articles of organization;~~ organization and whether the person is executing the articles of organization in the capacity of a member or an organizer;
 - (4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that address; and
 - (5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members."

Section 2.4. G.S. 57C-2-22(b) reads as rewritten:

"(b) Unless otherwise provided in the articles of organization or a written operating agreement, any amendment to the articles of organization shall require the unanimous vote of the ~~members.~~ members or, if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by the unanimous vote of the organizers."

Section 2.5. G.S. 57C-2-22.1(b) reads as rewritten:

"(b) The restated articles of organization may include one or more amendments to the ~~articles.~~ articles of organization. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the ~~members.~~ members or, if no initial members of the limited liability company have been identified in the manner provided in this Chapter, by the unanimous vote of the organizers. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company."

PART III. REAL ESTATE RECORDS INDEX.

Section 3. G.S. 57C-2-34 reads as rewritten:

"§ 57C-2-34. Real property records.

(a) Whenever the name of any domestic or foreign limited liability company holding title to real property in this State is changed upon amendment to its articles of organization or whenever title to its real property in this State is ~~transferred-vested~~ by operation of law in another entity upon merger or conversion of ~~two or more~~ the limited liability ~~companies,~~ company, a certificate reciting the ~~change or transfer name change,~~ merger, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited liability company holding title to the real property before the ~~amendment or merger name change, merger, or conversion~~ shall appear in the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger or conversion,~~ as applicable, shall appear in the 'Grantee' index."

PART IV. MEMBERSHIP.

Section 4.1. G.S. 57C-3-01 reads as rewritten:

"§ 57C-3-01. Admission of members.

(a) ~~The persons executing~~ Unless the articles of organization of a limited liability company ~~become members upon the effective time of filing of the articles of organization by the Secretary of State as specified in G.S. 57C-2-20.~~ provide otherwise, each person executing the articles of organization of a limited liability company in the capacity of a member, and each person who is otherwise named in the articles of organization as a member of the limited liability company, becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective.

(b) ~~After the formation of a limited liability company, a~~ A person may be admitted as a ~~member.~~ member of a limited liability company:

- (1) In the case of a person acquiring a membership interest directly from the limited liability company, (i) upon being so identified by the organizers of the limited liability company in accordance with G.S. 57C-2-20(c) or (ii) upon compliance with the articles of organization or operating agreement or, if the articles of organization or operating agreement do not so provide, upon the unanimous consent of the members; and
- (2) In the case of an assignee of an interest of a member, upon compliance with the provisions of G.S. 57C-5-04(a)."

Section 4.2. G.S. 57C-3-05 reads as rewritten:

"§ 57C-3-05. Members bound by operating agreements.

A member shall be bound by any operating agreement, including any amendment thereto, otherwise valid under this Chapter and other applicable law, (i) to which the member has expressly assented, or (ii) which was in effect at the time the member became a member and either was in writing or the terms of which were actually known to the member, or (iii) with respect to any amendment, if the member was bound by the operating agreement as in effect immediately prior to such amendment and such

amendment was adopted in accordance with the terms of such operating agreement. The articles of organization or written operating agreement may require that all agreements of the members constituting the operating agreement be in writing, in which case the term 'operating agreement' shall not include oral agreements of the members. Except to the extent otherwise provided in a written operating agreement, a limited liability company shall be deemed for all purposes to be a party to the operating agreement of its member or members."

Section 4.3. G.S. 57C-3-20(b) reads as rewritten:

"(b) Except to the extent otherwise provided in the articles of organization or a written operating agreement, Management—management of the affairs of the limited liability company shall be vested in ~~its~~ the managers. Subject to any provisions in the articles of organization or a written operating agreement or this Chapter restricting, enlarging, or modifying the management rights and duties of any manager or managers, or management procedures, each manager shall have equal rights and authority to participate in the management of the limited liability company, and management decisions shall require the approval, consent, agreement, or ratification of a majority of the managers."

Section 4.4. G.S. 57C-3-32(b) reads as rewritten:

"(b) No provision permitted under subsection (a) of this section shall limit, eliminate, or indemnify against the liability of a manager for (i) acts or omissions that the manager knew at the time of the acts or omissions were clearly in conflict with the interests of the limited liability company, (ii) any transaction from which the manager derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date the provision became effective, except that indemnification pursuant to subdivision (2) of subsection (a) of this section may be provided if approved by all the members. As used in this subsection, 'improper personal benefit' does not include reasonable compensation or other reasonable incidental benefit for or on account of service as a manager, an officer, an employee, an independent contractor, an attorney, or a consultant of the limited liability company.

