

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 124*
Judiciary I Committee Substitute Adopted 4/28/15

Short Title: Modernize Assumed Business Name Statutes.

(Public)

Sponsors:

Referred to:

February 27, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE LAW GOVERNING THE USE OF ASSUMED BUSINESS
3 NAMES AND TO MAKE RELATED CONFORMING AND TECHNICAL
4 AMENDMENTS, AS RECOMMENDED BY THE GENERAL STATUTES
5 COMMISSION.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. ASSUMED BUSINESS NAME ACT**

9 **SECTION 1.** Article 14 of Chapter 66 of the General Statutes is repealed.

10 **SECTION 2.** Chapter 66 of the General Statutes is amended by adding a new
11 Article to read:

12 "Article 14A.
13 "Assumed Business Name Act."

14 **"§ 66-71.1. Short title.**

15 This Article may be cited as the "Assumed Business Name Act."

16 **"§ 66-71.2. Statement of purpose.**

17 The purpose of this Article is to afford the public a means of ascertaining the real names of
18 persons engaging in business in this State under an assumed business name by requiring those
19 persons to register the assumed business name as provided in this Article.

20 **"§ 66-71.3. Definitions.**

21 The following definitions apply in this Article:

22 (1) Assumed business name. –

- 23 a. In the case of an individual, any name other than the real name of the
24 individual.
25 b. In the case of a partnership other than a limited liability partnership
26 or limited partnership, any name other than the real names of all the
27 general partners of the partnership.
28 c. In the case of a limited liability partnership, any name other than the
29 name registered with the Secretary of State.
30 d. In the case of a limited partnership, any name other than the name
31 stated in its certificate of limited partnership filed with the Secretary
32 of State.
33 e. In the case of a limited liability company, any name other than the
34 name stated in its articles of organization filed with the Secretary of
35 State.



- 1 f. In the case of a corporation, any name other than the corporate name
2 stated in its articles of incorporation filed with the Secretary of State.
3 g. In the case of a trust, any name other than the name specified in the
4 trust instrument or, if the trust instrument does not specify a name for
5 the trust, any name other than the name of the trustee and a
6 designation of the trust for which the trustee is acting.
7 h. In the case of any other person, any name other than the real name of
8 the person.

- 9 (2) Person. – Includes an individual, partnership, limited partnership, limited
10 liability partnership, limited liability company, corporation, association,
11 society, organization, joint venture, business trust, trust, governmental entity,
12 or any other legal or commercial entity.

13 **"§ 66-71.4. Filing of certificate; exception.**

14 (a) Before any person engages in business in this State under an assumed business
15 name, the person must file an assumed business name certificate in the office of the register of
16 deeds of the county in which the person is or will be engaged in business. If the person is or
17 will be engaged in business in multiple counties, filing is required in only one of those counties.

18 (b) A separate assumed business name certificate must be filed for each assumed
19 business name under which a person engages in business in this State.

20 (c) A limited liability partnership, limited partnership, limited liability company, or
21 corporation that engages in business under a name that is its real name with the legal entity
22 designation required by G.S. 55D-20 omitted is not required to file an assumed business name
23 certificate under this Article.

24 **"§ 66-71.5. Contents of certificate.**

25 An assumed business name certificate must include:

- 26 (1) The assumed business name.
27 (2) The real name of the person engaging in business under the assumed
28 business name. If the business is a partnership other than a limited liability
29 partnership or limited partnership, the assumed business name certificate
30 must include the real names of five general partners or of all the general
31 partners, whichever is fewer.
32 (3) The type of business.
33 (4) The street address of the principal place of business.
34 (5) Each county where the person uses or will be using the assumed business
35 name to engage in business.

36 **"§ 66-71.6. Execution of certificate.**

37 An assumed business name certificate must be executed as follows:

- 38 (1) In the case of an individual, the certificate must be signed by the individual.
39 (2) In the case of a partnership or limited partnership, the certificate must be
40 signed by a general partner.
41 (3) In the case of a corporation or limited liability company, the certificate must
42 be signed in the name of the corporation or limited liability company by an
43 individual authorized to act for the corporation or limited liability company.
44 (4) In the case of any other person, the certificate must be signed in the name of
45 the person by an individual authorized to act for the person.

