

GENERAL ASSEMBLY OF NORTH CAROLINA  
1997 SESSION

SESSION LAW 1997-475  
SENATE BILL 727

AN ACT TO REDUCE THE STATE SALES TAX ON FOOD BY AN ADDITIONAL ONE CENT EFFECTIVE JULY 1, 1998, TO ESTABLISH THE PERCENTAGE RATES FOR THE INSURANCE REGULATORY CHARGE AND THE PUBLIC UTILITY REGULATORY FEE, TO CLARIFY THE BASIS OF THE PREMIUM TAX LIABILITY ON WHICH THE INSURANCE REGULATORY CHARGE IS LEVIED, TO INCREASE COURT FEES IN CRIMINAL CASES, TO INCREASE THE FEES FOR FILING CERTAIN DOCUMENTS, AND TO PROVIDE THAT ANNUAL REPORTS OF MOST BUSINESS CORPORATIONS SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

**PART I. FOOD TAX REDUCTION**

Section 1.1. G. S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of ~~three percent (3%)~~ two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 1.2. Section 1.1 of this act becomes effective July 1, 1998, and applies to sales made or or after that date.

**PART II. INSURANCE REGULATORY CHARGE**

Section 2.1. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is eight and seventy-five-hundredths percent (8.75%) for the 1997 calendar year.

Section 2.2. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. — There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, ~~except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term "insurance company" does not include a company regulated under Article 67 of this Chapter, a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to~~

those taxes and is therefore not subject to the charge levied in this section. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by ~~G.S. 105-228.8~~ and G.S. 105-228.8, the additional local fire and lightning tax imposed by ~~G.S. 105-228.5(d)(4)~~ G.S. 105-228.5(d)(4), and any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a) shall be disregarded."

Section 2.3. G.S. 97-133(a)(2) reads as rewritten:

"(2) Assess each member of the Association as follows:

- a. Each individual member self-insurer shall be annually assessed an amount equal to one-quarter of one percent (0.25%) of the annual standard premium that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium. Each group member self-insurer shall be annually assessed an amount equal to one-quarter of one percent (0.25%) of the annual premium collected by the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this one-quarter of one percent (0.25%) assessment. Assessments paid by members pursuant to this subdivision shall be credited toward the tax paid by self-insurers under ~~G.S. 105-228.5 and G.S. 97-100.~~ Article 8B of Chapter 105 of the General Statutes.
- b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.
- c. If a self-insurer is a member of the Association for less than a full calendar year, the annual standard premium shall be adjusted by that portion of the year the self-insurer is not a member of the Association.
- d. If application of the contribution rates referenced in sub-subdivisions a. and b. of this subdivision would produce an amount in excess of the five million dollar (\$5,000,000) limits of the fund, an equitable proration may be made; provided that

every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association."

Section 2.4. G.S. 97-133(a)(4) reads as rewritten:

"(4) Be obligated to the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by the self-insurer of workers' compensation insurance as otherwise required under this Chapter. The Association shall pay claims against a self-insurer that are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings that occurred prior to the effective date of this Article; ~~provided that any assessments made to pay such claims may be credited towards the tax paid by the self-insurers under G.S. 97-100; Article.~~"

Section 2.5. Sections 2.1 through 2.4 of this act are effective when this act becomes law.

### **PART III. PUBLIC UTILITY REGULATORY FEE**

Section 3.1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1997.

Section 3.2. Section 3.1 of this act becomes effective July 1, 1997.

### **PART IV. INCREASE COURT FEES IN CRIMINAL CASES**

Section 4.1. G.S. 7A-304 reads as rewritten:

#### **"§ 7A-304. Costs in criminal actions.**

(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

- (1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars (\$5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.
- (2) For the use of the courtroom and related judicial facilities, the sum of six dollars (\$6.00) in the district court, including cases before a magistrate, and the sum of twenty-four dollars (\$24.00) in superior

court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

- (3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents (\$5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents (\$1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.
- (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.
- (4) For support of the General Court of Justice, the sum of ~~forty-six dollars (\$46.00)~~ sixty-one dollars (\$61.00) in the district court, including cases before a magistrate, and the sum of ~~fifty-three dollars (\$53.00)~~ sixty-eight dollars (\$68.00) in the superior court, to be remitted to the State Treasurer.
- (5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars (\$15.00) to be

remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

- (6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars (\$50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee.

~~(a1) The costs assessed pursuant to subsection (a) may also be collected by clerks of court for charges in which a party elects to pay the court's costs to satisfy the requirements of G.S. 20-7.2. Costs collected pursuant to this subsection shall be allocated in the same manner as other costs collected pursuant to this section. If a party elects to pay the costs of court to satisfy the requirements of G.S. 20-7.2 and is subsequently adjudged guilty of the same charge by the court, he shall not be required to pay the costs of court again for that charge, but he is subject to any other orders of the court, including an order to pay a fine.~~

(b) On appeal, costs are cumulative, and costs assessed before a magistrate shall be added to costs assessed in the district court, and costs assessed in the district court shall be added to costs assessed in the superior court, except that the fee for the Law-Enforcement Officers' Benefit and Retirement Fund and the Sheriffs' Supplemental Pension Fund and the fee for pretrial release services shall be assessed only once in each case. No superior court costs shall be assessed against a defendant who gives notice of appeal from the district court but withdraws it prior to the expiration of the 10-day period for entering notice of appeal. When a case is reversed on appeal, the defendant shall not be liable for costs, and the State shall be liable for the cost of printing records and briefs in the Appellate Division.

