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SENATE BILL DRS35223-MV-16

Short Title: Modify Business Corporation Act.

(Public)

Sponsors: Senator Galey (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS
3 CORPORATION ACT, AS RECOMMENDED BY THE NORTH CAROLINA BAR
4 ASSOCIATION.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. CLARIFY THAT VOTING SHARES CONTROLLED BY CORPORATION**
8 **ARE NOT ENTITLED TO VOTE**

9 SECTION 1.(a) G.S. 55-7-21 reads as rewritten:

10 "§ 55-7-21. Voting entitlement of shares.

11 (a) Except as provided in subsections (b) and (c) of this section or unless the articles of
12 incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one
13 vote on each matter voted on at a shareholders' meeting.

14 (b) Absent special circumstances, the shares of a corporation are not entitled to vote if
15 they are ~~owned, directly or indirectly, by a second corporation, domestic or foreign, and the first~~
16 ~~corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of~~
17 ~~the second corporation, owned by or otherwise belong to the corporation, directly or indirectly,~~
18 through an entity of which a majority of the voting power is held directly or indirectly by the
19 corporation or which is otherwise controlled by the corporation.

20 (c) Subsection (b) of this section does not limit the power of a corporation to vote any
21 shares, including its own shares, ~~held by it held, directly or indirectly,~~ in a fiduciary
22 ~~capacity,~~ capacity, unless they are held for the benefit of, or otherwise belong to, the corporation,
23 directly or indirectly, through an entity of which a majority of the voting power is held directly
24 or indirectly by the corporation or which is otherwise controlled by the corporation.

25 (d) Redeemable shares are not entitled to vote after notice of redemption is given to the
26 holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company,
27 or other financial institution under an irrevocable obligation to pay the holders the redemption
28 price on surrender of the shares.

29 (e) For purposes of this section, "voting power" means the current power to vote in the
30 election of directors of a corporation or to elect, select, or appoint managers, managing members,
31 or other members of the governing body of another entity."

32 SECTION 1.(b) This section becomes effective October 1, 2021.

33
34 **PART II. CLARIFY THAT BOARD MAY FIX COMPENSATION OF DIRECTORS**
35 **FOR SERVICES IN ANY CAPACITY AS A DIRECTOR**

36 SECTION 2.(a) G.S. 55-8-11 reads as rewritten:



* D R S 3 5 2 3 - M V - 1 6 *

1 **"§ 55-8-11. Compensation of directors.**

2 Unless the articles of incorporation or bylaws provide otherwise, the board of directors,
3 without regard to personal interest, may fix the compensation of directors for services in any
4 ~~capacity.~~ capacity as a director. The compensation established pursuant to this section of directors
5 of a public corporation or of a corporation that so provides in its articles of incorporation is
6 presumed to be fair to the corporation unless proven not to be fair to the corporation by a
7 preponderance of the evidence."

8 **SECTION 2.(b)** This section becomes effective October 1, 2021.

9
10 **PART III. CLARIFY THAT A QUORUM IS A MAJORITY UNLESS OTHERWISE**
11 **FIXED AND SHALL NOT BE FIXED AT LESS THAN ONE-THIRD**

12 **SECTION 3.(a)** G.S. 55-8-24 reads as rewritten:

13 **"§ 55-8-24. Quorum and voting.**

14 (a) Unless the articles of incorporation or bylaws ~~require~~ provide for a greater ~~number,~~
15 ~~or lesser number~~ or unless otherwise expressly provided in this Chapter, a quorum of a board of
16 directors consists ~~of~~ of a majority of the number of directors specified in or fixed in accordance
17 with the articles of incorporation or bylaws.

18 (1) ~~A majority of the fixed number of directors if the corporation has a fixed board~~
19 ~~size; or~~

20 (2) ~~A majority of the number of directors prescribed, or if no number is prescribed~~
21 ~~the number in office immediately before the meeting begins, if the corporation~~
22 ~~has a variable range size board.~~

23 (b) ~~The quorum of the board of directors provided in the articles of incorporation or a~~
24 ~~bylaw adopted by the shareholders may authorize a quorum of a board of directors to~~ bylaws
25 shall not consist of no fewer less than one-third of the fixed or prescribed number of directors
26 determined under subsection (a), specified in or fixed in accordance with the articles of
27 incorporation or bylaws.

