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MEAN BUSINESS

Legal Guide to Doing Business in North Carolina

February 2006 Edition



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Dear Legal Guide Reader:

This Legal Guide to Doing Business in North Carolina provides an overview of the rules and regulations applicable to companies with business facilities in North Carolina, U.S.A.

North Carolina is a global, high-tech destination and a leading area in the United States for business start-ups, relocations and expansions. Once heavily dependent upon farming and the manufacture of tobacco, textile and furniture products, the state has transformed itself in recent years into a highly diversified manufacturing, financial services and technology-based economy. The three largest metropolitan areas of the state are the Research Triangle of Raleigh (State Capital), Durham and Chapel Hill; Metrolina (Charlotte); and the Piedmont Triad of Winston Salem, Greensboro and High Point.

Womble Carlyle Sandridge & Rice, PLLC, was founded in Winston-Salem in 1876 and has grown steadily with the region. Today, the firm comprises more than 500 lawyers in offices in Charlotte, Greensboro, Raleigh, Research Triangle Park and Winston-Salem, North Carolina; as well as in Atlanta, Georgia; Greenville, South Carolina; Tysons Corner, Virginia; and Washington, DC. As Womble Carlyle has grown, our practice increasingly has become national and international in scope. The firm represents numerous international corporations that have established operations in the United States, corporations involved in multi-district litigation across the country and U.S. companies doing business abroad. Our clients include businesses, as well as nonprofits, in such areas as manufacturing, transportation, telecommunications, energy, technology, financial services, health care, life sciences, government and education. Womble Carlyle is the North Carolina member of Lex Mundi, a global association of independent law firms, and as such has access to the offices and services of over 17,000 lawyers at more than 160 law firms to better serve our clients.

The firm considers technology and the benefits it offers an integral part of the legal services we provide. We use computer and information technology in support of large-case litigation, as well as the management of complex corporate transactions. We often develop new software applications to meet the specific needs of clients. An integrated communications network permits the allocation of resources among all of our offices and enables us to establish direct, secure links with clients and their legal departments, enhancing the responsiveness and efficiency of the services we provide.

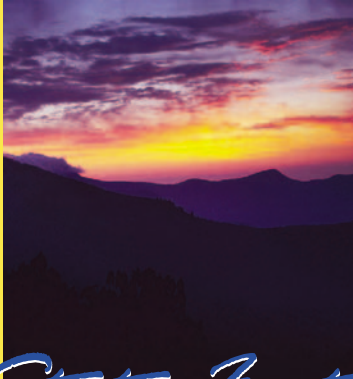
If you would like to contact the firm, one of the following individuals can either answer your questions or put you in touch with the appropriate person:

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We hope you will find this guide interesting and informative.

Very truly yours,

Keith W. Vaughan
Chair, Firm Management Committee



State Facts

Population: 8,541, 221
(11th in country)

Size: 52,669 square miles
(28th in country)

High school graduates 78.1%

Bachelor's degree or higher 22.5%

Median household income \$39,184

Homeownership rate 69.4%

Median value of homes \$108,300

Nickname: Tar Heel State—the origin is clothed in mystery, but it probably evolved from the fact that during the Colonial period, the colony's chief exports were tar, pitch and turpentine.

Origin of Name: North Carolina is named in honor of King Charles I of England, from the Latin "Carolus."

Song: "The Old North State"

Motto: Esse Quam Videri
(To be rather than to seem)

State Reptile: Eastern Box Turtle

State Bird: Cardinal

State Flower: Dogwood

State Rock: Granite

State Shell: Scotch Bonnet

State Stone: Emerald

State Tree: Pine

State Vegetable: Sweet Potato

Introduction

Geographic Description

North Carolina is located in the southeastern United States, extending 500 miles inland from the Atlantic Ocean. The state is geographically divided into three regions: the mountains, the Piedmont, and the coastal plains. The three largest urban areas are the Metrolina Area (Charlotte), the Research Triangle (Raleigh, Durham and Chapel Hill), and the Piedmont Triad (Winston Salem, Greensboro and High Point). North Carolina's population is more than 8.5 million, according to a 2004 report by the Office of State Budget and Management and the Office of the Governor.

Investment Climate

North Carolina offers a favorable business climate, with reasonable wage rates and taxes. The state has consistently earned the number one spot in the Top Business Climate rankings by *Site Selection* magazine. Other factors contributing to the state's business attraction are an excellent transportation system, strong motor freight and railroad services, two deep-water port facilities, and a number of major airports, two of which (Raleigh-Durham and Charlotte-Douglas) provide non-stop service to Europe.

North Carolina has one of the largest civilian labor forces in the nation, totaling over 4.3 million workers in 2005. North Carolina workers and management enjoy a very positive relationship. Work stoppages resulting from labor disputes are among the lowest in the nation. North Carolina's right to work law guarantees each worker the right to decide, without coercion, whether to join a union. As a result, the private sector unionization rate in North Carolina is extremely low.

North Carolina offers unique private sector resources. The state is home to three of the nation's largest financial institutions as well as numerous smaller banks. North Carolina's financial institutions provide sophisticated domestic and international banking services, including foreign currency exchange, multi-currency loans, trade financing and cash management. North Carolina's larger banks have operations in Europe, Asia and South America.

Womble Carlyle works closely with the Department of Commerce, North Carolina's leading economic development agency, and other public and private economic development partnerships to assist businesses in all phases of site location and to provide ongoing support.

Educational Institutions

North Carolina has long placed the education of its citizens at the head of its list of priorities. The nation's first state-supported college, now the University of North Carolina at Chapel Hill, opened its doors over two hundred years ago. Since that time, the University has grown to a 16-campus system that covers the state. The state also has a system of 58 technical colleges that work closely with the business community to provide tailored technical education and job training to ensure a high level of skill and productivity in the workforce. Additionally, the state is home to 36 independent colleges and universities, including many nationally recognized institutions such as Duke University, Davidson College and Wake Forest University.



Coast

Warmed by the Gulf Stream, the North Carolina Coast is a sunny place filled with pristine beaches, giant sand dunes (including Jockey's Ridge, the highest along the East Coast) and wetlands filled with wildlife and a variety of plants. The defining characteristic of the area is the Outer Banks, a chain of fragile barrier islands—130 miles of unspoiled coastline surrounded by 900 square miles of water.

The area is also full of history, dating back to the 16th century, when the first English settlement was built—and then vanished. There are sites from pre-Revolutionary War Days through the Civil War, not to mention many historic lighthouses (including the Cape Hatteras Lighthouse, which at 208 feet is the tallest brick lighthouse in the nation). The city of Wilmington is a major U.S. seaport. And in 1903, the Wright Brothers ushered in the era of flight at Kitty Hawk. The average annual temperature here is 63 degrees. The growing season lasts 295 days.

Business Entities

Corporations

State of Incorporation

The North Carolina Business Corporation Act was substantially revised and modernized in 1990. As a result, a corporation having its principal facilities in North Carolina will often find it convenient and efficient to incorporate under the laws of North Carolina.

Corporate Formation.

A North Carolina corporation may be formed with a minimum of formality. Articles of Incorporation must be signed by one or more incorporators (generally, one member of the assisting law firm) and filed with the State of North Carolina. A filing fee of \$125 is required to be paid to the State. If the members of the initial Board of Directors are not named in the Articles of Incorporation, the incorporator elects the initial Board. Thereafter, the incorporator has no function, and the Board of Directors adopts bylaws and conducts other organizational formalities.

Articles of Incorporation.

The Articles of Incorporation are a matter of public record. They must specify the name of the corporation, the initial registered agent and registered office, name and address of each incorporator, the number of authorized shares and the designation of any classes of shares and their relative rights. Other provisions may be included, such as the names and addresses of the initial directors, limitations on the liability of directors, reservation of preemptive rights, and granting of cumulative voting. Following the issuance of shares, substantive amendments to the Articles may be made only with shareholder approval.

Name

The corporate name must contain the word "corporation", "incorporated", "company" or "limited", or an abbreviation of one of these words, and the name must be distinguishable from names of other entities doing business in North Carolina.

Bylaws

The Bylaws are not a matter of public record. The Bylaws will contain detailed provisions for governance of the corporation, dealing with such matters as meetings of shareholders, meetings of directors, election and authority of officers, and indemnification of directors and officers. The Bylaws may be amended by the directors except for certain specified amendments requiring shareholder approval. These specified amendments generally deal with specialized voting requirements or limits on the powers of the Board of Directors.

Share Capital

Shares of capital stock may be issued for any consideration deemed sufficient by the Board, including services performed or to be performed, or promissory notes. The number of authorized shares specified in the Articles of Incorporation limits the number of shares which may be issued. There is no obligation for a corporation to issue all authorized shares, and there is no obligation on incorporators to put capital into a corporation except to the extent they may contractually obligate themselves to do so. A corporation may issue two or more classes of shares having different rights and preferences.

Meetings of Shareholders and Directors

North Carolina law provides for annual meetings and special meetings of shareholders. Shareholders may also act by unanimous written consent in lieu of meeting. Shareholders may act by written consent of less than all shareholders entitled to vote in certain circumstances involving non-public corporations. Shareholders elect the Board of Directors at the

annual shareholder meeting. The Board of Directors, which may consist of one or more directors, elects officers and determines the general business direction and policies of the corporation. Directors need not be citizens or residents of the State of North Carolina or of the United States. Directors may act by unanimous written consent in lieu of meeting. Board meetings may also be conducted by any means by which the directors may simultaneously hear one another, which would include telephone and video-conferences. North Carolina has rules requiring notice of shareholder and director meetings and governing the conduct of such meetings which are similar to those of most states.

Authority of Shareholders, Directors and Officers

The shareholders must vote on certain fundamental matters, such as mergers, substantive amendments to the Articles of Incorporation, certain Bylaw amendments, the sale of the business, and dissolution. Other matters are voted on by the Board, including most types of amendments to the Bylaws, payments of dividends, issuance of capital shares, corporate loans and other significant transactions outside the ordinary scope of the day-to-day business. The Board also elects officers. Officers consist usually of a President, one or more Vice Presidents, a Secretary, and a Treasurer. There may also be a Chairman of the Board, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer and one or more Assistant Secretaries and Assistant Treasurers. Two or more offices may be held by the same person, but no individual may act in more than one capacity where action of two or more officers is required. Officers need not be citizens or residents of the State of North Carolina, or of the United States, but if a business is located in North Carolina there should be a high-ranking corporate officer (e.g., an Executive Vice President or Vice President/General Manager) on location who has authority to take significant corporate actions in day to day operations.

Limited Liability

Corporate shareholders, as such, are generally not liable for corporate obligations unless they agree to guarantee such obligations or unless a court finds that the corporate form should be ignored because the shareholders acted outside the course of prudent business practice.

Annual Reports

Corporations organized in North Carolina or otherwise authorized to do business in North Carolina must file an annual report each year setting forth certain non-financial information, including the names and addresses of its key officers and directors.

Taxation

Corporations are taxable entities, which means that corporate earnings are subject to federal and North Carolina tax. Certain corporations can qualify to be taxed on a modified pass-through basis, but only if they have a maximum of one hundred shareholders, none of whom are non-U.S. persons, and all of whom must be individuals (or a special type of trust).

Partnerships

General Partnership

A general partnership is an association of two or more co-owners operating a business for profit. General partnerships in North Carolina and most states are governed by the provisions of the Uniform Partnership Act. Any lawful business may be conducted in the general partnership form.

There is no requirement of formality or registration in the formation of a general partnership, and the terms of the partnership agreement may be written or oral. Good practice dictates a written agreement if the partnership business is substantial. The partnership must register in each county in which it conducts business by filing a Certificate of Assumed Name with the register of deeds of the county. There is no limit on the number of partners that may exist in a general partnership. Both natural persons and business entities (including corporations) may be partners.

In a general partnership, all partners are jointly and severally liable for the acts, debts and obligations of the partnership. While each partner has a right in specific partnership property, the partners may act with respect to partnership property only in accordance with the Uniform Partnership Act and the terms of the partnership agreement. The partnership itself is not a taxable entity, and partnership income, gains and losses pass through to the partners for federal and North Carolina income tax purposes.

There are no publication, annual report, or other statutory reporting requirements for general partnerships.

Limited Partnership

A limited partnership is an association composed of one or more general partners with unlimited liability and one or more limited partners who are generally not liable for obligations of the partnership. Limited partnerships in North Carolina and most states are

governed by the provisions of the Revised Uniform Limited Partnership Act. The limited partnership form is used in North Carolina, primarily in connection with venture capital funds and other investment vehicles.

Limited partners have a passive investment and do not participate actively in management and control of the business of the limited partnership. Management of the partnership's activities is performed by the general partners. If a limited partner participates in the management of the partnership business in substantially the same manner as a general partner, the limited partner will have unlimited liability in the same manner as the general partner. Certain discrete activities for the partnership may be carried out by limited partners without affecting limited partner status, such as acting as a contractor, consultant or surety, or exercising voting rights on certain matters.

Unlike general partnerships, limited partnerships are subject to various registration and other formal requirements. To form a limited partnership, the partners must file a Certificate of Limited Partnership with the Secretary of State. The Certificate of Limited Partnership is similar to the Articles of Incorporation for a corporation and is required to contain the name of the limited partnership, the address of the registered office, the name of the registered agent, the date—if any—on which the limited partnership is to dissolve, the name and address of each general partner, and the address where the limited partnership's records are kept.