46 **"§ 66-71.7. Amendment of certificate.**

47 Any person that has filed an assumed business name certificate must, within 60 days after a
48 change in any of the information required in the assumed business name certificate, file a
49 certificate of amendment in the office of the register of deeds of the county in which the
50 assumed business name certificate was filed. The certificate must be executed in the same

1 manner as required under G.S. 66-71.6 for the execution of an assumed business name
2 certificate and must set forth:

- 3 (1) The assumed business name and the real name of the person engaging in
4 business under the assumed business name as stated in the original, or most
5 recently amended, assumed business name certificate.
- 6 (2) The book and page number of the original filing.
- 7 (3) The identification number assigned to the assumed business name by the
8 Secretary of State (SOS ID).
- 9 (4) How the assumed business name certificate is to be amended.

10 **"§ 66-71.8. Withdrawal of assumed business name.**

11 Any person filing an assumed business name certificate as required by this Article may,
12 upon ceasing to engage in business in this State under the assumed business name, withdraw
13 the assumed business name by filing a certificate of withdrawal in the office of the register of
14 deeds of the county in which the assumed business name certificate was filed. The certificate
15 must be executed in the same manner as required under G.S. 66-71.6 for the execution of an
16 assumed business name certificate and must set forth:

- 17 (1) The assumed business name being withdrawn.
- 18 (2) The book and page number of the original filing.
- 19 (3) The identification number assigned to the assumed business name by the
20 Secretary of State (SOS ID).
- 21 (4) The real name of the person engaging in business under the assumed
22 business name and that person's current address.
- 23 (5) A statement that the person has ceased engaging in business under the
24 assumed business name.
- 25 (6) The effective date of the withdrawal if it is not to be effective upon the filing
26 of the certificate of withdrawal.

27 **"§ 66-71.9. Secretary of State to maintain a centralized, statewide database of assumed**
28 **business name information.**

29 (a) The Secretary of State shall develop, implement, and maintain a searchable online
30 database of assumed business name information reported under G.S. 66-71.10. The system
31 must allow information to be entered and retrieved from the system by the registers of deeds
32 and must be available for searches by the public.

33 (b) The Secretary of State may adopt rules to implement the statewide online database.

34 **"§ 66-71.10. Register of deeds to index certificates; transmission of data to central**
35 **database.**

36 (a) The register of deeds of each county must index in accordance with Article 2 of
37 Chapter 161 of the General Statutes every assumed business name with respect to which an
38 assumed business name certificate, a certificate of amendment, or a certificate of withdrawal
39 has been filed in that county.

40 (b) Not later than 30 days after the date a certificate under this Article is filed, the
41 register of deeds must transmit a scanned image of the certificate to the Secretary of State and
42 enter into the central database maintained by the Secretary of State under G.S. 66-71.9 the
43 assumed business name, the real name of each person engaging in business under that name,
44 the type of certificate, the county in which the certificate was filed, and, in the case of a
45 certificate of amendment or certificate of withdrawal, the identification number assigned to the
46 assumed business name by the Secretary of State (SOS ID).

47 **"§ 66-71.11. Forms.**

48 (a) The Land Records Management Advisory Committee established under
49 G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this
50 Article, but their use is not mandatory.

1 (b) Any person, including the registers of deeds, may make available the forms
2 developed under subsection (a) of this section.

3 **"§ 66-71.12. Effect of filing certificate.**

4 (a) An assumed business name certificate filed under this Article is effective upon filing
5 and remains in effect until withdrawn under G.S. 66-71.8.

6 (b) Compliance with this Article does not confer any exclusive rights to the use of an
7 assumed business name in this State.

8 **"§ 66-71.13. Copy of certificate prima facie evidence.**

9 A copy of a certificate filed under this Article, duly certified by the register of deeds of the
10 office in which it was filed, is prima facie evidence of the facts required to be stated in the
11 certificate.

12 **"§ 66-71.14. Consequences of signing false certificate or violating Article.**

13 (a) A person signing a certificate under this Article that the person knows is false in any
14 material respect with intent that the certificate be delivered to the register of deeds for filing is
15 guilty of a Class 1 misdemeanor.