28 (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of
29 directors present is the act of the board of directors unless the articles of incorporation or bylaws
30 require the vote of a greater number of ~~directors.~~ directors or unless otherwise expressly provided
31 in this Chapter.

32 (d) A director who is present at a meeting of the board of directors or a committee or
33 subcommittee of the board of directors when corporate action is taken is deemed to have assented
34 to the action taken unless any of the following requirements are met:

35 (1) The director objects at the beginning of the ~~meeting~~ (or meeting, or promptly
36 upon the director's arrival) arrival, to holding it or transacting business at the
37 meeting.

38 (2) The director's dissent or abstention from the action taken is entered in the
39 minutes of the meeting.

40 (3) The director files written notice of the director's dissent or abstention with the
41 presiding officer of the meeting before its adjournment or with the corporation
42 immediately after adjournment of the meeting. The right of dissent or
43 abstention is not available to a director who votes in favor of the action taken."

44 **SECTION 3.(b)** This section becomes effective October 1, 2021.

45
46 **PART IV. AUTHORIZE CHANGE OF CORPORATE NAME WITHOUT**
47 **SHAREHOLDER APPROVAL**

48 **SECTION 4.(a)** G.S. 55-10-02 reads as rewritten:

49 **"§ 55-10-02. Amendment by board of directors.**

1 Unless the articles of incorporation provide otherwise, a corporation's board of directors may
2 adopt any of the following amendments to the corporation's articles of incorporation without
3 shareholder approval:

4 ...

5 (4) If the corporation has only one class of shares ~~outstanding; outstanding~~, to do
6 any of the following:

7 a. ~~To change~~ Change each issued and unissued authorized share of the
8 class into a greater number of whole shares of the ~~class; or class.~~

9 b. ~~To increase~~ Increase the number of authorized shares of the class to
10 the extent necessary to permit the issuance of shares as a share
11 dividend.

12 (5) To change the corporate ~~name by substituting the word "corporation",~~
13 ~~"incorporated", "company", "limited", or the abbreviation "corp.", "inc.",~~
14 ~~"co.", or "Ltd.", for a similar word or abbreviation in the name, or by adding,~~
15 ~~deleting, or changing a geographical attribution for the name.~~

16"

17 **SECTION 4.(b)** This section becomes effective October 1, 2021.

18
19 **PART V. CLARIFY JURISDICTION OF THE COURT IN AN APPRAISAL**
20 **PROCEEDING COMMENCED UNDER G.S. 55-13-30**

21 **SECTION 5.(a)** G.S. 55-13-30 reads as rewritten:

22 **"§ 55-13-30. Court Action.**

23 (a) If a shareholder makes a demand for payment under G.S. 55-13-28 ~~which that~~ remains
24 unsettled, the corporation shall commence a proceeding within 60 days after receiving the
25 payment demand by filing a complaint with the Superior Court Division of the General Court of
26 Justice to determine whether the shareholder complied with the requirements of this Article and
27 is entitled to appraisal rights, and, if so, to determine the fair value of the shares and accrued
28 interest. The shareholder has the burden of proving that the shareholder complied with the
29 requirements of this Article regarding entitlement to appraisal rights. If the superior court
30 determines that a shareholder has not complied with the requirements of this Article, the
31 shareholder is not entitled to appraisal rights, and the court shall dismiss the proceeding as to the
32 shareholder. If the corporation does not commence the proceeding within the 60-day period, the
33 corporation shall pay in cash to each shareholder the amount the shareholder demanded pursuant
34 to G.S. 55-13-28, plus interest.

35 (a1) Repealed by Session Laws 1997-202, s. 4.