(c) Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-50.1(a), jail fees and cost of necessary trial transcripts shall be assessed as provided by law in addition to other costs set out in this section. Nothing in this section shall limit the power or discretion of the judge in imposing fines or forfeitures or ordering restitution.

(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Costs due the county;
- (2) Costs due the city;
- (3) Fines to the county school fund;
- (4) Sums in restitution prorated among the persons entitled thereto;
- (5) Costs due the State;
- (6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

- (1) Complete restitution has been received; or
- (2) When, in the opinion of the clerk, additional payments in restriction will not be collected; or
- (3) Upon the request of the person or persons entitled thereto; and
- (4) In any event, at least once each calendar year.

(e) Unless otherwise provided by law, the costs assessed pursuant to this section for criminal actions disposed of in the district court are also applicable to infractions disposed of in the district court. The costs assessed in superior court for criminal actions appealed from district court to superior court are also applicable to infractions appealed to superior court. If an infraction is disposed of in the superior court pursuant to G.S. 7A-271(d), costs applicable to the original charge are applicable to the infraction."

Section 4.2. Section 4.1 of this act becomes effective September 1, 1997, and applies to fees assessed or paid on or after that date.

#### **PART V. INCREASE FILING FEES**

Section 5.1. G.S. 55-1-22 reads as rewritten:

##### **"§ 55-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to ~~him~~ the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	<del>\$100.00</del> <u>\$125.00</u>
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation with amendment of articles	10.00 50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee

(16)	Application for reinstatement following administrative dissolution	<del>25.00</del>	<u>100.00</u>
(17)	Certificate of reinstatement		No fee
(18)	Certificate of judicial dissolution		No fee
(19)	Application for certificate of authority	<del>200.00</del>	<u>250.00</u>
(20)	Application for amended certificate of authority		50.00
(21)	Application for certificate of withdrawal		10.00
(22)	Certificate of revocation of authority to transact business		No fee
(23)	Annual report	<del>10.00</del>	<u>20.00</u>
(24)	Articles of correction		10.00
(25)	Application for certificate of existence or authorization		5.00
(26)	Any other document required or permitted to be filed by this Chapter		10.00.

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Five dollars (\$5.00) for the certificate."

Section 5.2. G.S. 55A-1-22 reads as rewritten:

**"§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	<del>\$50.00</del> <u>\$60.00</u>
(2)	Application for reserved name	\$10.00
(3)	Notice of transfer of reserved name	\$10.00
(4)	Application for registered name	\$10.00
(5)	Application for renewal of registered name	\$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	\$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	\$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or	

	registered office or both	\$ 5.00
(10)	Amendment of articles of incorporation	\$25.00
(11)	Restated articles of incorporation without amendment of articles	\$10.00
(12)	Restated articles of incorporation with amendment of articles	\$25.00
(13)	Articles of merger	\$25.00
(14)	Articles of dissolution	\$15.00
(15)	Articles of revocation of dissolution	\$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	<del>\$25.00</del> <u>\$100.00</u>
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	<del>\$100.00</del> <u>\$125.00</u>
(21)	Application for amended certificate of authority	\$25.00
(22)	Application for certificate of withdrawal	\$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	\$ 5.00
(24a)	Designation of Principal Office Address	\$ 5.00
(25)	Articles of correction	\$10.00
(26)	Application for certificate of existence or authorization	\$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	\$10.00."

Section 5.3. G.S. 57C-1-22 reads as rewritten:

**"§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
(1)	Articles of organization	<del>\$100.00</del> <u>\$125.00</u>
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00



(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	<u>Application for reinstatement following administrative dissolution</u>	<u>100.00</u>
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	<del>200.00</del> <u>250.00</u>
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00.

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Five dollars (\$5.00) for the certificate."

Section 5.4. G.S. 25-9-403(5) reads as rewritten:

"(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement is ~~eight dollars (\$8.00)~~fifteen dollars (\$15.00)."

Section 5.5. G.S. 25-9-405 reads as rewritten:

**"§ 25-9-405. Assignment of security interest; duties of filing officer; fees.**

- (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in G.S. 25-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment is ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00).
- (2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and also the most current file number if it has been continued and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the Uniform Commercial Code index of the financing statement, and in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, he shall index in the real estate index the assignment under the name of the assignor as grantor and, to the extent that the law of this State provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment is ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00). Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State other than this Chapter.
- (3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 5.6. G.S. 25-9-406 reads as rewritten:

**"§ 25-9-406. Release of collateral; duties of filing officer; fees.**

A secured party of record may, by his signed statement, release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient

if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release is ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00)."