16 (b) A person failing to file an assumed business name certificate or a certificate of
17 amendment as required by this Article is liable to any person injured by the failure for the
18 reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a
19 reasonable purpose, the information required to be stated in the assumed business name
20 certificate or certificate of amendment. The expenses may be awarded in a civil action.

21 **"§ 66-71.15. Expiration of certificates filed under Article 14; transition provisions.**

22 (a) All certificates of assumed name filed under former Article 14 of this Chapter
23 expire July 1, 2021, and the provisions of that former Article continue to apply to them until
24 that date except as provided in this section. On or after that date, any person that (i) is listed as
25 an owner of the business in a certificate of assumed name filed under that former Article and
26 (ii) desires to continue engaging in business in this State under the assumed business name after
27 that date must file an assumed business name certificate under this Article.

28 (b) At least one person listed as an owner of the business in a certificate of assumed
29 name under former Article 14 of this Chapter must file an assumed business name certificate
30 before the certificate of assumed name expires under subsection (a) of this section if any of the
31 following occur:

32 (1) A general partnership would have been required to file a new certificate of
33 assumed name under former G.S. 66-68(c) due to the withdrawal or addition
34 of a partner.

35 (2) Any of the information in the certificate of assumed name required under
36 former G.S. 66-68(a) has changed and the person desires to continue
37 engaging in business in this State.

38 (c) No person shall file a new certificate of assumed name under former Article 14 of
39 this Chapter on or after July 1, 2016. Any document or other record filed on or after that date to
40 register an assumed business name is deemed to be filed under this Article, even if it is
41 described as a certificate of assumed name rather than an assumed business name certificate or
42 if it expressly refers to former Article 14 of this Chapter.

43 (d) A person that filed a certificate of assumed name that has not expired may withdraw
44 the assumed name under the provisions of former G.S. 66-68(f). Any such withdrawal is
45 deemed to be a withdrawal under former G.S. 66-68(f), even if it is described as a withdrawal
46 under this Article.

47 (e) No person shall file a certificate of amendment under this Article to a certificate of
48 assumed name filed under former Article 14 of this Chapter. If any such amendment is
49 nevertheless filed, it is not effective as a certificate of amendment or as an assumed business
50 name certificate under this Article.

1 (f) The register of deeds shall not transmit a scanned image to the Secretary of State, or
2 enter any of the information required by G.S. 66-71.10 into the central database maintained by
3 the Secretary of State, of any withdrawal or transfer of an assumed name or any amendment to
4 a certificate of assumed name when the certificate of assumed name to which the withdrawal,
5 transfer, or amendment relates was filed before July 1, 2016.

6 (g) Other than this section, this Article does not apply to a certificate of assumed name
7 or a withdrawal of an assumed name under former Article 14 of this Chapter."

8
9 **PART II. RELATED CONFORMING AND TECHNICAL AMENDMENTS TO OTHER**
10 **SECTIONS OF THE GENERAL STATUTES**

11 **SECTION 3.(a)** G.S. 1-69.1 reads as rewritten:

12 **"§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

13 (a) Except as provided in subsection (b) of this section:

14 (1) All unincorporated associations, organizations or societies, or general or
15 limited partnerships, foreign or domestic, whether organized for profit or
16 not, may ~~hereafter~~ sue or be sued under the name by which they are
17 commonly known and called, or under which they are ~~doing~~ engaging in
18 business, to the same extent as any other legal entity established by law and
19 without naming any of the individual members composing it.

20 (2) Any judgments and executions against any such association, organization or
21 society shall bind its real and personal property in like manner as if it were
22 incorporated.

23 (3) Any unincorporated association, organization, society, or general partnership
24 bringing a suit in the name by which it is commonly known and called must
25 ~~allege the specific location of the recordation required by G.S. 66-68. that it~~
26 has filed a certificate of assumed name under former Article 14 of Chapter
27 66 of the General Statutes or an assumed business name certificate under
28 Article 14A of Chapter 66 of the General Statutes.