A limited partnership organized outside of North Carolina must be registered with the Secretary of State before doing business in North Carolina. A foreign limited partnership which fails to register will be liable in an amount equal to all fees and taxes which would have been imposed upon the partnership if it had registered, plus interest and penalties. The registration application must set forth the name and address of a registered agent for service of process within North Carolina, as well as certain other required information.

The name of a limited partnership is subject to name clearance procedures similar to corporations. A name may not be registered unless it is sufficiently unique to permit separate indexing in the limited partnership records. The limited partnership name may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner. Further, the name of the limited partnership must contain the words "limited partnership", the abbreviation "L.P." or "LP" or the combination "Ltd. partnership".

Subject to the terms of the partnership agreement, a limited partnership may be dissolved upon the written consent of all partners or pursuant to entry of a decree of judicial dissolution.

Assignment of limited partnership interests is permissible unless restricted by the partnership agreement. A partnership interest is recognized as a security, and thus transfers and sales of limited partnership interests are subject to securities laws restrictions.

Limited Liability Companies

The North Carolina Limited Liability Corporation Act was enacted in 1993. Limited liability companies ("LLCs") are an increasingly popular form of business organization in North Carolina. The popularity of the LLC results primarily from its combination of the limited liability characteristics of a corporation with the flow-through tax characteristics of a partnership. Owners of interests in an LLC have the same limited personal liability as shareholders in a corporation, and profits of the business are not subject to "double" taxation and instead are only taxed once at the owner level. In the North Carolina LLC Act and for purposes of the following discussion, owners of interests in an LLC are referred to as "members" and the individuals responsible for the management of the LLC are referred to as "managers".

Formation

As with corporations, an LLC may be formed with relative ease in North Carolina. One or more persons may organize an LLC by filing articles of organization with the Secretary of State with a filing fee of \$125. The articles of organization must specify the name of the LLC, the latest date—if any—on which the LLC will dissolve, the address and name of each person executing the articles of organization, the street (and mailing address if the two are different) of the LLC's original registered office, the county in which the registered office is located, and the name of the LLC's registered agent. Unless all members of the LLC will be managers, the articles of organization must also contain a statement that members are not managers merely based on their member status. When the articles of organization are filed by the Secretary of State, the proposed organization becomes an LLC and the persons executing the articles of organization become its initial members.

Name

The name of the LLC must contain the words "limited liability company", the abbreviation "L.L.C." or "LLC", or the combination "Ltd. liability co.", "limited liability co.", or "Ltd. liability company". In addition, the name of the business must be distinguishable from the name of any other corporation, limited partnership or LLC recorded with the Secretary of State.

Membership

As stated above, the persons executing the articles of organization become the initial members of the LLC upon the filing of the articles of organization by the Secretary of State. A membership interest is personal property, but does not give a member an interest in specific LLC property. Once an LLC is formed, there are two ways a person may become a member. First, membership interests may be acquired directly from the LLC. In this case, the person purchasing the interest follows the process specified in the operating agreement of the LLC. If no process for the admission of new members is specified in the operating agreement, the unanimous consent of the current members is required for the admission of a new member. Alternately, a person may receive an interest in an LLC by transfer of the interest from another member. In this case, the assignee may become a member if the assignee himself consents and, unless otherwise specified in the articles of organization or operating agreement, the members of the LLC unanimously agree.

A person ceases to be a member of an LLC when that person voluntarily withdraws from membership, is removed in accordance with the articles of organization or the operating agreement, enters into certain bankruptcy proceedings, or, in the case of an individual, dies or is declared incompetent in a judicial proceeding. A withdrawing member is entitled to any distribution to which he is otherwise entitled under the operating agreement or the articles of organization. If there are no such provisions in the articles of organization or the operating agreement, however, the withdrawing member is entitled to the fair value of his interest in the LLC within a reasonable time based upon his rights to share in distributions from the LLC.

Managers

Unlike limited partners in a limited partnership, members of an LLC may actively participate in the management of the LLC without losing their limited liability status. Unless otherwise stated in the articles of organization, all members are managers of the LLC, along with any other person who is designated as a manager in a written operating agreement. If not otherwise specified in the articles of organization or the operating agreement, each manager has equal rights and authority in the management of an LLC. All management decisions require the approval of a majority of the managers unless otherwise specified in the articles of organization or operating agreement. The manager(s) of an LLC may delegate authority to persons other than the manager(s) to the extent allowed by the operating agreement. The North Carolina LLC Act permits great flexibility in the structure of the management of LLCs.

Contributions/Distributions

A member's contribution to capital may be in the form of any tangible or intangible property or benefit such as cash, services rendered, property, promissory notes, or any other binding obligation to contribute such items. The income, gain, loss, deduction, or credit of an LLC is allocated among its members, and classes of members, as specified in the operating agreement. If the operating agreement does not specify how such items are to be allocated, the allocations are made to the members in proportion to the agreed fair market value, as stated in the LLC records, of their individual contributions. Members are entitled to interim distributions as specified in the operating agreement or, in the absence of such provisions, as determined by the managers in proportion to the agreed value of the members' contributions. Unless otherwise stipulated in an operating agreement, a member has no right to receive or demand a distribution from an LLC in a form other than cash. Withdrawing members are entitled to the distributions discussed above.

Annual Reports

LLCs organized in North Carolina or otherwise authorized to transact business in North Carolina must file an annual report each year with the Secretary of State setting forth certain non-financial information, including the names and addresses of its manager(s) and its registered agent.

Foreign LLCs

A foreign LLC must obtain a certificate of authority from the Secretary of State in order to be authorized to conduct business in North Carolina. Foreign LLCs are governed by the laws of the state or other jurisdiction in which they are organized. Also, a foreign LLC may not be denied a certificate of authority because of any difference between the laws under which it is organized and the laws of North Carolina. Finally, a foreign LLC has the same, but no greater, rights and privileges, duties and limitations as a similar North Carolina-based LLC enjoys.

Sole Proprietorship

A sole proprietorship—an individual doing business for his own account—is the most informal form of business organization. A sole proprietorship may be formed without any expense or formality of organization whatsoever.

A sole proprietorship is not an entity distinct from its owner. Accordingly, the owner will be subject to unlimited liability with regard to the debts of the business. The sole proprietorship is the most widely used mode of business organization for small ventures with limited capital requirements and low growth expectations.

Joint Venture

In North Carolina, a joint venture is not a statutory form of organization. Joint ventures are created as a practical matter, however. These take the form of corporations with each joint venturer being a shareholder, limited liability companies with each joint venturer being a member or partnerships with each joint venturer being a partner. Thus, the formalities associated with the creation of a joint venture, and the regulation of the rights and activities of the parties, are the same as discussed above for corporations, limited liability companies or partnerships.

Additional Formalities

No matter what form of organization is selected, the business entity (other than a sole proprietorship) must obtain a federal taxpayer identification number, and local business permits or licenses may be required. Other decisions which must be made include, among others, means of providing for workers' compensation, types and extent of property and liability insurance coverage, and types of employee benefit plans and means of funding. If the business is to be conducted under an assumed name, the assumed name must be registered with the register of deeds in each county in North Carolina in which the business is conducted.

Alternative Means of Doing Business

Alternative means of doing business are available to foreign enterprises which desire to introduce products or services into the United States market without actually establishing a business location in the United States, or which merely desire to test the market prior to making a significant financial commitment. Such enterprises frequently enter the United States market through agents or distributors. The following discussion outlines these alternative means of doing business.

Sales Representatives

A sales representative is an individual, corporation, LLC or partnership that solicits orders for another enterprise (the "supplier"), but which does not have authority to accept orders, set prices, negotiate terms and conditions of sale, or otherwise to bind the supplier. The sales representative does not purchase for its own account or for resale. The sales representative can act as an agent to accept offers and enter into binding contracts on behalf of the supplier, but only with express authority to do so. The sales representative usually does not warehouse or distribute any products. Customer orders are accepted by the supplier and then shipped directly to the customer.

Generally, the sales representative enters into a contract with the supplier providing a formula for compensation and designating a sales territory as exclusive or non-exclusive. Compensation is commonly a commission calculated as a percentage of the net sales price of goods shipped, although some representatives receive a fixed salary or a combination of salary and commission. Commissions are regulated by a statute in North Carolina that requires all outstanding commissions to be paid within thirty days after the effective date of termination of the sales representative for any reason other than malfeasance by the sales representative. The legal relationship between the sales representative and the supplier is also governed by the common law and other applicable state and federal laws.

The engagement by a supplier of a sales representative is usually structured so that the sales representative is an independent contractor rather than an employee. This structure minimizes the exposure of the supplier to liability for taxes, direct liability for negligent acts by the sales representative, compliance with labor laws and withholding requirements.

Distributors

A distributor is an individual, corporation, LLC or partnership that purchases for its own account for resale within a designated territory.

The distributor normally imports and clears the goods through United States customs, and then stores the goods until they are sold and delivered to the purchaser. Distributors are compensated by the profit derived from resales, and they assume the economic risks of purchasing and reselling the goods.

A distributor is generally independent and the amount of control which can be exerted by the supplier is limited. For example, state and federal antitrust laws may limit the ability of the supplier to control prices charged by the distributor.

Franchising

Franchising is a flexible method of distribution of goods and services whereby the franchisee operates under the trademark of another. Franchising is a widely used business technique in the United States, and approximately one-third of all retail sales in the United States are made through franchised outlets. Franchises range from simple seller-customer arrangements to businesses in which the franchisor outfits the franchisee with a complete sales outlet to operate a business under the franchisor's trademark.

There are two different franchise models: product franchises and business format franchises. In a product franchise, the franchisor manufactures (or contracts with another to manufacture for its account) products subject to the terms of the franchise relationship. Examples include soft drink bottling operations and specialty merchandise retail chains. In a business format franchise, the franchisor does not manufacture a product, but licenses a bundle of intellectual property rights that includes the use of a trademark, marketing strategy and method of operation, and may involve the lease of premises, the purchase of supplies and the payment of royalties pursuant to a licensing agreement. Examples include fast-food restaurants, dry-cleaning outlets and hotels.

Franchisors are subject to regulations enacted by the Federal Trade Commission. Unlike many states, North Carolina has not enacted a franchise law. However, any franchising scheme should be reviewed in light of the North Carolina Business Opportunity Sales Act, a registration and disclosure law which may be applicable depending on the structure of the franchise offer.

Licensing

The United States has a highly developed system of patent, technology and trademark licensing. Foreign businesses frequently seek a United States licensee as a means of building market share with minimal capital requirements. A licensee may be interested in licensing to acquire needed technology or to benefit from the licensor's good reputation.

Under the licensing option, the licensor has a range of separate rights which may be offered to the licensee, as follows:

- The right to make
- The right to use
- The right to disclose by publication or by sublicense
- The right to lease
- The right to sell

Typically, a foreign licensor enters into a written license agreement with the licensee. License agreements must comply with state and federal antitrust laws designed to minimize the creation of a monopoly. License agreements need not be recorded in the United States Patent and Trademark Office (the "USPTO") or the United States Copyright Office (the "Copyright Office") unless the license is exclusive. An assignment, grant, exclusive license or conveyance of a patent or trademark itself, however, must be recorded with the USPTO to be effective. Similarly, an assignment, grant, exclusive license or conveyance of a copyright must be recorded with the Copyright Office to be effective.

Licensors are generally compensated through the payment of royalties or fees, the amounts of which are negotiable.



Piedmont

Covering nearly one half of North Carolina in the central part of the state, the Piedmont is an area of gently rolling foothills with the occasional boulder or unexpected rock outcropping. The Piedmont region boasts of one of the most dynamic economies in the United States and is home to the state's largest cities and biggest financial institutions. Renowned research universities, shopping meccas, top golf courses and abundant historic sites are also part of the makeup of the Piedmont.

Although the area enjoys four distinct seasons, temperatures are mild year round. The average wintertime temperature is about 42 degrees. In summer, it's 77 degrees. The area also enjoys sunshine for about 210 days a year.

Federal Trade Regulation

The Sherman and Clayton Acts

These Acts prohibit contracts, combinations or conspiracies in restraint of trade, as well as certain monopolies and monopolistic practices.

Sherman Act, Section 1: This Act prohibits, among other things, the following agreements between competitors as illegal horizontal restraints of trade:

- Agreements to fix prices. The prohibition against price-fixing is the most serious and most strictly enforced rule under the statute. It prohibits agreements among competitors which affect the price at which a product or service is sold. The agreement can be informal and indirect; mere acquiescence to a price-fixing scheme may make one liable for price-fixing;
- agreements to allocate territories or customers;
- agreements to boycott third parties;
- agreements to restrict output.

