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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, TO AMEND THE PROFESSIONAL CORPORATION ACT, AND TO MAKE CONFORMING CHANGES TO THE REAL ESTATE LICENSE LAW.

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

1            domestic or foreign partnership, a domestic or foreign limited  
2            partnership, a domestic or foreign limited liability company, a foreign  
3            limited liability company, an unincorporated association, or another  
4            entity."

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

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

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

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

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

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

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

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

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

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

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

39           "(2) ~~If approved by all the members, provide~~ Provide for indemnification of a  
40           manager or member for judgments, settlements, penalties, fines, or  
41           expenses incurred in a proceeding to which the member or manager is a  
42           party because he is or was a manager or member. For purposes of this

1 subdivision, the words 'expenses', 'proceeding', and 'party' shall have the  
2 meanings set forth in G.S. 55-8-50(b)."

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

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

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

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

21 **"§ 57C-5-07. Distribution upon withdrawal.**

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

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

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

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

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

1 pursuant to such vote, to procedures prescribed in the articles of  
2 organization or a written operating agreement, or, in the absence of  
3 prescribed voting requirements or procedures, by a unanimous vote of  
4 the remaining member or members taken after the event of withdrawal.  
5 The foregoing to the contrary notwithstanding, a limited liability  
6 company shall not be dissolved and is not required to be wound up by  
7 reason of any event of withdrawal if, within 90 days after the event of  
8 withdrawal, all remaining members, and the person or persons with respect  
9 to whom the event of withdrawal has occurred (or his successor), members  
10 agree in writing that the business of the limited liability company may  
11 be continued; or".

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

13 **"§ 24-9. Loans to ~~corporations~~ certain entities organized for profit not subject to**  
14 **claim or defense of usury.**

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

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

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

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

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

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

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

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

14 **"§ 55B-13. Suspension or revocation of certificate of registration.**

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

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

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

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

29 **"§ 55B-16. Foreign professional corporations.**

30 (a) A foreign professional corporation may apply for a certificate of authority to  
31 transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of  
32 the General Statutes provided that:

- 33 (1) The corporation obtains a certificate of registration from the appropriate  
34 licensing board or boards in this State;  
35 (2) With respect to each professional service practiced through the  
36 corporation in this State, at least one director and one officer shall be a  
37 licensee of the licensing board which regulates the profession in this  
38 State;  
39 (3) Each officer, employee, and agent of the corporation who will provide  
40 professional services to persons in this State shall be a licensee of the  
41 appropriate licensing board 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 as provided by  
5           G.S. 55B-14; and

6           (6)    The application for certificate of authority, in addition to the  
7           requirements of G.S. 55-15-03, shall set forth the personal services to be  
8           rendered by the foreign professional corporation and the individual or  
9           individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and  
10          shall be accompanied by a certification by the appropriate licensing  
11          board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and  
12          by additional certifications as may be required to establish that the  
13          corporation is a 'foreign professional corporation' as defined in G.S.  
14          55B-16(b).

15          (b)    For purposes of this section, 'foreign professional corporation' means a  
16          corporation for profit that is incorporated under a law other than the law of this State for  
17          the sole and specific purpose of rendering professional services of the type that if  
18          rendered in this State would require the obtaining of a license from a licensing board  
19          pursuant to the statutory provisions referred to in G.S. 55B-2(6) and that (i) has as its  
20          shareholders only individuals who are duly licensed, in this State or some other state, to  
21          render the same professional services as the corporation, or (ii) is organized for the  
22          purpose of rendering professional services of the type defined in Chapters 83A, 89A,  
23          89C, and 89E of the General Statutes, and has as its shareholders only individuals who  
24          are duly licensed, in this State or in another state, to render the same professional services  
25          as the corporation or who are nonlicensed employees of the corporation, provided that  
26          nonlicensed employees own not more than one-third of the total issued and outstanding  
27          shares of the corporation, or (iii) is described in G.S. 55B-15.

28          (c)    A foreign professional corporation with a valid certificate or authority has the  
29          same but no greater rights and has the same but no greater privileges as, and is subject to  
30          the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic  
31          professional corporation of like character, except that the provisions of G.S. 55B-6 and  
32          G.S. 55B-7 shall not apply."

33                "Sec. 19. G.S. 93A-1 reads as rewritten:

34          **"§ 93A-1. License required of real estate brokers and real estate salesmen.**

35                From and after July 1, 1957, it shall be unlawful for any person, partnership,  
36          ~~association or corporation~~ corporation, limited liability company, association, or other  
37          business entity in this State to act as a real estate broker or real estate salesman, or  
38          directly or indirectly to engage or assume to engage in the business of real estate broker  
39          or real estate salesman or to advertise or hold himself or themselves out as engaging in or  
40          conducting such business without first obtaining a license issued by the North Carolina  
41          Real Estate Commission (hereinafter referred to as the Commission), under the  
42          provisions of this Chapter."

43                Sec. 20. G.S. 93A-2 reads as rewritten:

1 **"§ 93A-2. Definitions and exceptions.**

2 (a) A real estate broker within the meaning of this Chapter is any person,  
3 partnership, ~~association, or corporation~~ corporation, limited liability company, association,  
4 or other business entity who for a compensation or valuable consideration or promise  
5 thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers  
6 to auction (specifically not including a mere crier of sales), or negotiates the purchase or  
7 sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to  
8 sell leases of whatever character, or rents or offers to rent any real estate or the  
9 improvement thereon, for others.