29 (b) Unincorporated nonprofit associations are subject to Chapter 59B of the General
30 Statutes and not this section."

31 **SECTION 3.(b)** Effective July 1, 2021, G.S. 1-69.1(a)(3), as amended by this
32 section, reads as rewritten:

33 (3) Any unincorporated association, organization, society, or general partnership
34 bringing a suit in the name by which it is commonly known and called must
35 allege that it has filed ~~a certificate of assumed name under former Article 14~~
36 ~~of Chapter 66 of the General Statutes or an assumed business name~~
37 certificate under Article 14A of Chapter 66 of the General Statutes."

38 **SECTION 4.** G.S. 53-208.7(a) reads as rewritten:

39 (a) Each application for a license under this Article shall be made in writing, under
40 oath, and in a form prescribed by the Commissioner. For all applicants, each application shall
41 contain:

42 (1) The exact name of the applicant, the applicant's principal address, any
43 assumed ~~or trade~~ business name used by the applicant in the conduct of its
44 business, and the location of the applicant's business records.

45 "

46 **SECTION 5.** G.S. 55D-20(d) reads as rewritten:

47 (d) The use of assumed business names or fictitious names, as provided for in ~~Chapter~~
48 ~~66, Chapter 66 of the General Statutes,~~ is not affected by this Chapter or by Chapter 55, 55A,
49 57D, or 59 of the General Statutes."

50 **SECTION 6.** G.S. 58-70-5 reads as rewritten:

51 **"§ 58-70-5. Application to Commissioner for permit.**

1 (a) Any person, firm, corporation or association desiring to secure a permit as provided
2 by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at
3 which ~~such~~ the person, firm, corporation or association desires to carry on the collection agency
4 business as ~~hereinafter defined~~. ~~Such~~ defined in this Article. The applicant shall be entitled to a
5 permit upon submission to the Commissioner of Insurance of the following:

6 ~~(a)~~(1) The name, trade name if any, street address, and telephone number of the
7 applicant, including any home office address and telephone number, if
8 ~~different;~~ different.

9 ~~(b)~~(2) If the applicant is a corporation,

10 ~~(1)~~a. A certified copy of the board of director's resolution authorizing the
11 submission of the application;

12 ~~(2)~~b. An authenticated copy of the Articles of Incorporation and all
13 amendments thereto;

14 ~~(3)~~c. An authenticated copy of the bylaws or other governing instruments;

15 ~~(4)~~d. If the applicant is a foreign corporation, a copy of the certificate of
16 authority to transact business in this State issued by the North
17 Carolina Secretary of ~~State~~; State.

18 (3) If the applicant is a partnership, an authenticated copy of the then current
19 partnership agreement.

20 (4) If an assumed business name is used, certificates showing that the assumed
21 business name has been filed as required by Article 14A of Chapter 66 of the
22 General Statutes.

23 (5) A surety bond as required by G.S. 58-70-20. In the case of an alien
24 corporation, the surety bond requirements shall be double the amount set by
25 G.S. 58-70-20.

26 (6) A completed statement by each stockholder owning ten percent (10%) or
27 more of the applicant's outstanding voting stock and each partner, director,
28 and officer actively engaged in the collection agency business, containing:
29 the name of the collection agency, the name and address of the individual
30 completing the form, the positions held by the individual, each conviction of
31 any criminal offense and any criminal charges pending other than minor
32 traffic violations of the individual, and the name and address of three people
33 not related to the individual who can attest to the individual's reputation for
34 honesty and fair dealings.

35 (7) A statement sworn to by an appropriate corporate officer, partner, or
36 individual proprietor giving a description of the collection method to be
37 employed in this State.

38 (8) A statement certifying that there are no unsatisfied judgments against the
39 applicant.

40 (9) A list of all telephone numbers assigned to or to be used by the applicant in
41 the operation of the collection agency.

42 (10) The appropriate permit fee as required by G.S. 58-70-35.

43 (11) A balance sheet as of the last day of the month prior to the date of
44 submission of the application, certified true and correct by a corporate
45 officer, partner, or proprietor, setting forth the current assets, fixed assets,
46 current liabilities, and positive net worth of the applicant.