The following practices which typically occur between a manufacturer and its distributors or customers are held, under certain circumstances, to be illegal vertical restraints of trade:

- Attempts by manufacturers or distributors to engage in resale price maintenance, i.e., an agreement between a seller and its customers such as dealers, distributors, wholesalers, to maintain the resale price of the seller's goods at a certain level;
- attempts to tie the sale of two distinct products. A tying arrangement exists when a seller agrees to sell a product or service (the "tying" product) only if the buyer also purchases a different product or service (the "tied" product) or agrees not to purchase that product or service from any other supplier. The essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all or may have preferred to purchase elsewhere on different terms;
- attempts by a seller to require exclusive dealing or requirements contracts;
- attempts by a manufacturer to limit dealer territories or customers;
- attempts to sell only on the condition that the purchaser not use or deal in the goods of a competitor of the seller.

Sherman Act, Section 2/Clayton Act, Section 7: These provisions prohibit monopolization and attempts or conspiracies to monopolize. Among other things, courts have found predatory pricing to be evidence of intent to monopolize. Predatory pricing is pricing below some appropriate measure of cost with the purpose of profiting later by destroying competitors. There is substantial legal debate about the definition of "cost". The Acts also forbid mergers and acquisitions which might tend to create monopolies or to lessen competition.

The Robinson Patman Act

This Act prohibits price discrimination between competing customers of the seller's products where such discrimination might lessen competition among (i) the seller and its competitors or (ii) the favored customer and its competitors.

The Federal Trade Commission Act

This Act bars unfair methods of competition and unfair and deceptive acts or practices. Among other things, courts have found such acts to include:

- false and misleading advertising;
- false disparagement of competitors or their products; and
- commercial bribery.

Penalties for Violations

Criminal violations of the antitrust laws can bring felony prison sentences of up to three years and fines of up to \$10 million for corporations and \$350,000 for individuals. Civil actions under the antitrust laws can allow injured firms and individuals to recover treble damages and attorney's fees.



Mountains

The Appalachian mountain chain runs through the western part of the state, forming the lush landscape of the region. The Great Smoky Mountains in southwestern North Carolina are one of the country's top natural destinations, and visitors can enjoy 250 miles of the world-famous Blue Ridge Parkway winding through North Carolina's mountains. Mount Mitchell is the highest peak in the state, and at 6,684 feet, it is also the tallest mountain in the eastern United States.

Two-thirds of North Carolina's mountains are covered with hardwood forests, and in autumn, the over 120 species of trees put on a brilliant display of color. Some areas of the region see over 30 inches of snow a year, so skiing, snowboarding and other winter sports are popular activities. Summers are cool and refreshing with low humidity.

State Trade Regulation

State Antitrust Law In North Carolina

North Carolina has specific antitrust statutes similar to the federal statutes. A business operating in North Carolina, or whose operations affect North Carolina, is subject to those statutes and must recognize that conduct detrimental to the competitive process may violate those antitrust laws. Because the federal Sherman Act and the principal North Carolina statutes are identical, most practices which violate the federal law will violate the state laws as well.

North Carolina statutes authorize the North Carolina Attorney General to criminally prosecute any violation of North Carolina's antitrust and unfair competition laws. In addition, the Attorney General can bring civil actions to enforce North Carolina's laws, including actions for injunction. Finally, the Attorney General can seek to enforce some federal antitrust statutes. The Attorney General has an active Consumer Protection/Antitrust Division which has been willing to bring criminal and civil actions based on novel theories. Any private individual or business injured by an antitrust violation may bring a civil action for monetary damages and, in some cases, injunction.

Unfair and Deceptive Trade Practices/Consumer Protection

North Carolina law states that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” While the statute does not define the terms “unfair” and “deceptive”, the North Carolina courts have fashioned exceptionally broad definitions for both terms. In recent years, the North Carolina Attorney General has aggressively enforced this statute. By statute, the Attorney General can seek injunctive relief and substantial civil penalties. North Carolina also allows private parties to file suit, and any person (not only consumers) injured by an unfair or deceptive trade practice may recover treble damages.

Other North Carolina statutes concern specific unfair and deceptive trade practices, including sending unsolicited merchandise, unfair and deceptive trade names, automatic dialing and recorded message players, work at home solicitations, actions by debt collectors, sales of motor fuel, insurance practices, and retail installment sales.

Regulation of Franchises

North Carolina does not regulate the sale of franchises, as such. However, the Business Opportunity Sales Act is broadly written to cover the sale of many franchises. A “business opportunity” is the sale or lease of products, equipment, supplies or services for the purpose of enabling the purchaser to start a business and in which the seller represents that: (i) the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices; or (ii) the seller may, in the ordinary course of business, purchase any or all products produced by the purchaser; or (iii) the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity; or (iv) the seller will provide a sales program or marketing plan to the purchaser that will enable the purchaser to derive income from the business opportunity which exceeds the price paid.

Most, if not all, franchises involve a sales or marketing plan, which may include such topics as design and layout of store, uniforms for employees, signs and advertising that mention the franchised name, store hours, products sold, and sales techniques. Frequently, franchisors discuss potential sales or profits the franchisee may make. Accordingly, many franchises fall within the definition of “business opportunity” under North Carolina law.

North Carolina's Business Opportunity Sales Act is a "registration and disclosure law". The Act requires registration of business opportunities prior to their offer, as well as disclosure of certain prescribed information which must be delivered to prospective franchisees within established periods of time before sale. The Act provides certain limited exemptions from its registration requirements.

Covenants Not to Compete

North Carolina courts will enforce covenants not to compete in employment contracts. In order to be enforceable, such covenants must be (i) in writing, (ii) entered into at the time and as part of the contract of employment, (iii) based upon reasonable consideration, (iv) reasonable both as to time and territory, and (v) not against public policy. In order for a new covenant with an existing employee to be enforceable, there must be additional consideration to the employee in the form of increased salary, promotion, etc. In general, the North Carolina courts have been hostile to the enforcement of such covenants, particularly if they are viewed as unduly broad with respect to time or territory. The employer must show that the protection sought is limited to the protection of its legitimate interests, those recognized interests being either protection against the improper disclosure of confidential business information or securing the employer's customer base. In cases where the covenant's duration or territory is found overbroad, the courts will typically refuse to enforce the covenant rather than rewrite the covenant in a more reasonable manner. The courts have been more willing to enforce broad agreements not to compete in connection with the sale of a business.

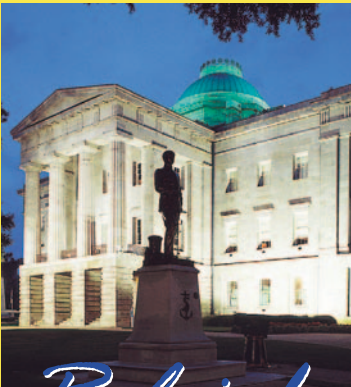
NC Fast Facts



Wilmington



County	New Hanover
High school graduates	83.0%
Bachelor's degree or higher	31.0%
Median household income	\$31,099
Homeownership rate	57.5%
Median value of homes	\$128,400
Land area	41 square miles



Raleigh



State Capital	
Nickname	"The City of Oaks"
Population	316,802
High school graduates	88.5%
Bachelor's degree or higher	44.9%
Median household income	\$46,612
Homeownership rate	51.6%
Median value of homes	\$156,000
Land area	115 square miles

Taxation

Federal Income Taxation

Federal income taxes are not affected by where a business chooses to locate in the United States. There are various methods of controlling the amount of the U.S. income tax payable, and many of these apply to domestic corporations as well as foreign-owned corporations or foreign individuals.

Personal Income Tax

Individuals are subject to U.S. income tax on their worldwide income if they are U.S. citizens or resident aliens. Resident alien status is determined under a set of complex rules. Any individual who is not a U.S. citizen, and who does not wish to be taxed as such, and who plans to spend a substantial amount of time in the United States should pay careful attention to these rules. Currently, the highest marginal U.S. individual Federal income tax rate is 35% for ordinary income and 15% for long-term capital gains. A nonresident alien generally is subject to tax on dividends from U.S. corporations, as discussed below.

Corporate Income Tax

If a foreign business chooses to operate in the United States through a corporation formed here, that U.S. corporation will be subject to U.S. Federal income taxation on its worldwide income. Dividends from that corporation to foreign shareholders will be subject to U.S. Federal income tax that will be withheld by the U.S. payor. The amount of that tax may be significantly reduced by treaty. U.S. branches of foreign businesses are taxed similarly to U.S. corporations owned by foreign shareholders. U.S. partnerships and limited liability companies withhold and pay the income tax applicable to foreign partners and members at U.S. rates.

State and Local Taxation

State and local taxes have become increasingly important for businesses, both in deciding where to locate a business in the United States, and for ongoing operational planning purposes. At the same time, some states—with North Carolina being a superlative example—have become increasingly aggressive in offering incentives and tax benefits to attract new businesses. Any foreign business desiring to locate in the United States should explore these benefits. North Carolina is a business-friendly environment for almost all purposes, and its tax structure has been established accordingly; however, North Carolina tax administrators have followed suit with the officials of many other states in taking (overly) aggressive enforcement positions. For all of these and many other reasons, state and local tax planning has become a critical part of the business equation.

North Carolina imposes a variety of taxes in various contexts, including income, franchise, sales/use, property, cigarette, motor fuel, gross receipts, real property transfer, insurance premium, utility/carrier, bank, unclaimed property, employment, tire, soft drink, appliance, retail chain, alcoholic beverage, forest product, and business license/occupation taxes. As a result of litigation by Womble Carlyle, North Carolina no longer imposes an intangible personal property tax, the North Carolina taxes that affect most businesses. A brief sampling of related economic development tax incentives is treated below.

Personal Income Tax

Generally speaking, North Carolina follows the Federal income tax treatment for state tax purposes, and North Carolina taxable income is calculated using Federal taxable income as its starting point. If an individual has income subject to Federal income tax, he or she may be subject to North Carolina income tax based upon part or full year residency in North Carolina, or based upon the receipt of income derived from (or deemed to have been

derived from) North Carolina sources. Thus, individuals owning stakes in businesses that transact business in North Carolina and operate as “pass-through” entities—e.g., partnerships, “S” corporations, and limited liability companies (LLCs) treated as partnerships for Federal tax purposes—may be subject to North Carolina personal income tax. Depending upon the situation, this income may be withheld by the company “at the source” prior to distribution to the individual, or the individual may have to remit the tax to North Carolina himself or herself. Currently, the highest marginal personal income tax rate is 8.25%. No local net income taxes are imposed in North Carolina.

Corporate Income Tax

If a “C” corporation has income subject to Federal income tax, it will be subject to North Carolina income tax if, and to the extent that, it “does business” in North Carolina. For most types of corporations, the extent to which a corporation “does business” in North Carolina is determined by application of a formula which takes into account the portion of the corporation's sales, property and payroll sourced to North Carolina, as compared to its aggregate sales, property, and payroll. The sales factor is double-weighted, with the result that businesses with material sales outside of North Carolina are “rewarded” with a lower North Carolina apportionment percentage. The fact that North Carolina does not impose a “throwback” rule is a further boon for most businesses. This means that sales of goods to customers, which are shipped to a state that does not tax those sales, are not “thrown back” to North Carolina for inclusion in the North Carolina corporate income tax apportionment formula. As a rare exception to the general rule that North Carolina income tax treatment follows the Federal income tax treatment, the filing of a consolidated corporate income tax return for an affiliated group is not permitted, but it may be required if income would be distorted in the absence of such a consolidation. Similarly, combined corporate income tax reporting for corporate affiliates is neither required nor permitted. Unlike some states, North Carolina does not impose a corporate-level tax upon “S” corporations, and also does not require the filing of a state-level “S” election. Currently, the corporate income tax rate is 6.9%. As previously stated, no local net income taxes are imposed in North Carolina.

Franchise Tax

In addition to the income tax, corporations (including, in this case, “S” corporations) pay a state franchise tax for the privilege of conducting business in the corporate form in North Carolina. While LLCs that are taxed as partnerships for Federal purposes are not subject to franchise tax per se, a corporate member owning a controlling stake in a limited liability company doing business in North Carolina is required to include its *pro rata* share of the limited liability company's North Carolina business in its own corporate franchise tax base. Partnerships are not subject to franchise tax, and whether a corporate partner of a partnership (in contrast to a corporate member of an LLC) doing business in North Carolina is itself subject to franchise tax may depend upon the facts. The franchise tax is imposed at the rate of 0.15% of whichever of the following has the greatest value: (i) capital stock/surplus/undivided profits; or (ii) 55% of the assessed value of tangible personal property and real property that is taxable in North Carolina; or (iii) 100% of the value of the actual investment in North Carolina tangible personal property. However, there is a minimum annual franchise tax of \$35.00.

Sales and Use Tax

Unless otherwise exempt, retail sales of tangible property (and certain taxable services) that are sourced to North Carolina are subject to a sales tax. There is a symmetric “use” tax that is designed to impose an identical tax upon use, storage, distribution, or consumption that occurs within North Carolina unless the transaction is otherwise exempt. As is the case in all other states imposing sales and use taxes, without planning, a “layering” of tax can occasionally occur. While North Carolina does not tax most services, absent careful attention to the manner in which deliverables are both delivered and documented, services may very well become part of the sales taxable base. There are dozens of sales and use tax exemptions (partial and full) that may apply to a given situation, including a full exemption for items purchased for resale, and a sizeable “partial” exemption for certain manufacturing and production machinery (1% tax, with a maximum of \$80 per article). In the absence of a full or partial exemption, sales or use tax would be imposed at the rate of 7% in almost every North Carolina jurisdiction, with a 7.5% rate applying in the Charlotte/Mecklenberg area, and an 8% rate applying for Manteo/Nag's Head/Dare. (North Carolina is unusual in having a nearly uniform sales tax rate.)