36 (b) The corporation shall commence the proceeding in the appropriate court of the county
37 where the corporation's principal ~~office (or, office, or, if none, its registered office)~~ office in this
38 State is located. If the corporation is a foreign corporation without a registered office in this State,
39 it shall commence the proceeding in the county in this State where the principal office or
40 registered office of the domestic corporation merged with the foreign corporation was located at
41 the time of the transaction.

42 (c) The corporation shall make all ~~shareholders (whether shareholders, whether or not~~
43 ~~residents of this State)~~ State, whose demands remain unsettled parties to the proceeding as in an
44 action against their shares and all parties ~~must~~ shall be served with a copy of the complaint.
45 Nonresidents may be served by registered or certified mail or by publication as provided by law.

46 (d) The jurisdiction of the superior court in which the proceeding is commenced under
47 subsection (b) of this section is plenary and exclusive. The court may appoint one or more persons
48 as appraisers to receive evidence and recommend a decision on the question of fair value. The
49 appraisers shall have the powers described in the order appointing them, or in any amendment to
50 it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties
51 in other civil proceedings. There ~~shall be~~ is no right to a trial by jury.

1 (e) Each shareholder made a party to the proceeding that is determined by the superior
2 court to have complied with the requirements of this Article and is entitled to appraisal rights is
3 entitled to judgment either (i) for the amount, if any, by which the court finds the fair value of
4 the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the
5 shareholder for the shareholder's shares or (ii) for the fair value, plus interest, of the shareholder's
6 shares for which the corporation elected to withhold payment under G.S. 55-13-27."

7 **SECTION 5.(b)** This section is effective when it becomes law and applies to
8 proceedings commenced on or after that date.

9
10 **PART VI. MODERNIZE CORPORATE RECORDS REQUIREMENTS AND CLARIFY**
11 **INSPECTION RIGHTS**

12 **SECTION 6.(a)** G.S. 55-16-01 reads as rewritten:

13 **"§ 55-16-01. Corporate records.**

14 (a) A corporation shall ~~keep as permanent records minutes of all meetings of its~~
15 ~~incorporators, shareholders and board of directors, a record of all actions taken by the~~
16 ~~shareholders or board of directors without a meeting, and a record of all actions taken by a~~
17 ~~committee of the board of directors in place of the board of directors on behalf of the~~
18 ~~corporation.~~ maintain the following records:

19 (1) Its articles of incorporation as currently in effect.

20 (2) Its bylaws as currently in effect.

21 (3) All written communications within the past three years to shareholders
22 generally.

23 (4) Minutes of all meetings of, and records of all actions taken without a meeting
24 by, its shareholders, its board of directors, and board committees established
25 under section G.S. 55-8-25.

26 (5) A list of the names and business addresses of its current directors and officers.

27 (6) Its most recent annual report delivered as required by G.S. 55-16-22.

28 (b) A corporation shall maintain ~~appropriate accounting records.~~ all annual financial
29 statements prepared for the corporation for its last three fiscal years, or each year of its existence
30 if shorter than three years, and any audit or other reports with respect to the financial statements.

31 (c) A corporation or its agent shall maintain a record of its ~~shareholders, in a form that~~
32 ~~permits preparation of a list of the names and addresses of all current~~ shareholders, in alphabetical
33 order by class of shares showing the number and class of shares held by ~~each~~ each shareholder.

34 (d) A corporation shall maintain ~~its records in written form or in another form capable of~~
35 ~~conversion into written form within a reasonable time.~~ accounting records in a form that permits
36 preparation of its financial statements.

37 (e) A corporation shall ~~keep a copy of the following records at its principal office:~~

38 (1) ~~Its articles or restated articles of incorporation and all amendments to them~~
39 ~~currently in effect;~~

40 (2) ~~Its bylaws or restated bylaws and all amendments to them currently in effect;~~

41 (3) ~~Resolutions adopted by its board of directors creating one or more classes or~~
42 ~~series of shares, and fixing their relative rights, preferences, and limitations,~~
43 ~~if shares issued pursuant to those resolutions are outstanding;~~

44 (4) ~~The minutes of all shareholders' meetings, and records of all action taken by~~
45 ~~shareholders without a meeting, for the past three years;~~

46 (5) ~~All written communications to shareholders generally within the past three~~
47 ~~years and the financial statements required to be made available to the~~
48 ~~shareholders for the past three years under G.S. 55-16-20;~~

49 (6) ~~A list of the names and business addresses of its current directors and officers;~~
50 ~~and~~

51 (7) ~~Its most recent annual report delivered as required by G.S. 55-16-22.~~

1 maintain the records specified in this section in a manner so that they may be made available
2 for inspection within a reasonable time."