47 (12) The address of the location at which the applicant will make those records of
48 its collection agency business described in G.S. 58-70-25 available for
49 inspection by the Commissioner of Insurance.

1 (13) A statement certifying that no officer, individual proprietor, or partner of the
2 applicant has been convicted of a felony involving moral turpitude or any
3 violation of any State or federal debt collection law.

4 (14) If the collection agency's office or records, as described in G.S. 58-70-25,
5 are located outside of North Carolina, a statement sworn to by an appropriate
6 corporate officer, partner, or individual proprietor consenting to and
7 authorizing the reimbursement, to the Commissioner by the collection
8 agency, of expenses incurred by the Commissioner in conducting routine
9 examinations, audits, and in investigating written complaints against the
10 collection agency or its employees. All reimbursements shall be paid to the
11 Commissioner no more than 30 days after the date of billing. In the case of
12 an alien corporation, the sworn statement must provide that the corporation
13 will make available to the Commissioner for his inspection, in North
14 Carolina, those records described in G.S. 58-70-25, at the expense of the
15 corporation.

16 (15) If the applicant is a foreign corporation, a statement authorizing the
17 Commissioner to be its agent for service of process, which shall be
18 administered pursuant to the provisions of G.S. 58-16-30.

19 (b1) In addition to the information required by ~~subsection (b)~~ subdivision (a)(2) of this
20 section, if the applicant is an alien corporation, the corporation must be owned or majority
21 controlled ultimately by a parent entity incorporated or organized under the laws of the United
22 States or any jurisdiction within the United States, and the alien corporation may only service
23 accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this
24 subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an
25 entity unrelated to the parent entity, notice shall be provided to the Department of the pending
26 sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities
27 and Exchange Commission, shall be deemed compliance with the notice requirement of this
28 subsection. In the event of a sale, the new parent entity shall provide evidence to the
29 Department within 30 days of the sale of its and the alien corporation's compliance with the
30 requirements of this section. In the event that the new parent entity does not provide the
31 evidence within 30 days after the sale, the alien corporation's permit shall be automatically
32 suspended until the Department is provided the evidence of compliance which is satisfactory to
33 the ~~Commissioner~~; Commissioner.

34 ~~(e) If the applicant is a partnership, an authenticated copy of the then current~~
35 ~~partnership agreement;~~

36 ~~(d) If the trade name is used, certificates showing that the trade name has been filed as~~
37 ~~required by G.S. 66-68;~~

38 ~~(e) A surety bond as required by G.S. 58-70-20. In the case of an alien corporation, the~~
39 ~~surety bond requirements shall be double the amount set by G.S. 58-70-20;~~

40 ~~(f) A completed statement by each stockholder owning ten percent (10%) or more of~~
41 ~~the applicant's outstanding voting stock and each partner, director, and officer actively engaged~~
42 ~~in the collection agency business, containing: the name of the collection agency, the name and~~
43 ~~address of the individual completing the form, the positions held by the individual, each~~
44 ~~conviction of any criminal offense and any criminal charges pending other than minor traffic~~
45 ~~violations of the individual, and the name and address of three people not related to the~~
46 ~~individual who can attest to the individual's reputation for honesty and fair dealings;~~

47 ~~(g) A statement sworn to by an appropriate corporate officer, partner, or individual~~
48 ~~proprietor giving a description of the collection method to be employed in North Carolina;~~

49 ~~(h) A statement certifying that there are no unsatisfied judgments against the applicant;~~

50 ~~(i) A list of all telephone numbers assigned to, or to be used by the applicant in the~~
51 ~~operation of the collection agency;~~