Property Tax

Local governments (cities and counties) in North Carolina support themselves principally by the property tax, which is imposed upon non-exempt real and tangible personal property that has a taxable situs with the applicable locality. As previously mentioned, North Carolina no longer imposes an intangible personal property tax. As with sales and use taxes, there are numerous exemptions from property tax: as one example, business inventories are not subject to the tangible personal property tax. Each city and county adopts a tax rate each year and applies that rate to the value of each taxpayer's taxable property to determine the taxpayer's property tax. The same rate generally applies to both real and tangible personal property. Because the rates vary from locality to locality, however, there is little that can be said about the amount of this tax generally; however, North Carolina's property tax rates

are generally considered to be low, probably due in no small part to the fact that the state actually pays for many “local” expenses that, in other states, are instead paid for by the local governments themselves.

Economic Development

North Carolina is consistently recognized as one of the top states in terms of economic development. The reasons for this are manifold, but include the availability and size of tax incentives and grants and its generally receptive business climate. As a result of litigation by Womble Carlyle, North Carolina's watershed tax incentive legislation, the William S. Lee Act, withstood constitutional challenge many years ago and has been put to good use ever since. A very brief list of North Carolina state and local tax incentives that may be available to businesses locating, expanding, or engaging in other qualifying activities in North Carolina (beyond the income, sales/use, and property tax features mentioned above) follows: (i) machinery and equipment investment credits; (ii) technology commercialization investment credits; (iii) research and development credits; (iv) job creation credits; (v) regional or national headquarters/administrative facility credits; (vi) “Development Zone” sur-credits; (vii) worker training credits; (viii) credits for wharfage (shipments through local ports); and (ix) the handsome Job Development Investment Grant (measured by state employment tax withholdings). Numerous other state and/or local tax incentives may apply depending upon the industry or other facts in question. There are a number of technical rules governing eligibility for and retention of economic development incentives in North Carolina. Businesses contemplating application for incentives should work closely with the North Carolina Department of Commerce and seek the guidance of legal counsel with expertise in this field.



Durham



Nickname	"The City of Medicine, USA"
Population	198,376
High school graduates	82.6%
Bachelor's degree or higher	41.8%
Median household income	\$41,160
Homeownership rate	48.9%
Median value of homes	\$126,100
Land area	95 square miles



Chapel Hill



County	Orange County
Population	49,301
High school graduates	94.3%
Bachelor's degree or higher	73.7%
Median household income	\$39,140
Homeownership rate	42.9%
Median value of homes	\$229,100
Land area	20 square miles

Labor and Employment

Immigration

With the globalization of world markets, employers located in the United States often seek to employ foreign personnel. A variety of permanent and temporary visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the United States employer and the foreign employer. Permanent residents are authorized to work where and for whom they wish. Temporary visa holders have authorization to remain in the United States for a temporary time and often the employment authorization is limited to specific employers, jobs, and even specific work sites. Further guidance on these issues is provided in detail by U.S. Citizenship and Immigration Services within the Department of Homeland Security.

Labor And Employment Statutes

Age Discrimination in Employment Act ("ADEA"): The ADEA forbids employment discrimination against any employee aged forty (40) or older based on that employee's age. The ADEA applies to employers engaged in interstate commerce who employ 20 or more employees.

Americans with Disabilities Act ("ADA"): The ADA proscribes employment discrimination against qualified individuals with a disability based on the existence of a disability, a record of a disability, or on the employer's perception that an employee is disabled. Furthermore, the Act requires that employers take reasonable steps to accommodate disabled individuals in the workplace unless such measures would constitute an undue hardship to an employer. This Act applies to employers engaged in interstate commerce who have fifteen or more employees.

Employee Polygraph Protection Act ("EPPA"): The EPPA greatly restricts polygraph testing of employees. The Act applies to all employers engaged in interstate commerce. Exempted are employers whose primary business purpose is running a security service or manufacturing, distributing or dispensing a controlled substance.

Equal Pay Act ("EPA"): The EPA, an amendment to the Fair Labor Standards Act, requires that male and female employees be paid the same when their jobs involve equal skills, effort and responsibility and are performed under similar working conditions in the same establishment. If the minimum wage provision of the FLSA is applicable to one's business, then the EPA is applicable as well.

Fair Labor Standards Act ("FLSA"): The FLSA establishes the minimum wage, overtime and child labor laws for employers engaged in industries affecting interstate commerce, regardless of the number of employees. Few employees are totally exempt from the statute, but coverage issues are complex and not capable of a short summary.

Family and Medical Leave Act ("FMLA"): The FMLA requires that eligible employees be allowed to take up to twelve weeks of unpaid leave per year for the birth or adoption of a child, or for the serious health condition of the employee or the spouse, parent or child of the employee. This Act applies to all employers engaged in commerce where the employer employs fifty or more employees.

Federal Contractors

Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations under Executive Order 11246, the Vocational Rehabilitation Act, and other orders and regulations. Certain federal contractors are also covered by the Drug Free Workplace Act.

Other Federal Regulations

Many employers operate in industries that are regulated by federal agencies. For example, the Department of Transportation requires employers to drug-test employees who drive motor vehicles of over 26,000 pounds. Employers in regulated industries must be aware of any requirements imposed by federal or state regulations.

National Labor Relations Act and Labor Management Reporting and Disclosure Act: These statutes set forth the guidelines governing labor management relations, as well as certain activities which are independent of the involvement of a labor organization. They apply to all employers who are engaged in any industry in or affecting interstate commerce, regardless of the number of employees. Employers who operate under the Railway Labor Act (generally, rail and air carriers) are not subject to these Acts, but have significantly different requirements under their own statutory scheme.

Occupational Safety and Health Act ("OSHA"): OSHA is the Act that instituted the mechanism for establishing and enforcing safety regulations in the workplace. It applies to all employers who are engaged in an industry affecting commerce, regardless of the number of employees. In North Carolina, federal OSHA standards apply, but there are additional requirements, as well. North Carolina OSHA enforcement is conducted by the State's Department of Labor.

Title VII of the Civil Rights Act of 1964 ("Title VII"): Title VII is the broad civil rights statute that forbids discrimination in hiring based on race, color, religion, gender and national origin. This prohibition extends to workplace harassment, including sexual harassment, as well as retaliation and pregnancy discrimination. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

Worker Adjustment Retraining and Notification Act ("WARN"): WARN requires employers to give sixty days' notice to their employees of plant closings or mass layoffs. This Act applies to all businesses that employ 100 or more employees, excluding part-time employees. However, the statute has additional limitations on coverage depending on the size of the job site affected and its proximity to other locations of the employer.

Immigration Reform and Control Act ("IRCA"): IRCA requires that employers, regardless of size, inspect and verify documentation establishing the identity and eligibility to work in the United States of every newly hired employee, and makes it unlawful to hire an alien who is ineligible for work in the United States. Employers are subject to significant fines and penalties for failure to comply with documentation requirements under IRCA, as well as for hiring unauthorized workers. IRCA also prohibits employers of four or more workers from discriminating against lawfully admitted aliens.

Fair Credit Reporting Act ("FCRA"): FCRA prescribes the extent to, and manner in which, employers may use credit information in making employment decisions. The FCRA imposes strict guidelines requiring employers to use such credit reports only for a permissible purpose, after disclosure to employment applicants or employees of the intent to seek and use credit information, and after obtaining the written consent of the employee/applicant. The disclosure/consent may not be made a part of the employer's application form. Additionally, employees/applicants must be notified of any adverse decision based in whole or in part upon credit information. Additional requirements apply to investigative consumer reports.

Employee Benefits

Employee Retirement Income Security Act of 1974 ("ERISA"): ERISA governs implementation and maintenance of most types of employee benefit plans, including most retirement programs, life and disability insurance programs, medical reimbursement plans, health care plans, and severance policies. ERISA sets out a detailed regulatory scheme mandating certain reporting and disclosure requirements, setting forth fiduciary obligations and, in most types of retirement plans, coverage, vesting and funding requirements. ERISA generally preempts state laws governing employee plans and arrangements.

Consolidated Omnibus Budget Reconciliation Act ("COBRA"): Under COBRA, group health plans are required to offer continuation of group health coverage to certain former employees and their covered dependents (known as "qualified beneficiaries") upon the occurrence of certain "qualifying events". COBRA generally provides a maximum continuation period of 18 months. In certain circumstances where a qualified beneficiary is disabled at any time during the first 60 days of COBRA coverage, the period can be extended to 29 months. Also, if certain qualifying events occur during the original 18 months of COBRA coverage, qualified beneficiaries become entitled to receive 36 months of continuation coverage. Employers may require electing qualified beneficiaries to pay the entire premium for COBRA coverage plus a 2% administrative charge. For disabled qualified beneficiaries, premiums may be increased after 18 months to 150% of the plan's total cost of coverage. COBRA contains very specific procedures for notifying qualified beneficiaries of their COBRA rights.

Health Insurance Portability and Accountability Act ("HIPAA"): HIPAA amended ERISA (and other federal statutes) in 1996 to establish limitations on the use of preexisting condition exclusions (so-called "portability" rules). HIPAA prevents group health

plans or health insurance issuers from imposing a preexisting condition exclusion of more than 12 months (18 months for late enrollees) for coverage of any condition that was present during the six-month period ending on the individual's enrollment date. In addition to various other provisions, HIPAA mandates that preexisting condition limitations generally may not be imposed upon newborns or adopted children under age 18, and may not apply to pregnancy. The preexisting condition exclusion period must be reduced by periods of "creditable coverage", generally defined as periods of continuous coverage the individual has under other health plans. HIPAA also imposes various other requirements on employers and group health plan providers and insurers, such as nondiscrimination and disclosure requirements, special enrollment rights, and special notice obligations.

The HIPAA privacy rules extend privacy protection to all types of "protected health information" held by "covered entities". Covered entities include health plans, health care clearinghouses, and health care providers. The HIPAA security rules impose requirements with respect to safeguarding and protecting the confidentiality, integrity and availability of electronic protected health information.

State Considerations

State Labor Laws

North Carolina remains an employment-at-will state, which means that an employee without a contract for a definite term may be discharged at any time for any reason that does not violate a statute. There is a judicially-created exception to the employment-at-will doctrine prohibiting discharge for a reason which violates public policy, and this exception has evolved substantially over time. The General Assembly has enacted the following statutes which govern labor and employment relationships within the state:

Controlled Substance Examination Regulations: This Act regulates the procedures for drug testing in the workplace. All employers in North Carolina are covered by this Act.

Discrimination Against Individuals for Lawful Use of Lawful Products During Non Working Hours: This statute forbids discrimination based on the use of lawful products, such as tobacco and alcohol, outside of the office. All employers in North Carolina are covered by this provision.

Discrimination Against Individuals with Sickle Cell or Hemoglobin C Trait: This statute prohibits employment discrimination against individuals with the sickle cell or hemoglobin C trait. All employers in North Carolina are covered by this provision.

Employment Security Act: This statute sets forth the rules governing the unemployment system in North Carolina. Employees who become involuntarily unemployed, yet are physically able and available to work, and cannot find employment through no fault of their own, are entitled to unemployment compensation benefits. These benefits are paid out of an Unemployment Insurance Fund administered by the state's Employment Security Commission, into which state employers pay taxes based on the number of employees and the employer's history of unemployment compensation liability.

Equal Employment Practices Act: This statute prohibits employment discrimination on the basis of race, sex, religion, national origin and age by employers with fifteen or more employees. The statute does not provide for an enforcement agency, private cause of action or remedies. However, it has been used to establish a public policy exception to the employment-at-will doctrine.

Occupational Safety and Health Act of North Carolina ("OSHANC"): OSHANC is the state equivalent of the federal OSHA statute. This covers all employers in North Carolina except for those employing domestic workers in the residence; mine workers covered under federal acts; maritime workers; workers covered by the Atomic Energy Act; and railroad workers covered under federal Acts.

Parental Leave: Employers must provide four hours of unpaid leave each year to an employee with children in school so the employee can attend his or her children's school-related functions.

Persons with Disabilities Protection Act: This statute, formerly known as the Handicapped Persons Protection Act, prohibits employment discrimination based on an individual's disability. It applies to employers with fifteen or more full time employees working within the state, and imposes similar duties to accommodate workers as the ADA. However, there are distinctions between the PDPA and the ADA, and careful reference to the statutory language is necessary.

Retaliatory Employment Discrimination Act: This Act provides a civil remedy for employees who assert certain claims in good faith and are fired or demoted for doing so. Protected actions include the filing of workers' compensation claims and reporting OSHANC violations. All employers in North Carolina are covered by this Act.

“Right to Work” Act: North Carolina is a “right to work” state that guarantees the right to work without regard to membership or nonmembership in a union. The Anti-Closed-Shop Act prohibits closed shop, union shop, maintenance of membership and compulsory checkoff contracts. Contracts between government and labor organizations concerning public employees are void. Strikes by public employees are prohibited.