3 **SECTION 6.(b)** Article 16 of Chapter 55 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 55-16-01A. Definitions.**

6 In this Article, the following definitions apply:

7 (1) Reserved.

8 (2) Reserved.

9 (3) Qualified shareholder. – A person who has been a shareholder in the
10 corporation for at least six months immediately preceding the shareholder's
11 demand for inspection of records or who holds at least five percent (5%) of
12 the corporation's outstanding shares of any class.

13 (4) Shareholder. – A record shareholder or a beneficial shareholder whose shares
14 are held in a voting trust or by a nominee on the beneficial shareholder's behalf
15 and whose beneficial ownership is certified to the corporation by that voting
16 trust or nominee."

17 **SECTION 6.(c)** G.S. 55-16-02 reads as rewritten:

18 **"§ 55-16-02. Inspection of records by shareholders.**

19 (a) A qualified shareholder of a corporation is entitled to inspect and copy, during regular
20 business hours at the corporation's principal office, any of the records of the corporation
21 described in ~~G.S. 55-16-01(e) if he~~ G.S. 55-16-01(a), excluding minutes of meetings of, and
22 records of actions taken without a meeting by, the corporation's board of directors and board
23 committees established under G.S. 55-8-25, if the qualified shareholder gives the corporation
24 written notice of his ~~the~~ qualified shareholder's demand at least five business days before the date
25 on which he ~~the~~ qualified shareholder wishes to inspect and copy.

26 (b) A qualified shareholder of a corporation is entitled to inspect and copy, during regular
27 business hours at a reasonable location specified by the corporation, any of the following records
28 of the corporation if the qualified shareholder meets the requirements of subsection (c) of this
29 section and gives the corporation written notice of ~~his~~ the qualified shareholder's demand at least
30 five business days before the date on which ~~he~~ the qualified shareholder wishes to inspect and
31 copy:

32 (1) Records of any final action taken with or without a meeting by the board of
33 directors, or by a committee of the board of directors while acting in place of
34 the board of directors on behalf of the ~~corporation, minutes of any meeting of~~
35 ~~the shareholders and records of action taken by the shareholders without a~~
36 ~~meeting, to the extent not subject to inspection under G.S. 55-16-02~~
37 ~~(a);~~ corporation maintained in accordance with G.S. 55-16-01(a).

38 (2) Accounting records of the ~~corporation;~~ and corporation.

39 (3) The record of ~~shareholders;~~ shareholders maintained in accordance with
40 G.S. 55-16-01(c).

41 (4) The financial statements of the corporation maintained in accordance with
42 G.S. 55-16-01(b).

43 ~~provided that a~~ A shareholder of a public corporation ~~shall is not be~~ entitled to inspect or copy
44 any accounting records of the corporation or any records of the corporation with respect to any
45 matter which the corporation determines in good faith may, if disclosed, adversely affect the
46 corporation in the conduct of its business or may constitute material nonpublic information at the
47 time the shareholder's notice of demand to inspect and copy is received by the corporation.

48 (c) A qualified shareholder may inspect and copy the records described in subsection (b)
49 only ~~if~~ if all of the following apply:

50 (1) ~~His~~ The qualified shareholder's demand is made in good faith and for a proper
51 purpose; ~~purpose.~~

1 (2) ~~He~~ The qualified shareholder describes with reasonable particularity ~~his~~ the
2 qualified shareholder's purpose and the records ~~he~~ the qualified shareholder
3 desires to inspect, and inspect.

4 (3) The records are directly connected with ~~his~~ the qualified shareholder's
5 purpose.