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

Section 4.5. G.S. 57C-5-06 reads as rewritten:

"§ 57C-5-06. Voluntary withdrawal of member.

~~A member may withdraw only at the time or upon the happening of the events specified in the articles of organization or a written operating agreement, by giving not less than six months' prior written notice to the other members at their respective addresses as shown on the books of the limited liability company, unless:~~

- ~~(1) The articles of organization or a written operating agreement provide that the member does not have the right or power to withdraw; or~~
- ~~(2) The articles of organization or a written operating agreement specify another time for or impose other conditions on withdrawal."~~

Section 4.6. G.S. 57C-5-07 reads as rewritten:

"§ 57C-5-07. Distribution upon withdrawal.

~~Except as provided in and to the extent provided under this Article, Chapter, upon withdrawal, any withdrawing member is entitled to receive any distribution to which he is otherwise entitled under the articles of organization or a written operating agreement, or, if not otherwise provided in the articles of organization or a written operating agreement, upon a reasonable time after withdrawal, the fair value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's right to share in distributions from the limited liability company."~~

PART V. DISSOLUTION.

Section 5.1. G.S. 57C-6-01 reads as rewritten:

"§ 57C-6-01. Dissolution.

A limited liability company is dissolved and its affairs shall be wound up at or upon the first to occur of the following:

- (1) The time specified in the articles of organization or a written operating agreement;
- (2) The happening of an event specified in the articles of organization or a written operating agreement;
- (3) The written consent of all members;
- (4) Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members, the happening of any event of withdrawal described in G.S. 57C-3-02 (cessation of membership) with respect to any member, unless at the time of the event of withdrawal (i) there is at least one remaining member, (ii) the provisions of the articles of organization or a written operating agreement permit the business of the limited liability company to be carried on by the remaining member or members, and (iii) the remaining member or members elect to do so pursuant to such vote, to procedures prescribed in the articles of organization or a written operating agreement, or, in the absence of prescribed voting requirements or procedures, by a unanimous vote of the remaining member or members taken after the event of withdrawal. The foregoing notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member all remaining members agree agrees in writing that the business of the limited liability company may be continued, or continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member; or
- (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

Section 5.2. G.S. 57C-6-02 reads as rewritten:

"§ 57C-6-02. Judicial Grounds for judicial dissolution.

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

- (1) The Attorney General if it is established that (i) the limited liability company obtained its articles of organization through fraud; or (ii) the limited liability company has, after written notice by the Attorney General given at least 120 days prior thereto, continued to exceed or abuse the authority conferred upon it by law;
- (2) A member if it is established that (i) the managers or those in control of the limited liability company are deadlocked in the management of the affairs of the limited liability company, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members generally, because of the deadlock; (ii)

liquidation is reasonably necessary for the protection of the rights or interests of the complaining member, (iii) the assets of the limited liability company are being misapplied or wasted; or (iv) the articles of organization or a written operating agreement entitles the complaining member to dissolution of the limited liability company; or

(3) The limited liability company to have its voluntary dissolution continued under court supervision.

~~(b) Venue for a proceeding under subsection (a) of this section to dissolve a limited liability company lies in the county where the limited liability company's principal office (or, if none in this State, its registered office) is or was last located."~~

Section 5.3. Article 6 of Chapter 57C is amended by adding a new section to read:

"§ 57C-6-02.1. Procedure for judicial dissolution.

(a) Venue for a proceeding to dissolve a limited liability company lies in the county where the limited liability company's principal office (or, if none in this State, its registered office) is or was last located.

(b) It is not necessary to join members as parties to a proceeding to dissolve a limited liability company unless relief is sought against them individually, however the court shall order that appropriate notice of the dissolution proceeding be given to all members by the party initiating the proceeding.

(c) A court in a proceeding brought to dissolve a limited liability company may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the assets of the limited liability company, wherever located, and carry on the business of the limited liability company.

(d) In any proceeding brought by a member under G.S. 57C-6-02(2)(ii) in which the court determines that dissolution would be appropriate, the court shall not order dissolution if, after the court's determination, the limited liability company elects to purchase the membership interest of the complaining member at its fair value, as determined in accordance with any procedures the court may provide."

Section 5.4. Article 6 of Chapter 57C is amended by adding a new section to read:

"§ 57C-6-02.2. Receivership.

(a) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind up or to manage the business and affairs of the limited liability company. Before appointing a receiver, the court shall hold a hearing after notifying all parties to the proceeding and any interested persons designated by the court. The court appointing a receiver has exclusive jurisdiction over the limited liability company and all of its property, wherever located.