Wage and Hour Act: The North Carolina Wage and Hour Act sets the minimum wage and maximum hour regulations for those North Carolina employers not covered by the FLSA. The Act also contains requirements for all North Carolina employers regarding the payment of wages, notification to employees of vacation, sick leave and other policies, and rules governing deductions from wages.

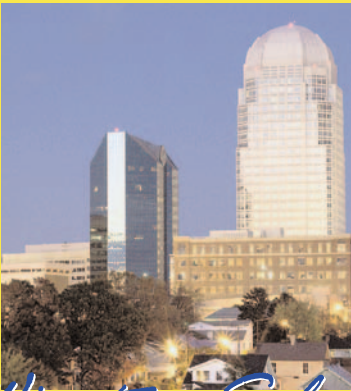
Workers' Compensation Law: The Workers' Compensation Act is meant to provide the exclusive remedy for employees injured on the job without regard to the fault of the employer. Employers who have three or more regular employees are subject to the Act, with certain exceptions. The Act specifies methods for reporting accidents and procedures for compensating employees. If agreement on compensation is not reached, either party may apply to the North Carolina Industrial Commission for a ruling.



Greensboro



Nickname	"The Gate City"
Population	229,110
High school graduates	84.3%
Bachelor's degree or higher	33.9%
Median household income	\$39,661
Homeownership rate	53.0%
Median value of homes	\$108,600
Land area	105 square miles



Winston-Salem



Nickname	"The City of the Arts"
Population	190,299
High school graduates	80.2%
Bachelor's degree or higher	30.3%
Median household income	\$37,006
Homeownership rate	55.8%
Median value of homes	\$102,200
Land area	109 square miles

Federal Considerations

Resource Conservation and Recovery Act ("RCRA"): RCRA's primary goal is to provide regulation of and control over the generation, transportation, storage, treatment and disposal of hazardous waste. The administration of RCRA has been "passed on" to a number of states by statute (including North Carolina through the Solid Waste Management Act) and, therefore, the states regulate most aspects of hazardous waste management within their borders.

By statute, the disposal of hazardous waste is prohibited except in accordance with a permit. Section 7003 of RCRA authorizes the United States Environmental Protection Agency ("EPA") to bring suit against any person or entity contributing to the handling, storage, treatment or disposal of a hazardous waste in a manner presenting an imminent and substantial endangerment to public health or the environment.

RCRA was amended by the Hazardous and Solid Waste Amendments of 1984, which added new requirements pertaining to groundwater contamination. Currently, a permit for a treatment, storage or disposal facility must detail required corrective action for any release of hazardous waste from any solid waste management unit, regardless of when the waste was placed on the site.

The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"): CERCLA, or "Superfund" as it is commonly called, was enacted in 1980 to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites. It also provides a vehicle for EPA to recover for damages to natural resources caused by hazardous substance releases. This statute has possibly generated more litigation and controversy since its inception than any other federal legislation.

CERCLA allows the government and others who incur cleanup costs to sue "potentially responsible parties" ("PRPs") for reimbursement of those costs. CERCLA permits EPA to issue orders compelling cleanup of a site, and permits a private citizen to bring an action to compel cleanup of a site. Liability is strict, joint and several, and with little or no regard for causation. By statute, there are four categories of PRPs:

- "Owners or operators" of the contaminated facility. A "facility" is virtually any place in which a hazardous substance is found. The current owner or operator is liable regardless of when the hazardous substance was disposed of at the facility and whether the present owner or operator did anything to contribute to the disposal.
- "Owners or operators" of the facility at the time of the disposal of the hazardous substances.
- Any person who contracted or arranged to have hazardous substances taken to, disposed of, or treated at a facility. This category generally applies to producers and manufacturers.
- Transporters of hazardous substances.

There are limited defenses under Superfund and they are narrowly construed. A PRP can escape liability if it can establish that the hazardous substance release was due solely to an act of war, an act of God, or an act of unrelated third parties. This latter "third party" defense does not apply if the damage from hazardous material was caused by an employee or agent of the PRP, or a third party acting in connection with a contract with the PRP.

The Clean Air Act ("CAA"): The CAA regulates air pollutants under federal standards implemented and enforced by the states. The CAA was most recently amended in 1990 to add several new programs, including acid rain control and stratospheric ozone protection programs, coupled with modification of existing programs for attaining the national ambi-

ent air quality standards and reducing emissions of hazardous air pollutants. Due to the nature of air pollution and its sources, this program is generally considered to be the most complex of the federal environmental programs.

The CAA requires a new operating permit for all “major” air sources, with state administration and enforcement. A significant feature is a permit fee based on tons of pollutants emitted on an annual basis; the permit fees are to fund and support the state operating permit programs.

The Clean Water Act (“CWA”): The CWA regulates the discharge of pollutants into all navigable waters of the United States. The CWA prohibits the discharge or addition of any pollutant from a point source into the water of the United States unless a permit has been issued. Permits are issued by either the state under an approved state program or by the EPA if the state program has not been approved. The permit limits are based upon EPA's effluent limitations regulations and are incorporated into a National Pollutant Discharge Elimination System (“NPDES”) permit. The CWA effluent limitations for industrial dischargers will also specify standards for pretreatment for those who discharge to a publicly owned treatment work. In 1990, EPA promulgated rules regarding permits for storm water discharges under the NPDES permit program.

State Considerations

EPA is primarily responsible for the oversight of environmental laws, but many responsibilities have been delegated to the states. North Carolina has accepted responsibility for administering these federal policies and has enacted additional legislation of its own.

The North Carolina Oil Pollution and Hazardous Substances Control Act of 1978 (“OPHSCA”): OPHSCA, which is similar to CERCLA, prohibits the discharge of oil or hazardous substances on the lands or waters of the state. “Hazardous substances” under OPHSCA include any substance that may present an imminent and substantial danger to the public health or welfare and all substances designated hazardous by EPA as of June 1, 1980. OPHSCA requires notification to the appropriate regional office of the Department of Environment and Natural Resources (“DENR”) and also requires cleanup. In contrast to most environmental statutes, which extend the cleanup obligation to parties based solely on their status as owners or operators, the cleanup obligation under OPHSCA extends to persons who have “control over” such substances immediately prior to a discharge. Like CERCLA, OPHSCA creates joint and several liability. OPHSCA also provides for strict liability against a liable party for damages to persons or property caused by the discharge of any hazardous substance into the waters of the state.

The North Carolina Inactive Hazardous Sites Act: This act covers those sites in North Carolina contaminated by hazardous substances that are not included on EPA's National Priorities List, which is a prioritized national inventory of hazardous waste sites.

Under this act, if DENR determines there is either a “release” or a “substantial threat of a release” of a hazardous substance or waste, it may order any “responsible party” to conduct necessary monitoring and testing to determine the nature and extent of hazards posed by the site. Responsible parties include those who make, contract, accept, transport, or otherwise arrange for a discharge or deposit of a hazardous substance that results in an inactive hazardous substance or waste disposal site.

The act requires DENR to develop a program for locating, cataloging and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. In order to comply with this mandate, DENR requires any owner, operator, or responsible party of such a site to submit data regarding the existence and condition of such sites.

After an inspection of a site, DENR may issue a written declaration that the site endangers the public health or the environment. Based upon such a declaration, DENR may then order any responsible party to develop and implement a remedial action program. If the owner or operator fails to remediate the site, DENR may do so and thereafter sue the responsible parties to recover all costs.

Responsible parties may conduct a voluntary cleanup pursuant to an agreement with DENR. Upon satisfactory completion of a voluntary cleanup, DENR may issue a letter indicating that no further action needs to be taken at the site.

The Brownfields Property Reuse Act of 1997: This act was enacted to encourage economic redevelopment of abandoned, idled, or underused property where redevelopment is hindered by actual or possible environmental contamination—“Brownfields property”. The Act offers liability protection and flexible cleanup requirements to qualified buyers and sellers of Brownfields property.

The Dry-Cleaning Solvent Cleanup Act of 1997: This act establishes a program for assessment and risk-based remediation of dry-cleaning sites and sets up a cleaning fund from which reimbursement may be sought. Any party who may have liability arising from solvent releases at a dry-cleaning facility may participate in the program.

The Leaking Petroleum Underground Storage Tank Statute (“LUST”): The LUST statute makes funds available to owners and operators of Underground Storage Tanks (“USTs”) to help in cleaning up contamination resulting from UST releases.

For owners of USTs to be eligible for reimbursement, the owner/operator must register the UST and pay the annual operating fees

(premium) required under North Carolina law. All premium obligations fees must be current at the time contamination is discovered, and the contamination cannot result from the owner/operator's willful or wanton misconduct for the owner/operator to be eligible for cleanup funds. Once eligible for funds, the owner/operator will be reimbursed by the state for costs incurred for cleanup in excess of the applicable deductible. The amount of the deductible depends upon when the release or discharge was discovered. No registration fees or deductibles are required for noncommercial USTs.

The North Carolina Water and Air Resources Act: Under this act, the N.C. Division of Environmental Management ("DEM") is authorized to adopt regulations pertaining to groundwater protection and to administer the NPDES program for surface water protection under the CWA. This act also provides for implementing a system of annual permit fees.

The North Carolina Solid Waste Management Act: This act provides the necessary authority to the Division of Solid Waste Management of DENR to adopt regulations under RCRA, which control the handling, storage and disposal of solid non-hazardous and hazardous waste. This act effectively puts RCRA enforcement control in the hands of the state. Regulations have been adopted.

Animal Waste Management Systems: This act establishes a permitting program for animal waste management systems to protect water quality and provide technical assistance to farmers. Permits are required for farms with 250 or more swine, 100 or more confined cattle, or 30,000 or more confined poultry with a liquid animal waste management system.

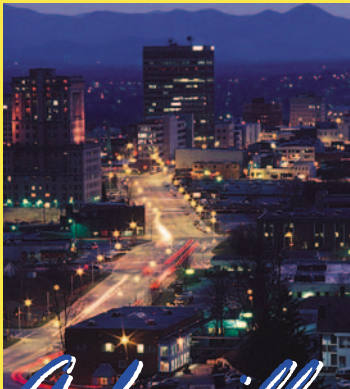
The North Carolina Environmental Crimes Statutes: These statutes provide for substantial criminal penalties, including prison sentences, for violations of specific environmental statutory provisions. The statutes distinguish between degrees of felonies as follows: (i) knowing and willful violations; and (ii) knowing and willful violations coupled with knowledge that the violation places another person in imminent danger of death or serious bodily harm. Both felonies carry monetary penalties, the former less severe than the latter.



Charlotte



Nickname	"The Queen City"
Population	584,658
High school graduates	84.9%
Bachelor's degree or higher	36.4%
Median household income	\$46,975
Homeownership rate	57.5%
Median value of homes	\$134,300
Land area	242 square miles



Asheville



County	Buncombe
Population	69,045
High school graduates	82.3%
Bachelor's degree or higher	30.4%
Median household income	\$32,772
Homeownership rate	56.8%
Median value of homes	\$109,100
Land area	41 square miles

Intellectual Property

Trademarks and Service Marks

North Carolina provides both common law and statutory protection for trademarks and service marks. Under North Carolina common law, the first party to adopt and use a given mark in connection with goods or services in a geographic region is the owner of the mark. The North Carolina Trademark Registration Act specifically preserves common law trademark rights in North Carolina.

A North Carolina trademark registration is effective for a term of ten years and may be renewed for successive ten-year terms. A statement verifying continued use must be filed within six months following the fifth year of each term of a North Carolina registration.

A North Carolina trademark registration is freely transferable and may be assigned in connection with the goodwill of the business that the mark represents. The provisions of the North Carolina Trademark Registration Act do not displace any rights acquired by a trademark or service mark owner under federal or common law (i.e., through use of a mark in commerce without registration). Thus, a North Carolina trademark or service mark registration will not provide superior rights over a preexisting, federally registered mark or a preexisting common law mark.

North Carolina has no state-level trademark dilution statute.

Trade Names

Any person, partnership or corporation that engages in business in North Carolina under an assumed name must file a certificate showing the assumed name with the register of deeds in each county in North Carolina in which such person, partnership or corporation does business.

Reserving and procuring a corporate name in the State of North Carolina or filing a Certificate of Assumed Name will not insulate a party from liability for trademark or service mark infringement.

Trade Secrets

North Carolina provides statutory protection for trade secrets under the Trade Secrets Protection Act. A trade secret is defined as "business or technical information, including but not limited to, a formula, pattern, program, device, compilation of information, method, technique or process that (i) derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." The fact that any trade secret was developed jointly, used by more than one party or licensed to third parties does not negate the existence of a trade secret.

The owner of a trade secret may bring an action for the wrongful acquisition, use or disclosure of the trade secret. Statutory remedies include injunctive relief and monetary damages. Punitive damages and attorneys' fees to the prevailing party may also be awarded in appropriate circumstances. In addition, North Carolina state and federal courts have recognized the doctrine of inevitable disclosure to prevent threatened misappropriation of a trade secret by a former employee of the trade secret's owner and may apply it in certain circumstances in the future.