- 1 (j) The appropriate permit fee as required by G.S. 58-70-35;
- 2 (k) A balance sheet as of the last day of the month prior to the date of submission of the
3 application, certified true and correct by a corporate officer, partner, or proprietor, setting forth
4 the current assets, fixed assets, current liabilities and positive net worth of the applicant;
- 5 (l) The address of the location at which the applicant will make those records of its
6 collection agency business described in G.S. 58-70-25 available for inspection by the
7 Commissioner of Insurance.
- 8 (m) A statement certifying that no officer, individual proprietor or partner of the
9 applicant has been convicted of a felony involving moral turpitude, or any violation of any
10 State or federal debt collection law.
- 11 (n) If the collection agency's office or records, as described in G.S. 58-70-25, are
12 located outside of North Carolina, a statement sworn to by an appropriate corporate officer,
13 partner, or individual proprietor consenting to and authorizing the reimbursement, to the
14 Commissioner by the collection agency, of expenses incurred by the Commissioner in
15 conducting routine examinations, audits, and in investigating written complaints against the
16 collection agency or its employees. All reimbursements shall be paid to the Commissioner no
17 more than 30 days after the date of billing. In the case of an alien corporation, the sworn
18 statement must provide that the corporation will make available to the Commissioner for his
19 inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the
20 corporation;
- 21 (o) If the applicant is a foreign corporation, a statement authorizing the Commissioner
22 to be its agent for service of process, which shall be administered pursuant to the provisions of
23 G.S. 58-16-30.
- 24 (p) In the case of an alien corporation, when the corporation is in violation of this
25 Article, the parent entity must agree to cure the violation by the alien corporation.
- 26 (q) For purposes of this Article, the following definitions apply:
- 27 (1) "Alien corporation" means a company incorporated or organized under the
28 laws of any jurisdiction outside of the United States.
- 29 (2) "Foreign corporation" means a company incorporated or organized under the
30 laws of the United States or of any jurisdiction within the United States other
31 than this State.
- 32 (r) If the applicant is a subsidiary in a holding company system and if the applicant's
33 ultimate parent regularly files financial information with the U.S. Securities and Exchange
34 Commission, in lieu of complying with ~~subsection (k)~~ subdivision (a)(11) of this section, the
35 applicant may file the ultimate parent company's balance sheet as of the most recent fiscal
36 year-end, as certified by the ultimate parent's independent auditors, and accompanied by a
37 guarantee of the applicant's performance from the ultimate parent company for the benefit of
38 the Department, limited to those portions of this Article that are applicable to the applicant.
- 39 (s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as
40 specified in subsection (r) of this section, shall remain responsible for the guarantee of
41 performance as provided in subsection (r) of this section notwithstanding any change in the
42 corporate structure of the ultimate parent company. If the permittee is acquired by any other
43 person that has control over the permittee, the controlling person shall provide its own
44 guarantee of performance as provided in subsection (r) of this section for the permittee to retain
45 its permit. If the permittee does not have an ultimate parent company, it shall file its own
46 balance sheet as specified in ~~subsection (k)~~ subdivision (a)(11) of this section."

47 **SECTION 7.** G.S. 59-84.1 reads as rewritten:

48 **"§ 59-84.1. Partnership to comply with "assumed name" statute; Assumed Business Name**
49 **Act; income taxation.**

1 (a) Every partnership other than a limited partnership shall comply with, and be subject
2 to, the provisions of ~~Articles 14~~ Articles 14A and 15 of Chapter 66 of the General Statutes in
3 all cases in which the ~~same~~ Articles are applicable.

4"

5 **SECTION 8.** G.S. 62-115 reads as rewritten:

6 **"§ 62-115. Issuance of partnership franchises.**

7 No franchise shall be issued under this Article to two or more persons until ~~such~~ the persons
8 have executed a partnership agreement, filed a copy of ~~said~~ the agreement with the
9 Commission, and indicated to the Commission, in writing, that they have complied with ~~Article~~
10 ~~14~~ Article 14A of Chapter 66 of the General Statutes relating to ~~doing~~ engaging in business
11 under an assumed business name."

12 **SECTION 9.** G.S. 66-262 reads as rewritten:

13 **"§ 66-262. Filing information.**

14 (a) Each filing submitted to the Secretary shall contain all of the following information:

15 (1) The name or names, including any assumed business names, under which
16 the telephonic seller is doing or intends to do business in this State.

17"

18 **PART III. EFFECTIVE DATE AND APPLICABILITY PROVISIONS**

19 **SECTION 10.** This act becomes effective July 1, 2016. This act does not affect a
20 civil action or proceeding commenced or a right accrued before July 1, 2016.
21