6 (c1) The corporation may impose reasonable restrictions on the confidentiality, use, or
7 distribution of records described in subsection (b) of this section.

8 (d) The right of inspection granted by this section ~~may~~ shall not be abolished or limited
9 by a corporation's articles of incorporation or bylaws.

10 (e) This section does not ~~affect~~ affect any of the following:

11 (1) The right of a shareholder to inspect records under G.S. 55-7-20 or, if the
12 shareholder is in litigation with the corporation, to inspect the records to the
13 same extent as any other ~~litigant~~ litigant.

14 (2) The power of a court, independently of this Chapter, to compel the production
15 of corporate records for ~~examination~~ examination and to impose reasonable
16 restrictions as provided in G.S. 55-16-04(c), so long as, in the case of
17 production of records described in subsection (b) of this section at the request
18 of a qualified shareholder, the qualified shareholder has met the requirements
19 of subsection (c) of this section.

20 (f) ~~For purposes of this section, "shareholder" includes a beneficial owner whose shares~~
21 ~~are held in a voting trust or by a nominee on his behalf and whose beneficial ownership is certified~~
22 ~~to the corporation by that voting trust or nominee.~~

23 (g) ~~For purposes of this section a "qualified shareholder" of a corporation is a person who~~
24 ~~shall have been a shareholder in the corporation for at least six months immediately preceding~~
25 ~~his demand or who shall be the holder of at least five percent (5%) of the corporation's~~
26 ~~outstanding shares of any class.~~

27 (h) A qualified shareholder of a corporation that has the power to elect, appoint, or
28 designate a majority of the directors of another domestic or foreign corporation or of a domestic
29 or foreign nonprofit corporation, ~~shall have~~ has the inspection rights provided in this section with
30 respect to the records of that other corporation.

31 (i) Notwithstanding the provisions of this section or any other provisions of this Chapter
32 or interpretations thereof to the contrary, a shareholder of a public corporation ~~shall have~~ has
33 common law rights to inspect or copy any accounting records of the corporation or any other
34 records of the corporation that may not be inspected or copied by a shareholder of a public
35 corporation as provided in ~~G.S. 55-16-02(b)~~ subsection (b) of this section."

36 **SECTION 6.(d)** G.S. 55-16-03 reads as rewritten:

37 "**§ 55-16-03. Scope of inspection right.**

38 (a) A ~~shareholder's~~ qualified shareholder may appoint an agent or attorney ~~has the same~~
39 to exercise the qualified shareholder's inspection and copying rights as ~~the shareholder~~
40 ~~represented under G.S. 55-16-02.~~

41 (b) The ~~right~~ corporation may, if reasonable, satisfy the right of a qualified shareholder
42 to copy records under G.S. 55-16-02 ~~includes, if reasonable, the right to receive by~~ furnishing to
43 the qualified shareholder copies by ~~xerographic photocopy~~ or other means, means chosen by the
44 corporation, including copies through an electronic transmission if available and so requested by
45 ~~the shareholder.~~ transmission.

46 (c) The corporation may impose a reasonable ~~charge, covering the costs of labor and~~
47 ~~material, for producing for inspection or copying any records provided to the shareholder. The~~
48 ~~charge may not exceed the estimated cost of production, reproduction, or transmission of the~~
49 ~~records.~~ charge to cover the costs of providing copies of documents to the qualified shareholder,
50 which may be based on an estimate of the costs.

1 (d) The corporation may comply with a qualified shareholder's demand to inspect the
2 record of shareholders under G.S. 55-16-02(b)(3) by providing the shareholder with a list of its
3 shareholders that was compiled no earlier than the date of the qualified shareholder's demand."

4 **SECTION 6.(e)** G.S. 55-16-04 reads as rewritten:

5 **"§ 55-16-04. Court-ordered inspection.**

6 (a) If a corporation does not allow a qualified shareholder who complies with
7 G.S. 55-16-02(a) to inspect and copy any records required by that subsection to be available for
8 inspection, the superior court of the county where the corporation's principal ~~office (or, office, or~~
9 if none in this State, its registered ~~office)~~-office, is located may, upon application of the qualified
10 shareholder, summarily order inspection and copying of the records demanded at the
11 corporation's expense.

