

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 473

Second Edition Engrossed 5/2/95

Senate Judiciary I/Constitution Committee Substitute Adopted 5/31/95

Short Title: Ltd. Liab. Co./Foreign Prof. Corp.

(Public)

Sponsors:

Referred to:

March 15, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE PROCEDURAL CHANGES AND TECHNICAL CORRECTIONS TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT, TO ALLOW RETROACTIVE INDEMNIFICATION OF A MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY, TO EXTEND THE USURY EXEMPTION TO LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, AND AMEND THE PROFESSIONAL CORPORATION ACT.

The General Assembly of North Carolina enacts:

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

"(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.~~ G.S. 57C-3-02 or G.S. 57C-5-02."

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

"(17) Person. – An individual, a trust, an estate, or a domestic ~~corporation, a 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, a ~~foreign~~

1 ~~limited liability company~~, an unincorporated association, or another
2 entity."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Sec. 10. Article 5 of Chapter 57C of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 57C-5-07. Distribution upon withdrawal.**

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

26 Sec. 11. G.S. 57C-6-02(a) reads as rewritten:

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

32 Sec. 12. G.S. 57C-6-01(4) reads as rewritten:

33 "(4) Unless otherwise provided in the articles of organization or a written
34 operating agreement, the happening of any event of withdrawal
35 described in G.S. 57C-3-02 (cessation of membership) with respect to
36 any member, unless at the time of the event of withdrawal (i) there is at
37 least one remaining member, (ii) the provisions of the articles of
38 organization or a written operating agreement permit the business of the
39 limited liability company to be carried on by the remaining member or
40 members, and (iii) the remaining member or members elect to do so
41 pursuant to such vote, to procedures prescribed in the articles of
42 organization or a written operating agreement, or, in the absence of
43 prescribed voting requirements or procedures, by a unanimous vote of

1 the remaining member or members taken after the event of withdrawal.
2 The foregoing to the contrary notwithstanding, a limited liability
3 company shall not be dissolved and is not required to be wound up by
4 reason of any event of withdrawal if, within 90 days after the event of
5 withdrawal, all remaining members, and the person or persons with respect
6 to whom the event of withdrawal has occurred (or his successor), members
7 agree in writing that the business of the limited liability company may
8 be continued; or".

9 Sec. 13. G.S. 24-9 reads as rewritten:

10 **"§ 24-9. Loans to ~~corporations~~ certain entities organized for profit not subject to**
11 **claim or defense of usury.**

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

20 Sec. 14. G.S. 24-9.2 is repealed.

21 Sec. 15. G.S. 55B-4(2) reads as rewritten:

22 "(2) All of the shares of stock of the corporation shall be owned and held by
23 a licensee, or licensees, as hereinabove defined in ~~G.S. 55B-2(2)~~ G.S.
24 55B-2(2), ~~Provided, that as to professional corporations rendering services as~~
25 ~~defined in Chapters 83A, 89A, 89C, and 89E, limited ownership of shares by~~
26 ~~non-licensees shall be permitted as set forth~~ except as otherwise permitted
27 in G.S. 55B-6."

28 Sec. 16. G.S. 55B-6(a) reads as rewritten:

29 "(a) Except as provided in subsection (b), a professional corporation may issue
30 shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder
31 may voluntarily transfer such shares of stock issued to him only to another such licensee.
32 No share or shares of any stock of such corporation shall be transferred upon the books of
33 the corporation unless the corporation has received a certification of the appropriate
34 licensing board that the transferee of such shares is a licensee. Provided, it shall be
35 lawful in the case of professional corporations rendering services as defined in Chapters
36 83A, 89A, 89C, and 89E, for non-licensed employees of such corporation to own not
37 more than one-third of the total issued and outstanding shares of such corporation.
38 Provided further, subject to any additional conditions that the appropriate licensing board
39 may by rule or order impose in the public interest, it shall be lawful for individuals who
40 are not licensees but who perform professional services on behalf of a professional
41 corporation in another jurisdiction in which the corporation maintains an office, and who
42 are duly licensed to perform professional services under the laws of the other jurisdiction,
43 to be shareholders of the corporation so long as there is at least one shareholder who is a

1 licensee as defined in G.S. 55B-2, and the corporation renders its professional services in
2 the State only through those shareholders that are licensed in North Carolina. Upon the
3 transfer of any shares of such corporation to a non-licensed employee of such
4 corporation, the corporation shall inform the appropriate licensing board of the name and
5 address of the transferee and the number of shares issued to such nonprofessional
6 transferee. Any share of stock of such corporation issued or transferred in violation of
7 this section shall be null and void. No shareholder of a professional corporation shall
8 enter into a voting trust agreement or any other type of agreement vesting in another
9 person the authority to exercise the voting power of any or all of his stock."

10 Sec. 17. G.S. 55B-13 reads as rewritten:

11 **"§ 55B-13. Suspension or revocation of certificate of registration.**

12 A licensing board may suspend or revoke a certificate of registration issued by it to a
13 domestic or foreign professional corporation for any of the following reasons:

- 14 (1) Upon the failure of such corporation to promptly remove or discharge
15 an officer, director, shareholder or employee who becomes disqualified
16 by reason of the revocation or suspension of his license to practice; or
17 (2) Upon a finding by the licensing board that the professional corporation
18 has failed to comply with the provisions of this Chapter or the
19 regulations of the licensing board.

20 Upon the suspension or revocation of a certificate of registration issued to a
21 professional corporation, such corporation shall cease forthwith to render professional
22 services, and the Secretary of State shall be notified to the end that the corporation may
23 be removed from active status and remain as such until reinstatement."

24 Sec. 18. Chapter 55B of the General Statutes is amended by adding a new
25 section to read:

26 **"§ 55B-16. Foreign professional corporations.**

27 A corporation for profit incorporated under a law other than the law of this State and
28 engaged in rendering a professional service as specified and defined in G.S. 55B-2(6)
29 may apply for a certificate of authority to transact business in this State
30 pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes
31 provided that:

- 32 (1) The corporation obtains a certificate of registration from the appropriate
33 licensing board or boards in this State;
34 (2) With respect to each professional service practiced through the
35 corporation in this State, at least one director and one officer are
36 licensees of the licensing board which regulates the profession in this
37 State;
38 (3) Each shareholder who will provide professional services to persons in
39 this State, or who will provide professional services from a base of
40 operations in this State, is a licensee of the appropriate licensing board
41 in this State;

- 1 (4) The corporation shall be subject to the applicable rules and regulations
2 adopted by, and all the disciplinary powers of, the appropriate licensing
3 board or boards in this State;
4 (5) The corporation's activities in this State shall be limited to providing
5 those professional services permitted by G.S. 55B-14; and
6 (6) The corporation's application for a certificate of authority shall
7 designate the professional services to be rendered by the corporation
8 and shall be accompanied by a certification from the appropriate
9 licensing board or boards that the licensure of the corporation's
10 shareholders is in compliance with this section."
11 Sec. 19. This act becomes effective October 1, 1995.