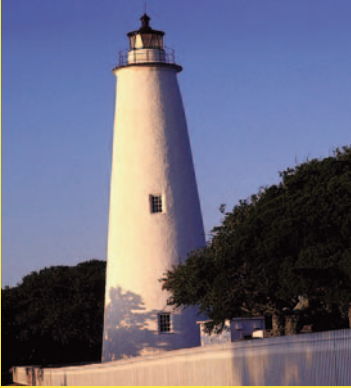
Ownership of Employee Developed Inventions

Any provision in an employment agreement which obligates an employee to assign any rights in an invention to the employer does not apply to an invention that the employee develops entirely on the employee's own time without using the employer's equipment, supplies, facilities or trade secret information. There is an exception for inventions that relate to the employer's business or demonstrably anticipated research or result from work performed by the employee for the employer.

An employer may require in an employment agreement that an employee report to the employer all inventions developed by the employee during the term of employment for the purpose of determining the employer's rights in such inventions.

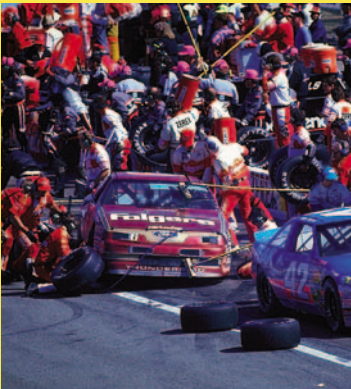
Right of Publicity

There is no North Carolina statute that addresses the rights of privacy or publicity. North Carolina courts, however, recognize actions for appropriation of an individual's name or likeness for commercial advantage. North Carolina courts also recognize the personal right of privacy, and courts will issue protective orders to guarantee that private information obtained during judicial discovery is not disclosed.



Outer Banks

North Carolina's Outer Banks are a chain of fragile barrier islands—130 miles of unspoiled coastline surrounded by 900 square miles of water. There are many historic lighthouses dating back to the 1800s including the Ocracoke Island lighthouse, built in 1823.



Motorsports

What Green Bay is to football and New York is to baseball, North Carolina is to motorsports. The forefathers of the sport were whiskey runners who souped up their cars to evade the law. Today, their legacy is the fastest growing sport in America. North Carolina is at the heart of the racing world. Many drivers and crews live near Charlotte where research, engineering, training and racing itself take place.

Dispute Resolution

Federal Court System

The trial courts of the federal court system are the U.S. District Courts. The State of North Carolina is divided into three federal districts: the Eastern District, with divisions in Greenville, Raleigh and Wilmington; the Middle District, with a division in Greensboro; and the Western District, with divisions in Asheville, Charlotte, Bryson City, Shelby and Statesville. Each district has federal district court judges who are appointed by the President for life terms upon approval by the United States Senate. U.S. magistrate judges, who do not serve a lifetime appointment, can handle a variety of pretrial matters and can, with the consent of the parties, try cases. Appeals are to the Fourth Circuit Court of Appeals.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are mandated by both the U.S. Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, patent and copyright, foreign consuls and vice-consuls, admiralty and maritime, antitrust, Securities Exchange Act cases and all actions where the United States is involved, including federal crimes, tort suits brought against the United States, and customs decision review. All other jurisdiction is concurrent with that of the state courts. There are generally three ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens of different states with an amount in controversy exceeding \$75,000. To be brought in federal court, there must be complete diversity, i.e., each plaintiff must be from a state that is different from that of each defendant. The second basis for jurisdiction involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or treaties of the United States. The third basis for jurisdiction is the Class Action Fairness Act, which give federal courts jurisdiction of certain types of class actions. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure, promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are a uniform body of procedural rules applicable to every federal district court in the U.S. Each federal district court also establishes its own rules applicable only to the procedure in that district court. These rules often set forth very specific guidelines for the handling of an action, and close attention must be paid to them. Thus, one participating in a suit in federal district court must be aware of that court's local rules as well as the Federal Rules of Civil Procedure.

All three federal districts now allow or require that pleadings be filed electronically, using the CM/ECF System. The procedure for electronic filing varies, so practitioners should consult the local rules. Each district court maintains a website which contains information about the court, electronic filing, local rules and other essential information.

The Federal Rules of Appellate Procedure are a uniform body of procedural rules applicable to all appeals from a federal district court to a federal appellate court. If an appeal is taken from a North Carolina U.S. District Court, the Fourth Circuit's appellate rules and internal operating procedures should be consulted in conjunction with the Federal Rules of Appellate Procedure.

State Court System

North Carolina has a unified, statewide court system called the General Court of Justice. It is comprised of appellate and trial court levels. All of the judicial power of the State, except for impeachments and powers given to administrative agencies, is vested in the General Court of Justice.

State Trial Courts

The state trial court division has two levels of courts—the Superior Courts and the District Courts—spread among approximately sixty judicial districts grouped into four judicial divisions. Except in respect to proceedings in probate and the administration of decedents' estates, the original civil jurisdiction so vested in the trial division is vested concurrently in each division. For the efficient administration of justice, the respective divisions are constituted proper or improper for the trial and determination of specific actions and proceedings.

Superior Courts

Superior courts have exclusive original jurisdiction for the probate of wills and the administration of decedents' estates. Superior Courts have jurisdiction over all civil cases where the amount in controversy exceeds \$10,000, except as otherwise provided below, and all criminal actions that constitute felonies. Superior Courts also retain jurisdiction for the following: (i) actions where the principal relief prayed for is injunctive relief against the enforcement of any statute, ordinance, or regulation or injunctive relief to compel enforcement of any statute, ordinance, or regulation; (ii) declaratory relief to establish or disestablish the validity of any statute, ordinance, or regulation or the enforcement or declaration of any claim of constitutional right; (iii) special proceedings; (iv) *quo warranto*; (v) condemnation actions and proceedings; (vi) corporate receiverships; (vii) review of decisions of most administrative agencies; (viii) and appeals from the clerk of court to a judge.

A regular, resident Superior Court judge is elected by popular vote in each judicial district, and additional resident judges are elected in the larger districts. These judges are elected to eight-year terms. Further, the resident Superior Court judges are on a rotation system required by the North Carolina Constitution in which each resident judge presides for six-month periods in each court of each district within the judicial division, rotating through all the districts in the division.

District Courts

District Courts have jurisdiction over civil cases where the amount in controversy is for \$10,000 or less and have jurisdiction over the following types of cases, without regard to the amount in controversy: (i) family law cases; (ii) proceedings to terminate parental rights of any child in the custody of a county social services department or licensed child-placing agency; (iii) any case involving a juvenile alleged to be a delinquent, undisciplined, abused, neglected or dependent; (iv) all criminal actions below the grade of felony; (v) preliminary hearings in felony cases; and (vi) all small claims actions in which the amount in controversy does not exceed \$3,000. Jury trials are available in civil cases upon demand. No jury is authorized in criminal cases; however, on appeal to Superior Court, trial shall be *de novo*, with a jury as provided by law. Appeals of civil cases are to the Court of Appeals.

District Court judges are elected to serve full time for terms of four years.

The District Court has supervisory authority over Magistrates Court. Magistrates are appointed by the Senior Resident Superior Court Judge and serve a term of two years. They have jurisdiction over small claims, and have authority to issue arrest and search warrants. A small claim is defined as a case in which (i) the amount in controversy does not exceed \$3,000; and (ii) the principal relief sought is monetary, for recovery of personal property, summary ejection, or any combination of the foregoing; and (iii) the plaintiff has requested assignment to a Magistrate.

North Carolina Business Court

North Carolina has implemented a Business Court. There is currently a courtroom in Greensboro, with a courtroom soon to open in Charlotte. The Chief Justice of the North Carolina Supreme Court can assign cases to the Business Court upon motion of a party or recommendation of a Superior Court Judge. The Business Court uses electronic filing and provides written decisions, which has created a useful body of North Carolina business law.

Proceedings

In the trial division, there are two types of proceedings: actions and special proceedings. An action is an ordinary proceeding by which a party prosecutes another party for the protection of some right, or the redress of some wrong. Actions can be either criminal, prosecuted by the State against a party charged with a public offense, or civil, which is any action that is not criminal. Special proceedings are those remedies that are not actions as outlined above. An example of such a proceeding would be a petition by an administrator to sell lands for the payment of debts.

All civil actions and proceedings of a civil nature in the superior and district courts are governed by the North Carolina Rules of Civil Procedure, which are statutory. There are also General Rules of Practice for the Superior and District Courts which supplement the Rules of Civil Procedure. These rules deal with the form of pleadings, the content of motions, the duration of discovery and similar matters. Additionally, many judicial districts in North Carolina have adopted local rules that vary from district to district.

In North Carolina, a civil action is commenced by the filing of a complaint with the court, or by having a summons issued with the complaint filed within twenty days of that issuance. A summons is usually issued upon the filing of the complaint, and both the summons and complaint must be delivered to the defendant according to a strict body of rules providing the defendant with constitutional right of notice a procedure called "service of process". In North Carolina, service upon individuals may be accomplished in several ways: (i) personal service by delivering a copy of the summons and complaint to the defendant, or by leaving the copy at the defendant's usual place of abode with some person of suitable age and discretion residing there; (ii) by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive process for the defendant; or (iii) by mailing a copy of the summons and complaint to the defendant by registered or certified mail. Service upon partnerships, domestic and foreign corporations, state agencies, and county and city political bodies have similarly detailed rules for service of process which must be strictly followed to ensure valid service of process.

Once the defendant has been properly served, he must then file a response to the complaint, either in the form of a motion or an answer. In the answer, the defendant must admit or deny each allegation contained in the complaint. In addition, the answer must set forth any affirmative defenses the defendant may have to the plaintiff's allegations. The defendant at this time should also allege any counterclaims that may exist against the plaintiff. The plaintiff must respond to any counterclaims by filing an answer, called a "reply". Once this process, called "pleading", is completed, the parties will engage in discovery. The purpose of modern discovery is to eliminate any surprise in the adversarial process. Thus, anything relevant to the subject matter of the suit that is not privileged is within the scope of discovery. Information obtained through discovery need not be admissible at trial as long as it is reasonably calculated to lead to admissible evidence.

State Appellate Courts

The appellate court division is also two-tiered, composed of the Court of Appeals and the Supreme Court. The Court of Appeals is comprised of twelve judges, each elected to a term of eight years. This court sits primarily in Raleigh, the State Capital, in panels of three, thus allowing multiple cases to be heard at the same time. The Supreme Court consists of a Chief Justice and six associate justices, elected by the voters for eight-year terms. This Court sits only in Raleigh.

Court of Appeals

The Court of Appeals has jurisdiction to review decisions by the Superior Courts and District Courts. The Court of Appeals also reviews final judgments by the Industrial Commission, the State Bar in disciplinary proceedings and the Property Tax Commission. The Court of Appeals has the power to issue remedial writs necessary for the general supervision and control over proceedings of lower courts. Appeal also lies to this court from any interlocutory order or judgment of a Superior Court or a District Court which affects a substantial right, determines the action and prevents a judgment from which an appeal might be taken, discontinues the action, or grants or refuses the new trial.

Supreme Court

The Supreme Court has original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory and the decisions shall be reported to the next session of the General Assembly for its action. An appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the Superior Court includes a sentence of death. In all other cases, the first appeal must be to the Court of Appeals; however, the Supreme Court may certify certain cases for direct appeal. Like the Court of Appeals, it also has the power to issue remedial writs necessary for the general supervision and control over proceedings of lower courts. Additionally, an appeal of right from the Court of Appeals lies when the decision involves a substantial question arising under the Constitution of the United States or of the North Carolina Constitution, or in those cases in which there is a dissent at the Court of Appeals.

Arbitration and Mediation in North Carolina

There are a wide variety of arbitration and mediation services available to those seeking alternative dispute resolution services in North Carolina.

North Carolina has enacted a statute providing for judicial enforcement of agreements to arbitrate. North Carolina also permits judicial enforcement of arbitration awards.

Certain actions are subject to mandatory arbitration. All civil actions filed in the trial divisions which are not assigned to a magistrate

and not exceeding \$15,000 total, exclusive of interest, costs and attorneys' fees, are subject to court-ordered arbitration, except for class actions, actions calling for injunctive or declaratory relief, family law issues, title issues, wills and estates issues, summary ejectment proceedings or claims which assert an unspecified amount exceeding \$10,000. Additionally, if the parties agree, the court may submit any other civil action to arbitration. The law of evidence does not apply, except as to privilege, in an arbitration hearing but shall be considered as a guide. The arbitrator is required to file his award with the court. If any party is not satisfied with the arbitrator's award, a written demand for a trial *de novo* must be filed within thirty days after the arbitrator's award. The trial following thereafter shall be conducted as if there had been no arbitration proceeding. If no party files a demand for trial *de novo* within thirty days, the clerk of the court shall enter judgment on the award which shall then have the same effect as a consent judgment in the action.

Mediation differs both from litigation and from arbitration in that a mediator does not impose a settlement decision on the parties. Rather, the mediator is trained to assist the parties in coming to an agreement on a solution to their dispute. Mediation can be useful in a number of different categories of cases, and can also be useful when litigation is too expensive or when negotiations between attorneys are not proceeding productively.

North Carolina allows each judicial district to require mediation of all civil superior court cases. Almost all districts now require mediation of civil cases, unless the parties move for an exemption or permission to use another alternative dispute resolution technique. The procedure for selection of a mediator and conducting the mediation is set forth in the Rule Implementing Statewide Mediation Settlement Conferences in Superior Court Civil Actions.