12 (b) If a corporation does not within a reasonable time allow a qualified shareholder who
13 complies with G.S. 55-16-02(b) to inspect and copy ~~any other record, the records required by~~
14 that subsection, the qualified shareholder who complies with G.S. 55-16-02(b) and (c) may apply
15 to the superior court in the county where the corporation's principal ~~office (or, office, or if none~~
16 in this State, its registered ~~office)~~-office, is located for an order to permit inspection and copying
17 of the records demanded. The court shall dispose of an application under this subsection on an
18 expedited basis.

19 (c) If the court orders inspection and copying of the records demanded, it may impose
20 reasonable restrictions on their confidentiality, use, or distribution by the demanding qualified
21 shareholder, and it shall also order the corporation to pay the qualified shareholder's ~~eosts~~
22 ~~(including costs, including reasonable attorneys' fees)-fees~~, incurred to obtain the order unless
23 the corporation ~~proves~~-establishes that it refused inspection in good faith ~~because it due to any of~~
24 the following:

25 (1) The corporation had a reasonable basis for doubt about the right of the
26 shareholder to inspect the records demanded.

27 (2) The corporation required reasonable restrictions on the confidentiality, use, or
28 distribution of the records demanded to which the demanding qualified
29 shareholder had been unwilling to agree.

30 ~~(d) If the court orders inspection and copying of the records demanded, it may impose~~
31 ~~reasonable restrictions on the use or distribution of the records by the demanding shareholder."~~

32 **SECTION 6.(f)** G.S. 55-16-20 reads as rewritten:

33 **"§ 55-16-20. Financial statements for shareholders.**

34 ~~(a) A corporation shall make available to its shareholders annual financial statements,~~
35 ~~which may be consolidated or combined statements of the corporation and one or more of its~~
36 ~~subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income~~
37 ~~statement for that year, and a statement of cash flows for the year unless that information appears~~
38 ~~elsewhere in the financial statements. If financial statements are prepared for the corporation on~~
39 ~~the basis of generally accepted accounting principles, the annual financial statements must also~~
40 ~~be prepared on that basis. Upon the written request of a shareholder, a corporation shall deliver,~~
41 ~~or make available to the requesting shareholder by posting on its website or by other generally~~
42 ~~recognized means, annual financial statements for the most recent fiscal year of the corporation~~
43 ~~for which annual financial statements have been prepared for the corporation. If financial~~
44 ~~statements have been prepared for the corporation on the basis of generally accepted accounting~~
45 ~~principles for the specified period, the corporation shall deliver or make available those financial~~
46 ~~statements to the requesting shareholder. If the annual financial statements to be delivered or~~
47 ~~made available to the requesting shareholder are audited or otherwise reported upon by a public~~
48 ~~accountant, the report shall also be delivered or made available to the requesting shareholder.~~

49 ~~(b) If the annual financial statements are reported upon by a public accountant, his report~~
50 ~~must accompany them. If not, the statements must be accompanied by a statement of the president~~
51 ~~or the person responsible for the corporation's accounting records:~~

- 1 (1) ~~Stating his reasonable belief whether the statements were prepared on the~~
2 ~~basis of generally accepted accounting principles and, if not, describing the~~
3 ~~basis of preparation; and~~
4 (2) ~~Describing any respects in which the statements were not prepared on a basis~~
5 ~~of accounting consistent with the statements prepared for the preceding year.~~

6 A corporation shall deliver, or make available and provide written notice of availability of,
7 the financial statements required under subsection (a) of this section to the requesting shareholder
8 within five business days of delivery of the written request to the corporation.