Section 5.7. G.S. 25-9-407 reads as rewritten:

**"§ 25-9-407. Information from filing officer.**

- (1) If the person filing any financing statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.
- (2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00). Where the Uniform Commercial Code index has been automated, the filing officer shall issue a computer printout of the index entries for a particular debtor for a fee of ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar (\$1.00) per page."

Section 5.8. The amendment to G.S. 55-1-22(a)(23), made by Section 5.1 of this act, becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997. The remaining changes made by Section 5.1 of this act become effective September 1, 1997. Sections 5.2 and 5.3 of this act become effective September 1, 1997. Sections 5.4 through 5.7 of this act become effective September 1, 1997.

**PART VI. CORPORATE ANNUAL REPORTS TO BE FILED WITH THE DEPARTMENT OF REVENUE**

Section 6.1. G.S. 55-16-22 reads as rewritten:

**"§ 55-16-22. Annual report for ~~Secretary of State~~ report.**

~~(a) Each~~ Except as provided in subsections (a1) and (a2) of this section, each domestic corporation ~~except those governed by Chapter 55B,~~ and each foreign corporation authorized to transact business in this State, ~~State shall deliver to the Secretary of State for filing an annual report that sets forth:~~ an annual report to the Secretary of Revenue.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The annual report shall set forth all of the following:

- (1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.
- (3) The address and telephone number of its principal ~~office;~~ office.
- (4) The names, titles, and business addresses of its principal ~~officers;~~ officers.
- ~~(4a) The names and business addresses of its directors; and~~
- (5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports. An annual report required to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign

corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

Section 6.2. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for~~: for the following:

- (1) An application for a certificate of ~~existence~~; existence.
- (2) A foreign corporation's application for a certificate of authority to transact business in this ~~State~~; State.
- (3) A foreign corporation's application for a certificate of ~~withdrawal~~; and withdrawal.
- (4) ~~The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 6.3. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 either has been delivered to the Secretary of ~~State~~; State or is not delinquent;"

Section 6.4. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due~~; is delinquent in delivering its annual report;"

Section 6.5. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due~~; is delinquent in delivering its annual report;"

Section 6.6. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered ~~to the Secretary of State under as required by~~ G.S. 55-16-22."

Section 6.7. G.S. 57C-2-23 reads as rewritten:

**"§ 57C-2-23. Annual report for Secretary of State.**

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of

State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets ~~forth~~ forth all of the following:

- (1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized~~; organized.
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or ~~both~~; both.
- (3) The address and telephone number of its principal ~~office~~; office.
- (4) The names and business addresses of its ~~managers~~; and managers.
- (5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) ~~The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports. by the fifteenth day of the fourth month following the close of the limited liability company's fiscal year.~~

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

Section 6.8. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State pursuant to G.S. 57C-2-23 as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 6.9. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. — This Article applies to Subchapters I, V, and VIII of this Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 6.10. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-256.1. Corporate annual report.**

A corporation that files its annual report with the Secretary must pay the amount provided in G.S. 55-1-22 when it files the report. Amounts collected under this section shall be credited to the General Fund as tax revenue. The Secretary must transmit an annual report filed with the Secretary in accordance with G.S. 55-16-22 to the Secretary of State."

Section 6.11. G.S. 105-259 reads as rewritten:

**"§ 105-259. Secrecy required of officials; penalty for violation.**

(a) Definitions. — The following definitions apply in this section:

- (1) Employee or officer. — The term includes a former employee, a former officer, and a current or former member of a State board or commission.
- (2) Tax information. — Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:
  - a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.
  - b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.
  - c. Information on whether a taxpayer has filed a tax return or a tax report.
  - d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified or (ii) identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. — An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (1) To comply with a court order or a law.
- (2) Review by the Attorney General or a representative of the Attorney General.
- (3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state,

or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

- (4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.
- (5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.
- (6) To sort, process, or deliver tax information on behalf of the Department of Revenue.
- (6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105- 164.14(f).
- (7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.
- (8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.
- (9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.
- (10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.
- (11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.
- (11a) To provide a copy of a return to the taxpayer who filed the return.
- (11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.
- (11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.
- (12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.
- (13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for



statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

- (14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.
- (15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:
  - a. The North Carolina Alcoholic Beverage Control Commission.
  - b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
  - c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
- (16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.
- (17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.
- (18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.
- (19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Section 6.12. Section 6.11 of this act becomes effective September 1, 1997. The remainder of this Part becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of Revenue and to fiscal years ending on or after

December 31, 1997, in the case of corporations and limited liability companies required to file annual reports with the Secretary of State.

Annual reports delivered to either the Secretary of State or the Secretary of Revenue after December 31, 1997, but before January 1, 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of reports erroneously filed with the Secretary of State, and the Secretary of Revenue shall notify the Secretary of State of reports erroneously filed with the Secretary of Revenue.

#### **PART VII. EFFECTIVE DATES**

Section 7.1. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of August, 1997.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 2:15 p.m. this 4th day of September, 1997