10 (b) The term real estate salesman within the meaning of this Chapter shall mean  
11 and include any person who under the supervision of a real estate broker, for a  
12 compensation or valuable consideration is associated with or engaged by or on behalf of a  
13 licensed real estate broker to do, perform or deal in any act, acts or transactions set out or  
14 comprehended by the foregoing definition of real estate broker.

15 (c) The provisions of this Chapter shall not apply to and shall not include:

16 (1) Any person, partnership, ~~association or corporation~~ corporation, limited  
17 liability company, association, or other business entity who, as owner or  
18 lessor, shall perform any of the acts aforesaid with reference to property  
19 owned or leased by them, where the acts are performed in the regular  
20 course of or as incident to the management of that property and the  
21 investment therein;

22 (2) Any person acting as an attorney-in-fact under a duly executed power of  
23 attorney from the owner authorizing the final consummation of  
24 performance of any contract for the sale, lease or exchange of real  
25 estate;

26 (3) The acts or services of an attorney-at-law;

27 (4) Any person, while acting as a receiver, trustee in bankruptcy, guardian,  
28 administrator or executor or any person acting under order of any court;

29 (5) Any person, while acting as a trustee under a trust agreement, deed of  
30 trust or will, or his regular salaried employees;

31 (6) Any salaried person employed by a licensed real estate broker, for and  
32 on behalf of the owner of any real estate or the improvements thereon,  
33 which the licensed broker has contracted to manage for the owner, if the  
34 salaried employee is limited in his employment to: exhibiting units on  
35 the real estate to prospective tenants; providing the prospective tenants  
36 with information about the lease of the units; accepting applications for  
37 lease of the units; completing and executing preprinted form leases; and  
38 accepting security deposits and rental payments for the units only when  
39 the deposits and rental payments are made payable to the owner or the  
40 broker employed by the owner. The salaried employee shall not  
41 negotiate the amount of security deposits or rental payments and shall  
42 not negotiate leases or any rental agreements on behalf of the owner or  
43 broker; or

1 (7) Any owner who personally leases or sells his own property."

2 Sec. 21. G.S. 57C-2-01 reads as rewritten:

3 **"§ 57C-2-01. Purposes.**

4 (a) Every limited liability company organized under this Chapter has the purpose  
5 of engaging in any lawful business unless a more limited lawful purpose is set forth in its  
6 articles of organization.

7 (b) A domestic or foreign limited liability company engaging in a business that is  
8 subject to regulation under another statute of this State may be formed or authorized to  
9 transact business under this Chapter only if permitted by and subject to all limitations of  
10 the other statute giving effect to subsection (c) of this section.

11 (c) Subsections (a) and (b) of this section to the contrary notwithstanding and  
12 except as set forth in this subsection, a domestic or foreign limited liability company shall  
13 engage in rendering professional services only to the extent ~~that, and subject to the~~  
14 ~~conditions and limitations under which, a professional corporation may engage in rendering~~  
15 ~~professional services under Chapter 55B of the General Statutes (the Professional Corporation~~  
16 ~~Act) and under the applicable licensing statute. that a professional corporation acting~~  
17 pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to  
18 Chapter 55 of the General Statutes may engage in rendering professional services under  
19 the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of  
20 the General Statutes and each applicable licensing statute are deemed amended to provide  
21 that professionals licensed under the applicable licensing statute may render professional  
22 services through a domestic or foreign limited liability company. For purposes of  
23 applying the provisions, conditions, and limitations of Chapter 55B of the General  
24 Statutes and the applicable licensing statute to domestic and foreign limited liability  
25 companies that engage in rendering professional services, (i) unless the context clearly  
26 requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina  
27 Business Corporation Act) shall be treated as references to this Chapter, and references to  
28 a 'corporation' or 'foreign corporation' shall be treated as references to a limited liability  
29 company or foreign limited liability company, respectively, (ii) members shall be treated  
30 in the same manner as shareholders of a professional corporation, (iii) managers shall be  
31 treated in the same manner as directors of a professional corporation, (iv) the persons  
32 signing the articles of organization of a limited liability company shall be treated in the  
33 same manner as the incorporators of a professional corporation, and (v) the name of a  
34 domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-  
35 30 or G.S. 57C-7-06 and, in addition, shall contain the word 'Professional' or the  
36 abbreviation 'P.L.L.C.' or 'PLLC'. For purposes of this subsection, 'applicable licensing  
37 statute' shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

38 Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter  
39 the law in this State applicable to the professional relationship and liabilities between the  
40 individual furnishing the professional services and the person receiving the professional  
41 services, or the standards of professional conduct applicable to the rendering of the  
42 services. This Chapter does not relieve individuals of responsibilities, obligations, or the  
43 imposition of sanctions under applicable licensing statutes, even if the sanctions are



1 imposed for the conduct of other members of a limited liability company. A member or  
2 manager of a professional limited liability company is not individually liable for debts  
3 and obligations of the professional limited liability company arising from errors,  
4 omissions, negligence, incompetence, or malfeasance committed in the course of the  
5 professional limited liability company's business by another member or manager or a  
6 representative of the professional limited liability company not working under the  
7 supervision or direction of the first member or manager at the time the errors, omissions,  
8 negligence, incompetence, or malfeasance occurred, unless the first member or manager  
9 was directly involved in the specific activity in which the errors, omissions, negligence,  
10 incompetence, or malfeasance were committed by the other member or manager or  
11 representative."

12           Sec. 22. This act becomes effective October 1, 1995.