9 ~~(c) A corporation shall mail the annual financial statements, or a written notice of their~~
10 ~~availability, to each shareholder within 120 days after the close of each fiscal year; provided that~~
11 ~~the failure of the corporation to comply with this requirement shall not constitute the basis for~~
12 ~~any claim of damages by any shareholder unless such failure was in bad faith. Thereafter, on~~
13 ~~written request from a shareholder who was not mailed the statements, the corporation shall mail~~
14 ~~him the latest financial statements.~~A corporation may fulfill its responsibilities under this section
15 by delivering the specified financial statements, or otherwise making them available, in any
16 manner permitted by the applicable regulations of the United States Securities and Exchange
17 Commission.

18 (d) Notwithstanding the provisions of subsections (a) and (b) of this section, the
19 following apply:

- 20 (1) As a condition to delivering or making available financial statements to a
21 requesting shareholder, the corporation may require the requesting
22 shareholder to agree to reasonable restrictions on the confidentiality, use, and
23 distribution of the financial statements.
24 (2) The corporation may, if it reasonably determines that the shareholder's request
25 is not made in good faith or for a proper purpose, decline to deliver or make
26 available the financial statements to that shareholder.

27 (e) If a corporation does not respond to a shareholder's request for annual financial
28 statements pursuant to this section in accordance with subsection (b) of this section within five
29 business days of delivery of the request to the corporation, the following apply:

- 30 (1) The requesting shareholder may apply to the superior court of the county
31 where the corporation's principal office, or if none in this State, its registered
32 office, is located for an order requiring delivery of or access to the requested
33 financial statements. The court shall dispose of an application under this
34 subsection on an expedited basis.
35 (2) If the court orders delivery or access to the requested financial statements, it
36 may impose reasonable restrictions on their confidentiality, use, or
37 distribution.
38 (3) In a proceeding under this subsection, if the corporation has declined to deliver
39 or make available the financial statements because the shareholder had been
40 unwilling to agree to restrictions proposed by the corporation on the
41 confidentiality, use, and distribution of the financial statements, the
42 corporation has the burden of demonstrating that the restrictions proposed by
43 the corporation were reasonable.
44 (4) In a proceeding under this subsection, if the corporation has declined to deliver
45 or make available the financial statements pursuant to subdivision (d)(2) of
46 this section, the corporation has the burden of demonstrating that it had
47 reasonably determined that the shareholder's request was not made in good
48 faith or for a proper purpose.
49 (5) If the court orders delivery or access to the requested financial statements, it
50 shall order the corporation to pay the shareholder's costs, including reasonable
51 attorneys' fees, incurred to obtain the court order, unless the corporation

1 establishes that it had refused delivery or access to the requested financial
2 statements because the shareholder had refused to agree to reasonable
3 restrictions on the confidentiality, use, or distribution of the financial
4 statements or that the corporation had reasonably determined that the
5 shareholder's request was not made in good faith or for a proper purpose."

6 **SECTION 6.(g)** G.S. 55-13-20 reads as rewritten:

7 **"§ 55-13-20. Notice of appraisal rights.**

8 ...

9 (c) If any corporate action specified in G.S. 55-13-02(a) is to be approved by written
10 consent of the shareholders pursuant to G.S. 55-7-04, then the following ~~must~~shall occur:

11 (1) Written notice that appraisal rights are, are not, or may be available ~~must~~shall
12 be given to each record shareholder from whom a consent is solicited at the
13 time consent of each shareholder is first solicited and, if the corporation has
14 concluded that appraisal rights are or may be available, ~~must~~shall be
15 accompanied by a copy of this Article.

16 (2) Written notice that appraisal rights are, are not, or may be available ~~must~~shall
17 be delivered together with the notice to the applicable shareholders required
18 by subsections (d) and (e) of G.S. 55-7-04, may include the materials
19 described in G.S. 55-13-22, and, if the corporation has concluded that
20 appraisal rights are or may be available, ~~must~~shall be accompanied by a copy
21 of this Article.