Mediation or Alternative Dispute Resolution for most civil cases is also provided for in the local rules for the Middle District, Eastern District and Western District of the U.S. Federal Courts in North Carolina. The rules for these mediations are similar to state practice.



Wineries

Fast becoming recognized as a major producer of fine wines, North Carolina is home to more than 350 vineyards and some 45 wineries and wine producers. North Carolina is home to the nation's first cultivated wine grape, the scuppernong. Today, rich farmland and mild climate contribute to the success and wide variety of grapes that thrive in the state's soil. North Carolina produces more than 500,000 gallons of wine annually and is now ranked 12th in the nation in wine and grape production. From Biltmore Estate—the most visited winery in the United States—to NASCAR team owner Richard Childress' Tuscan-themed complex opened in 2004, North Carolina offers a rich array of tasting and touring.

Financing Investments

Commercial Banking

Several of the largest and most respected U.S. financial institutions are headquartered in North Carolina. In addition, many other lenders based outside of the State have recognized the benefits of the North Carolina business economy and have established lending offices and other operations in North Carolina. As a result, North Carolina businesses enjoy the finest in financial services and access to the latest innovative financing products. Whether the company is public or private, or engaged in a manufacturing, retail or service business, the sophistication of the North Carolina financial community offers each North Carolina company a valuable source of creative financing ideas and solutions.

North Carolina institutions offer a variety of financing alternatives, including acquisition and working capital loans, real estate construction and term loans, Small Business Administration (SBA) loans, factoring and asset-based loans, debt restructuring, and leveraged leasing transactions. North Carolina banks also offer advice and services in many financial areas that provide cost, tax or risk-reduction benefits. These include tax-advantaged investments, interest rate swaps and other derivative products, bankers' acceptance financing, private placements of debt, and agency services in which the North Carolina bank assembles a group of domestic and/or foreign lenders to offer desired financing. North Carolina institutions offer a variety of international services, including export and import financing and letter of credit and foreign currency transactions.

In order to assist individuals relocating to North Carolina, many North Carolina financial institutions offer extensive relocation services. Relocation services include personal banking services, home mortgage financing, community orientation programs, home-finding assistance, discount brokerage services, and trust and financial planning services.

Tax-Exempt Financing

Tax-exempt financing offers a low-cost alternative that typically provides a longer maturity than taxable financing. Subject to various federal and North Carolina statutory limitations, authorities within the State of North Carolina may issue a variety of tax-exempt bonds for private parties. Moreover, participants in such financings may utilize variable rate or fixed rate finance structures. For example, private companies engaged in new capital expenditures related to construction of manufacturing or other industrial development projects, or related to acquisition and rehabilitation of existing manufacturing facilities, may use small issue Industrial Revenue Bonds. Companies issuing these qualified small issue bonds are limited under Federal law to \$10 million per jurisdiction and \$40 million nationwide. Additionally, organizations can use Pollution Control/Solid Waste Disposal Bonds, which are also federally tax exempt, to finance projects related to solid or hazardous waste disposal. Finally, not-for-profit organizations may undertake tax-exempt financings by issuing qualified 501(c)(3) bonds.

Federal Securities Law Issues

The focus of the United States federal securities laws is to protect the interests of investors and the public by requiring the disclosure of material information in connection with the offer and sale of securities and prohibiting fraud and manipulative practices. The Securities Act of 1933, as amended (the "1933 Act"), prohibits the offer or sale of a security unless either the transaction is registered with the Securities and Exchange Commission (the "SEC"), the federal agency responsible for administering and enforcing U.S. securities laws, or the transaction or the particular type of security being offered or sold is exempt from registration. In addition, among other things, the Securities Exchange Act of 1934, as amended (the "1934 Act"): (i) requires certain issuers (generally those whose equity securities

are held by the public) to provide material information on an ongoing basis by filing with the SEC quarterly, annual and other reports and statements (which the SEC makes available to the public); (ii) regulates the solicitation of proxies and the making of tender offers; (iii) imposes reporting and trading restrictions on directors, certain officers, principal shareholders and other insiders in connection with their personal transactions in securities of the issuer; and (iv) regulates the activities of securities brokers and dealers. The 1933 Act and 1934 Act also prohibit the making of material misstatements or omissions and other fraudulent practices in connection with the purchase or sale of any security, whether or not the transaction is registered with the SEC. Two entirely separate and distinct federal statutes regulate the activities of investment companies and investment advisers.

There are several exemptions from registration under the 1933 Act. Certain exemptions are available based on the type of security issued. For example, exempt securities include securities issued by federal or state governments or related agencies or by banks, savings and loan associations or similar institutions subject to governmental regulation, and securities issued by nonprofit organizations. Other exemptions are available based on the type of transaction in which the security is issued. One of the most commonly used transaction exemptions applies to transactions that do not involve a “public offering.”

The test to determine whether a public offering is involved has not been clearly defined, although the following factors are relevant: the number of offerees and their relationship to each other and the issuer; the size and manner of the offering; the sophistication of the offerees; and the nature and kind of information concerning the offering provided to the offerees. The SEC has adopted certain “safe harbor” rules that, if followed, help to ensure that an offering will be exempt from registration. Certain of these rules are contained in Regulation D promulgated by the SEC pursuant to the 1933 Act. These rules impose objective requirements on the dollar amount of the offering, the number of purchasers and the information that must be provided to purchasers, and place limitations on advertising, solicitation and resales of securities by purchasers. Other commonly used exemptions from registration under the 1933 Act apply to offerings conducted exclusively in the state in which the issuer is organized and does a substantial amount of its business, and to offers and sales of securities of nonpublic issuers made pursuant to employee benefit plans and compensatory employment contracts if the amount of securities offered and sold does not exceed certain dollar limitations and the purpose of the sale is to compensate employees rather than to raise capital for the issuer. Certain of the exemptions referred to above require notice filings to be made with the SEC and state securities regulators.

In addition to the foregoing, issuers may be able to rely on Regulation S for offers and sales of securities that are made in “offshore transactions” as long as no “directed selling efforts” are made in the United States. The Regulation S “safe harbor” from registration applies to both the primary distribution by an issuer (and related parties) and to offshore resales by persons other than an issuer (or related persons).

If no exemption is available and registration is required, a registration statement must be filed with, and declared effective by, the SEC in connection with the offering, and a prospectus containing specified information must be made available to investors. The SEC's registration forms call for varying levels of financial and other disclosures, depending on the size and type of the issuer.

State Blue Sky and Other Securities Issues

The North Carolina Securities Act

The North Carolina Securities Act (the “N.C. Act”) regulates offers and sales of securities in North Carolina. Commonly referred to as North Carolina's “blue sky” law, the N.C. Act is based on the Uniform Securities Act, with certain modifications that incorporate several historical North Carolina practices. Like the federal securities laws, the N.C. Act is designed to protect investors by, among other things, regulating the offer and sale of securities through registration, disclosure and other substantive requirements, and prohibiting fraudulent, manipulative and deceptive practices in connection with the offer or sale of securities. The N.C. Act, however, is subject to The National Securities Markets Improvement Act of 1996 (“NSMIA”), which was adopted by the U.S. Congress to streamline and reduce duplicative (and in some cases contradictory) fees and requirements under both the federal and state securities laws. NSMIA mandates that “covered securities” (generally, any security listed on a national stock exchange or automated quotation system) will not be subject to any state law, rule, regulation or administrative action that would otherwise require the issuer of such covered security to register the security at the state level.

In general, offers and sales of securities in North Carolina are prohibited, regardless of the size of the offering, unless the security is registered with the North Carolina Secretary of State or the security or the particular transaction is exempt under the N.C. Act or certain provisions of the 1933 Act. If an exemption is not available, an offer or sale of a security may not be made unless it is registered. Even if an exemption is available, notice or other filings (and possibly filing fees) may be required, depending on the type of exemption.

The N.C. Act identifies fourteen types of securities that are exempt from registration. These include, for example, securities issued or guaranteed by domestic governments and agencies and by certain foreign governments (or agencies) with which the United States currently maintains diplomatic relations; securities listed on certain exchanges or included in the NASDAQ National Market

System (note that in January 2006, the SEC approved NASDAQ's application to register as a national securities exchange, subject to NASDAQ's satisfaction of certain conditions); securities issued by banks, savings and loan associations and certain other financial institutions; securities issued by certain public utilities; certain commercial paper; and interests in certain employee benefit plans. The N.C. Act also includes nineteen exemptions that are based on the nature of the transaction pursuant to which the offer or sale takes place. These transaction exemptions include certain transactions made in reliance on SEC Regulation D (discussed above); transactions made pursuant to offers to no more than twenty-five persons in the state of North Carolina during any consecutive twelve-month period (as long as the seller reasonably believes that all buyers in North Carolina are purchasing for investment); certain offers and sales to qualified institutional investors; certain offers to an issuer's existing security holders (if no commission or other remuneration is paid for soliciting security holders); transactions made pursuant to a plan approved by the North Carolina Secretary of State after a hearing to determine the fairness of the transaction; and transactions pursuant to certain employee benefit plans.

Any person who offers or sells a security in violation of the N.C. Act's registration provisions, who makes material misstatements in connection with the offer, sale or purchase of a security, or who otherwise engages in fraudulent conduct may be subject to civil and criminal sanctions. The N.C. Act also regulates the activities of dealers, salesmen, investment advisers and investment adviser representatives. Dealers, salesmen, investment advisers and investment adviser representatives are prohibited from engaging in fraudulent practices and may have their registrations revoked or other penalties imposed upon them for violations of the N.C. Act.



Sophisticated Industries

North Carolina's biggest city, Charlotte, is the second largest banking center in the U.S. Two of the country's biggest banks, Bank of America and Wachovia, are headquartered there. The 60-story Bank of America Corporate Center is one of the largest buildings in the Southeast. Charlotte is also home to a branch of the Federal Reserve.

Many high tech industries are located in Research Triangle Park, an important scientific think tank located between Raleigh, Durham and Chapel Hill. With the resources and people available at North Carolina State University, Duke University and the University of North Carolina (UNC) at Chapel Hill, the park has become an international center for research, development and cutting edge technology.

Because of its location along the East Coast and excellent highway system, North Carolina is also an important distribution center.

Real Estate

The North Carolina economy continues to enjoy an influx of people moving here for jobs, for family life and for other opportunities, and with that influx has come a steady up-tick in real estate development, especially in the state's major metropolitan areas, running the gamut from residential developments, including every permutation of single family housing to multifamily and mixed use living situations, to major industrial, landmark retail and signature office uses. As part of that trend, to encourage and facilitate industrial and other corporate relocation to and expansion within the state, North Carolina, as well as local jurisdictions within the state, have offered economic development incentives and other entitlements to certain companies that choose to relocate here. While the North Carolina Bar Association has developed many standardized forms, including purchase agreements, various deed forms, deeds of trust and leases that are widely used, mostly in residential transactions, as a general rule, real estate transactions for commercial properties or for development for any purpose are of a complexity and novelty that rarely if ever fit into the bar forms.

In North Carolina, zoning, planning, building, environmental protection and subdivision laws are enforced by numerous city and county bodies pursuant to local ordinances enacted in accordance with state statutes. It is customary for the purchaser to be responsible for determining that the title to the property is marketable, for obtaining title insurance, and for resolving whether the property can be used or developed in accordance with the purchaser's plans, including verifying that environmental laws, whether concerning hazardous substances or development in sensitive areas such as those near wetlands, do not prohibit or substantially hinder purchaser's plans. The state taxes most conveyances of land by deed by the imposition of an excise tax, which is customarily paid by the seller, although as distinct from some other states, North Carolina does not impose an intangible or other tax on the recording of deeds of trust or mortgages. Regular recording charges do apply for any document recorded in a county's public registry.

North Carolina law permits conveyances of parcels of land of less than ten acres only if a subdivision plat has been approved by the local governing authority and filed in the local registry for that parcel of land. Many jurisdictions within the state have made this requirement more stringent, applying to conveyances of five acres or less. Although not as highly regulated as in certain other southeastern states, the subdivision plat approval process, like many other government approvals, varies widely from one local jurisdiction to the next and can involve a substantial investment of time and resources to accomplish. Other points of interest with respect to local governments include residential owners' association documents, with some governments proscribing text that must be included in such governing documents, as well as stormwater management schemes that must be approved on a development-by-development basis. Certain protections for developers exist in state statutes, however, lending predictability to what could be quite an unpredictable process. As one example, development moratoria may be implemented on a formal basis only within a defined framework that limits their duration and requires regular justifications for continuation. Additional statutes provide guidelines for establishing enforceable public-private development agreements and agreements concerning reimbursements for public infrastructure improvements installed by private developers.

There exist several state-level and local-level economic development programs, instituted both to attract out-of-state business to North Carolina and to encourage a greater investment by companies with existing facilities in-state. Certain state-level programs have an established history of strictly enforced procedural and substantive requirements for the grant and continuation of economic development incentives. Further, if any requirement attached to an entitlement is violated, state law gives any citizen taxpayer the right to sue. Given the strict enforcement of certain requirements by the government and the exposure to litigation should entitlements be called into question, it is advisable to involve legal

counsel at an early stage, both to assess availability of incentive packages and to aid the recipient company in compliance with the important ongoing requirements.