(b) The court may appoint an individual or other person as a receiver. The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The powers may include the authority to:

(1) Dispose of all or any part of the assets of the limited liability company wherever located, at a public or private sale, if authorized by the court;

(2) Sue and defend in the receiver's own name as receiver of the limited liability company in all courts of this State; and

(3) Exercise all of the powers of the limited liability company, through or in place of its managers, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

(d) From time to time during the receivership, the court may order compensation paid and expense disbursements or reimbursements made to the receiver and the

receiver's counsel from the assets of the limited liability company or proceeds from the sale of the assets."

Section 5.5. Article 6 of Chapter 57C is amended by adding a new section to read:

"§ 57C-6-02.3. Decree of dissolution.

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in G.S. 57C-6-02 exist, it may enter a decree dissolving the limited liability company and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up of the limited liability company's business and affairs in accordance with G.S. 57C-6-04 and G.S. 57C-6-05 and the notification of claimants in accordance with G.S. 57C-6-07 and G.S. 57C-6-08."

PART VI. ASSUMED NAME.

Section 6. G.S. 66-68 reads as rewritten:

"§ 66-68. Certificate to be filed; contents; exemption of certain partnerships and limited liability companies engaged in rendering professional services; withdrawal or transfer of assumed name.

(a) Unless exempt under subsection (e) hereof, before any person or partnership engages in business in any county in this State under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof, before any limited partnership engaged in business in any county in this State other than under the name set out in the Certificate filed with the Office of the Secretary of State, before any limited liability company engages in business in any county other than under the name set out in the articles of organization filed with the Office of the Secretary of State, or before a corporation engages in business in any county other than under its corporate name, such person, partnership, limited partnership, limited liability company, or corporation must file in the office of the register of deeds of such county a certificate giving the following information:

- (1) The name under which the business is to be conducted; and
- (2) The name and address of the owner, or if there is more than one owner, the name and address of each.

(b) If the owner is an individual or a partnership, the certificate must be signed and duly acknowledged by the individual owner, or by each general partner. If the owner is a ~~corporation~~, corporation or limited liability company, it must be signed in the name of the corporation or limited liability company and duly acknowledged as provided by G.S. 47-41.01 or G.S. 47-41.02.

(c) Whenever a general partner withdraws from or a new general partner joins a partnership, a new certificate shall be filed. For limited partnerships, the requirement of this subsection (c) shall be deemed satisfied if the partnership is identified as the owner as provided in subsection (a) and the partnership's certificate of limited partnership is amended as provided in G.S. 59-202.

(d) It is not necessary that any person, partnership, limited liability company, or corporation file such certificate in any county where no place of business is maintained and where the only business done in such county is the sale of goods by sample or by traveling agents or by mail.

(e) Any partnership or limited liability company engaged in rendering professional services, as defined in G.S. 55B-2(6), in this State, shall be exempt from the requirements of this section if it shall file annually with the licensing board responsible for regulating the rendering of such professional services, or at such intervals as shall be designated from time to time by such licensing board, a listing of the names and addresses of its ~~partners~~, partners or members. The listing shall be open to public inspection during normal working hours.

(f) Any person, partnership, limited liability company, or corporation executing and filing a certificate of assumed name as required by this section may, upon ceasing to engage in business in this State under the assumed name, withdraw the assumed name or transfer the assumed name to any other person, partnership, or corporation by filing in the office of the register of deeds of the county in which the certificate of assumed name is filed a certificate of withdrawal or a certificate of transfer executed as provided in subsection (b) of this section and setting forth:

- (1) The assumed name being withdrawn or transferred;
- (2) The date of filing of the certificate of assumed name;
- (3) The name and address of the owner or owners of the business;
- (4) A statement that such owner or owners have ceased engaging in business under the assumed name;
- (5) If the assumed name is to be withdrawn, the effective date (which shall be a date certain but not more than 20 days from the date of filing) of the withdrawal if it is not to be effective upon the filing of the certificate of withdrawal; and
- (6) If the assumed name is to be transferred, the name and address of the transferee or transferees, and the effective date (which shall be a date certain but not more than 20 days from the date of filing) of the transfer if it is not to be effective upon the filing of the certificate of transfer. This subsection does not relieve a transferee of the obligation to file a certificate of assumed name as required by this Article."

PART VII. EFFECTIVE DATE.

Section 7. This act is effective when it becomes law, applies to limited liability companies in existence or formed on or after January 1, 1999, and applies to actions commenced on or after October 1, 1999.

In the General Assembly read three times and ratified this the 8th day of June, 1999.

Dennis A. Wicker
President of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 19