22 (d) If any corporate action described in G.S. 55-13-02(a) is proposed, or a merger
23 pursuant to G.S. 55-11-04 or G.S. 55-11-12 is effected, then the notice or offer referred to in
24 subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may
25 be available, and the notice referred to in subsection (b) of this section, shall be accompanied by
26 both of the following:

27 (1) ~~The annual~~Annual financial statements ~~specified in~~as described in
28 G.S. 55-16-20(a) of the corporation that issued the shares to be appraised. The
29 date of the financial statements shall not be more than 16 months before the
30 date of the ~~notice and shall comply with G.S. 55-16-20(b).~~notice. If annual
31 financial statements that meet the requirements of this subdivision are not
32 reasonably available, then the corporation shall provide reasonably equivalent
33 financial ~~information~~information and in any case shall provide a balance
34 sheet as of the end of a fiscal year ending not more than 16 months before the
35 date of the notice, an income statement for that year, and a cash flow statement
36 for that year.

37 (2) The latest ~~available quarterly~~interim financial statements of the corporation,
38 if any.

39 ~~The right to receive the information described in this subsection may be waived in writing by a~~
40 ~~shareholder before or after the corporate action.~~

41 (e) The right to receive the information described in subsection (d) of this section may
42 be waived in writing by a shareholder before or after the corporate action."

43 **SECTION 6.(h)** G.S. 55-13-25 reads as rewritten:

44 **"§ 55-13-25. Payment.**

45 ...

46 (b) The payment to each shareholder pursuant to subsection (a) of this section ~~must~~shall
47 be accompanied by the following:

48 (1) The following financial information:

49 a. ~~The annual~~Annual financial statements ~~specified as described in~~
50 G.S. 55-16-20(a) of the corporation that issued the shares to be
51 appraised. The date of the financial statements shall not be more than

1 16 months before the date of ~~payment and shall comply with G.S.~~
 2 ~~55-16-20(b). payment.~~ If annual financial statements that meet the
 3 requirements of this sub-subdivision are not reasonably available, the
 4 corporation shall provide reasonably equivalent financial
 5 ~~information.~~ information and in any case shall provide a balance sheet
 6 as of the end of a fiscal year ending not more than 16 months before
 7 the date of payment, an income statement for that year, and a cash flow
 8 statement for that year.

9 b. The latest ~~available quarterly~~ interim financial statements, if any.

10 (2) A statement of the corporation's estimate of the fair value of the shares. The
 11 estimate ~~must~~ shall equal or exceed the corporation's estimate given pursuant
 12 to G.S. 55-13-22(b)(2)c.

13 (3) A statement that the shareholders described in subsection (a) of this section
 14 have the right to demand further payment under G.S. 55-13-28 and that if a
 15 shareholder does not do so within the time period specified ~~therein,~~ in
 16 G.S. 55-13-28, then the shareholder shall be deemed to have accepted ~~such~~
 17 payment in full satisfaction of the corporation's obligations under this Article."

18 **SECTION 6.(i)** G.S. 57D-3-04 reads as rewritten:

19 **"§ 57D-3-04. Information rights.**

20 (a) Subject to the other provisions of this section, each member may inspect and copy or
 21 otherwise obtain from the LLC any of the following:

- 22 ...
- 23 (2) Either, as the LLC may elect, (i) a copy of any federal, state, or local income
 24 tax returns of the LLC, including any amendments and supplements made to
 25 those returns, filed with taxing authorities that pertain to any of the LLC's
 26 preceding four fiscal years or (ii) financial statements of the LLC ~~of the type~~
 27 as described in subsections (a) and (b) of G.S. 55-16-20 that pertain to any of
 28 the LLC's preceding four fiscal years.

29"

30 **SECTION 6.(j)** Subsections (c), (d), (e), and (f) of this section become effective
 31 October 1, 2021, and apply to demands for inspection and requests for financial statements
 32 received by a corporation on or after that date. The remainder of this section becomes effective
 33 October 1, 2021.

34
 35 **PART VII. INSTRUCTION TO THE REVISOR OF STATUTES AND EFFECTIVE**
 36 **DATE**

37 **SECTION 7.(a)** The Revisor of Statutes shall cause to be printed, as annotations to
 38 the published General Statutes, all relevant portions of the Official Comments to the Model
 39 Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor
 40 may deem appropriate.

41 **SECTION 7.(b)** Except as otherwise provided, this act is effective when it becomes
 42 law.