Something of particular note to non-resident companies and individuals who choose to invest in North Carolina real estate is that within fifteen days of closing, every purchaser of North Carolina real estate whose *seller* is not a North Carolina resident must file a Form NC 1099 NRS. This form requires disclosure of the seller's name, address and social security or federal taxpayer identification number, the location of the property, the gross sales price of the property, and any tangible personal property associated with the real property. This requirement does not apply when only the buyer is a non-resident individual or entity.

In addition, North Carolina provides by statute that it is lawful for non-U.S. Citizens to hold, convey and inherit any interest in real property without limitation. The Secretary of State is responsible for collecting information from federal agency reports regarding ownership of real property interests in North Carolina by non-U.S. Citizens. Such information is made available to the North Carolina General Assembly and the public. In addition, any foreign person desiring to purchase or sell real estate in the United States should consider the various federal tax and reporting requirements that apply to such transactions, which are summarized in the remainder of this chapter.

FIRPTA

The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") authorizes the U.S. Secretary of Treasury to require foreign investors to file information returns and also imposes withholding requirements on transferees in the disposition of a U.S. real property interest when the transferor is a foreign person. For purposes of FIRPTA, a "foreign person" is defined as a nonresident alien or a corporation incorporated under the laws of a jurisdiction other than a state, the District of Columbia, or territory of the United States at the time of the conveyance of the real property interest. When non-foreign persons are involved in the disposition of real estate, it is standard to obtain a certification from that seller that it is not a foreign person. To prevent evasion of the FIRPTA requirements by the formation of shell companies, several years ago the law was revised to include an additional requirement that the entity giving the FIRPTA certification not be a "disregarded entity". If an entity is "disregarded" (meaning it is a pass-through type entity, such as a limited partnership or limited liability company, whose ownership interests are also owned by a pass-through type entity), then you must continue up the company's family tree until an individual citizen or a U.S. citizen corporation is found.

A non-citizen transferee generally must withhold 10% of the amount realized by the transferor on the transaction, although there are several situations in which withholding is not required or the amount of tax withheld is decreased. Any transferee failing to withhold the tax may be liable for the amount of tax, including penalties and interest. Penalties include a civil penalty of up to 25% of the tax due. A transferee also may be found criminally liable for fraud.

In some situations, a foreign investor may benefit from making an election under Section 897(i) of the Internal Revenue Code. An 897(i) election permits a foreign corporation to be treated as a domestic corporation for the purposes of FIRPTA. With this election, income from U.S. real property held by a foreign investor is taxed at graduated ordinary income rates, all expenses in connection with the income are deductible, the foreign investor avoids withholding on transfers, and special non-recognition rules promulgated under FIRPTA which treat foreign investors unfavorably will not apply. Before a foreign investor makes an 897(i) election, however, the foreign investor must employ careful planning because an 897(i) election affects all of the U.S. real property held by the foreign investor, and such an election is irrevocable without the consent of the IRS.

IITSSA

The International Investment and Trade in Services Survey Act ("IITSSA") requires that certain foreign direct investment in the United States be reported to the Bureau of Economic Analysis ("BEA"). Foreign direct investment in the U.S. includes foreign ownership of real estate and the direct or indirect ownership or control by a foreign person of a 10% or more voting interest in a U.S. business enterprise. For purposes of IITSSA, a "foreign person" is any individual or organization residing outside the U.S. or subject to the jurisdiction of a country other than the U.S.

Any business enterprise or parcel of real estate which is 10% owned by a foreign person is considered to be a U.S. affiliate. IITSSA requires that U.S. affiliates make several filings with the BEA. An initial report must be filed within forty-five days of the transaction establishing the U.S. affiliate. In addition, an annual report must be filed within sixty days after the applicable form is made available; quarterly reports must also be filed within thirty days of the close of each quarter in certain circumstances. Finally, U.S. affiliates must file an extensive survey every five years, and additional reports may be required, depending on the amount of the investment.

There are several exemptions from the BEA's filing requirements. For example, no filing is required for investment in real estate when the investment is for personal use. There also are exemptions based on the size or value of the real estate acquisition.

However, if an acquisition is exempt from reporting requirements due to its size or value, a claim of exemption must be filed within forty-five days of the acquisition. A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if individually they could be exempt.

The penalty for violating disclosure or limited access regulations regarding BEA information is a civil penalty of up to \$10,000. Willful failure to submit any of the information required can also result in an injunction requiring a report, a fine of not less than \$2,500 and not more than \$25,000, and up to one year in prison.

AFIDA

The Agricultural Foreign Investment Disclosure Act of 1978 (“AFIDA”) requires all foreign persons and organizations to report the acquisition or transfer of an interest in agricultural land within ninety days of the conclusion of the transaction. Agricultural land includes any area of land exceeding ten acres and producing, on average over the past three years, more than \$1,000 annually from farming, ranching, forestry or timber production. Reports must also be filed within ninety days after the date an owner of agricultural land becomes a foreign person or land held by a foreign person becomes agricultural. The foreign person must disclose in these reports extensive personal information in addition to information about the land itself.

The Secretary of Agriculture has the power to investigate whether reports are accurate and to impose penalties. AFIDA provides a maximum civil penalty of 25% of the fair market value of the foreign person's interest in the land in question for failure to submit a report, submission of an incomplete report, knowingly submitting a report that is false or misleading or knowingly failing to maintain the accuracy of a submitted report.



Blue Ridge Parkway: 70 Years of Beauty

The Blue Ridge Parkway stretches over 250 miles in North Carolina, from Cherokee and the entrance to Great Smoky Mountains National Park, north to the Virginia/North Carolina border and beyond. Besides spectacular scenery, this route offers many opportunities for side trips and a wide range of recreational activities, which put visitors in touch with mountain culture, scenery and history.



Golf

Home to nearly 600 courses and one of the game's true masterpieces—Pinehurst No. 2, North Carolina combines natural beauty and challenging courses to make it a top state to experience golf.

Miscellaneous

Requirements for Qualification

Qualification

Only “qualified” foreign persons may lawfully transact intrastate business in North Carolina. Thus, before a foreign corporation's local office or branch may start doing business, the corporation must qualify by obtaining a Certificate of Authority. This certificate is required in addition to other applicable business permits or licenses.

A corporation which fails to qualify under the statute is liable to the State for all fees and taxes which would have been imposed by law upon such corporation had it timely applied for and received such permission, plus interest and penalties. In addition, such foreign corporation is liable for a civil penalty of ten dollars per day, not to exceed \$1,000 per year. An unqualified corporation will also be barred from bringing any action in a North Carolina court based on its intrastate business unless it has qualified prior to trial, although an unqualified foreign corporation is permitted to defend itself in any proceeding in the State. An unqualified corporation, though, may be sued in North Carolina courts and will be deemed to have consented to their jurisdiction on the ground that it transacted unauthorized intrastate business.

To obtain a Certificate of Authority, a foreign corporation must file an application form with the North Carolina Secretary of State together with a filing fee of \$250. This form requires disclosure of the company's name, the state or country in which it is incorporated, the date of incorporation and period of existence, the street address (or mailing address if different from the street address) of its principal office and of its registered office in North Carolina, the names and business addresses of its current officers, and the name of its registered agent in North Carolina. This form may be obtained from the Secretary of State's office or from most law firms.

A foreign corporation must irrevocably consent to be served through a registered agent for service of process and, if the agent becomes unavailable, to service through the Secretary of State. As with North Carolina corporations, the registered agent may be an individual residing in North Carolina, a domestic corporation or a foreign corporation authorized to transact business in North Carolina.

A Certificate of Existence, or comparable document, issued by the appropriate authority in the foreign company's jurisdiction of incorporation and an English language translation thereof must be filed, together with the application for a Certificate of Authority. Generally, no further inquiries are conducted. Once granted, a Certificate of Authority remains in effect until the foreign corporation obtains a Certificate of Withdrawal or until the Secretary suspends the qualification, typically for failure to pay North Carolina taxes or for failure to file the annual report (see following paragraph).

Annual Report

A foreign corporation qualified to transact intrastate business must file an annual report containing the same information required of a domestic North Carolina corporation See Business Entities, Corporations, Page 3.

Applicability of Usury Laws

The legal rate of interest in North Carolina is eight percent, but parties may contract in writing for a different rate of interest. Any corporation, limited liability company or partnership substantially engaged in commercial pursuits for pecuniary gain may contract for any rate of interest or for payment of fees or other charges. In other cases, the maximum allowable contract rates vary according to the amount lent. For loans of \$25,000 or less, the

maximum allowable rate is the greater of either sixteen percent or the rate for six-month U.S. Treasury bills plus six percent. For loans of more than \$25,000, or first mortgage home loans of more than \$10,000, the parties may contract in writing for any rate of interest.

Permissible fees and charges imposed in connection with any loan of \$300,000 or less are also regulated by North Carolina law. The penalty for taking, receiving or charging an unlawful rate of interest is forfeiture of the entire interest, but the original debt is not affected. If an unlawful rate of interest has already been paid by the debtor, he may recover twice the amount of interest paid in an action in the nature of a debt.

Credit sales of personal property on an installment basis are governed by the North Carolina Retail Installment Sales Act, which prescribes maximum finance charges. Remedies for excessive finance charges, which vary depending upon the extent to which an improper finance charge exceeds the allowable maximum, include the forfeiture of finance charges, a penalty of twice the finance charge paid, or voiding the entire contract.

Restrictions on Specific Professions

The North Carolina Revenue Act imposes a business license tax on a variety of occupations, including attorneys, physicians, professional engineers, registered land surveyors, architects, photographers, real estate brokers, salesmen and appraisers. A license is a personal privilege to conduct the profession or business and is not transferable.

Business Name Registration Requirements

A foreign corporation that is not qualified to transact business in North Carolina may register its corporate name in order to preserve its unique real name if it later decides to qualify. The name, if available, is registered with the Secretary of State, and registration must be renewed on an annual basis.

Incentives

Corporations seeking to locate facilities in North Carolina may be eligible for incentives under various state and local programs. North Carolina sponsors various economic development incentives, including grant and loan programs, issuance of industrial revenue bonds, and tax credits for job creation and investment. Details of the requirements to qualify for these incentives may be obtained from the North Carolina Department of Commerce.

PLEASE NOTE: The information in this booklet represents a general guide to certain laws applicable to doing business in North Carolina as of January 1, 2006. This booklet should not be relied upon in any specific factual situation, and does not cover all laws or regulations that may be applicable in all circumstances. Readers having questions or specific issues to be resolved should contact a lawyer authorized to practice in North Carolina.

Photos and NC Fast Facts courtesy of NC Division of Tourism, Film, and Sports Development. Bill Russ, Photographer.

Durham photo courtesy of Durham Convention & Visitors Bureau

Data U.S. Census Bureau
Population, 2004 estimate
High school graduates, percent of persons age 25+, 2000
Bachelor's degree or higher, pct of persons age 25+, 2000
Homeownership rate, 2000
Median value of owner-occupied housing units, 2000
Median household income, 1999



**Hollywood East:
Filmmaking in
North Carolina**

With six production centers and more than one million square feet of soundstage space, North Carolina is third in the nation for filmmaking after California and New York. Diverse terrain and a mild climate have welcomed filmmakers since the 1920s. Since then, an extensive infrastructure of qualified set builders, electricians and other filmmaking professionals has developed in North Carolina. More than 700 features have been filmed in North Carolina since 1980 including movies like *The Color Purple*, *Bull Durham*, *Days of Thunder*, *Nell*, *Dirty Dancing*, *A Walk to Remember*, *The Divine Secrets of the Ya-Ya Sisterhood*, *Patch Adams*, *Last of the Mohicans*, *The Hunt for Red October*, *The Green Mile*, *The Patriot*, *Gettysburg*, *The Fugitive* and television favorites such as *Matlock*, *Dawson's Creek* and *One Tree Hill*.

State Agencies

North Carolina Department of the Secretary of State

Old Revenue Building
2 South Salisbury Street
Raleigh, North Carolina 27601-2005

Elaine F. Marshall, Secretary of State.....(919) 807-2903

Corporations Division:
Cheri L. Myers, Corporations Director(919) 807-2225

Securities Division:
David Massey, Deputy Securities Administrator(919) 733-3924

North Carolina Department of Revenue

501 North Wilmington Street
Raleigh, North Carolina 27604

E. Norris Tolson, Secretary(919) 733-7211

North Carolina Department of Labor

4 West Edenton Street
Raleigh, North Carolina 27601-1020

Cherie K. Berry, Commissioner of Labor(919) 733-7166

Occupational Safety and Health Division:
Allen McNeely, Director(919) 807-2860

North Carolina Department of Commerce

301 North Wilmington Street
Raleigh, North Carolina 27699-4301

Jim Fain, Secretary(919) 733-4151

Business/Industry Development Division:
Ray Denny, Director.....(919) 733-7978

North Carolina Department of Environment and Natural Resources

1601 Mail Service Center
Raleigh, North Carolina 27699-1601
Office of the Secretary:

William G. Ross, Jr., Secretary.....(919) 715-4102

Contact information for all offices

GEORGIA

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Steven S. Dunlevie
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2530 Meridian Parkway
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