

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 477
Commerce and Insurance Committee Substitute Adopted 4/25/23
Judiciary Committee Substitute Adopted 5/2/23
House Committee Substitute Favorable 8/16/23
PROPOSED HOUSE COMMITTEE SUBSTITUTE S477-PCS15379-TG-41

Short Title: Amend Bus. Corp. Act/Bus. Opp. Disclosures.

(Public)

Sponsors:

Referred to:

April 4, 2023

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT AND TO ELIMINATE DUPLICATIVE STATE DISCLOSURE REQUIREMENTS FOR BUSINESS OPPORTUNITY SELLERS THAT FILE COMPARABLE DISCLOSURES WITH THE FEDERAL TRADE COMMISSION, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION, AND TO MODIFY THE RIGHT OF A SHAREHOLDER OF A CORPORATION TO INSPECT THE RECORDS OF A SUBSIDIARY ENTITY OF THAT CORPORATION.

The General Assembly of North Carolina enacts:

PART I. FACILITATE THE USE OF EMAIL AND OTHER COMMUNICATIONS WITH SHAREHOLDERS

SECTION 1.(a) G.S. 55-1-40 reads as rewritten:

"§ 55-1-40. Chapter definitions.

~~The following definitions apply in this Chapter unless otherwise specifically provided:~~

- (1) ~~"Articles of incorporation" include~~ Articles of incorporation. – Include amended and restated articles of incorporation and articles of merger.
- (2) ~~"Authorized shares" means the~~ Authorized shares. – The shares of all classes a domestic or foreign corporation is authorized to issue.
- (2a) ~~"Business entity,"~~ Business entity, as used in G.S. 55-11-10 and Article 11A of this Chapter, ~~means a~~ Chapter. – A domestic corporation (including corporation, including a professional corporation as defined in ~~G.S. 55B-2),~~ G.S. 55B-2, a foreign corporation, a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.
- (3) ~~"Conspicuous" means so~~ Conspicuous. – So written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (4) ~~"Corporation" or "domestic corporation" means a~~ Corporation or domestic corporation. – A corporation for profit or a corporation having capital stock



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- 1 that is incorporated under or subject to the provisions of this Chapter and that
 2 is not a foreign corporation except that in G.S. 55-9-01 and G.S. 55-15-21
 3 "corporation" includes domestic and foreign corporations.
- 4 (5) ~~"Deliver" includes Deliver. – Includes mail.~~
- 5 (6) ~~"Distribution" means a Distribution. – A~~ direct or indirect transfer of money
 6 or other property (except its own shares) or incurrence of indebtedness by a
 7 corporation to or for the benefit of its shareholders in respect of any of its
 8 shares. A distribution may be in the form of a declaration or payment of a
 9 dividend; a purchase, redemption, or other acquisition of shares; a distribution
 10 of indebtedness; or otherwise.
- 11 (6a) ~~"Dividend credit" Dividend credit, as used in G.S. 55-6-01(d)(5) means the~~
 12 ~~G.S. 55-6-01(d)(5). – The aggregate of all yearly dividend credits. "Yearly~~
 13 ~~dividend credit" means with respect to noncumulative preferred shares, the~~
 14 ~~amount by which the full dividend preference of such a share, to the extent~~
 15 ~~that such the preference is earned by the corporation with respect to such a the~~
 16 ~~share in a particular fiscal year, exceeds the dividends paid on said the share~~
 17 ~~for that year; provided, that no however, dividend credit shall not accrue~~
 18 ~~unless, and only to the extent that, there exists an earned surplus at the end of~~
 19 ~~such that fiscal year. Computations of earnings allocable to classes of shares~~
 20 ~~made in good faith by the board of directors in accordance with generally~~
 21 ~~accepted accounting principles shall be are conclusive. For the purpose of this~~
 22 ~~definition, a dividend is deemed paid if it has been declared and funds for its~~
 23 ~~payment have been set aside.~~
- 24 (6b) ~~"Domestic limited liability company" has the Domestic limited liability~~
 25 ~~company. – The same meaning as the term "LLC" in G.S. 57D-1-03.~~
- 26 (6c) ~~"Domestic limited partnership" has the Domestic limited partnership. – The~~
 27 ~~same meaning as in G.S. 59-102.~~
- 28 (6d) ~~"Domestic nonprofit corporation" means a Domestic nonprofit corporation. –~~
 29 ~~A corporation as defined in G.S. 55A-1-40.~~
- 30 (7) ~~"Effective date of notice" is defined Effective date of notice. – Defined in~~
 31 ~~G.S. 55-1-41.~~
- 32 (8) ~~"Electronic" has the Electronic. – The same meaning as in G.S. 66-312.~~
- 33 (8a) ~~"Electronic record" has the Electronic record. – The same meaning as in~~
 34 ~~G.S. 66-312.~~
- 35 (8b) ~~"Electronic signature" has the Electronic signature. – The same meaning as in~~
 36 ~~G.S. 66-312.~~
- 37 (8c) Email. – An electronic transmission directed to a unique email address.
- 38 (8d) Email address. – A destination, commonly expressed as a string of characters,
 39 consisting of a unique username or mailbox, commonly referred to as the
 40 "local part" of the address, and a reference to an internet domain, commonly
 41 referred to as the "domain part" of the address, whether or not displayed, to
 42 which an email may be sent or delivered.
- 43 (9) ~~"Entity" includes (without Entity. – Without limiting the meaning of such the~~
 44 ~~term in Article 9 of this Chapter): Chapter, includes any of the following:~~
- 45 a. Any of the following, whether domestic or foreign:
- 46 1. Corporation; nonprofit corporation; professional
 47 ~~corporation; corporation.~~
- 48 2. Limited liability ~~company; company.~~
- 49 3. Profit and nonprofit unincorporated ~~association;~~
 50 ~~and association.~~
- 51 4. Business trust, estate, partnership, ~~trust; trust.~~

- 1 b. Two or more persons having a joint or common economic ~~interest;~~
2 ~~and interest.~~
- 3 c. The United States, and any state and foreign government.
- 4 (10) "~~Foreign corporation~~" means a Foreign corporation. – A corporation for profit
5 incorporated under a law other than the law of this State.
- 6 (10a) "~~Foreign limited liability company~~" has the Foreign limited liability company.
7 – The same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- 8 (10b) "~~Foreign limited partnership~~" has the Foreign limited partnership. – The same
9 meaning as in G.S. 59-102.
- 10 (10c) "~~Foreign nonprofit corporation~~" means a Foreign nonprofit corporation. – A
11 foreign corporation as defined in G.S. 55A-1-40.
- 12 (11) "~~Governmental subdivision~~" includes Governmental subdivision. – Includes
13 authority, county, district, and municipality.
- 14 (12) "~~Includes~~" means a Includes. – A partial definition.
- 15 (13) "~~Individual~~" denotes Individual. – Denotes a natural person legally competent
16 to act and also includes the estate of an incompetent or deceased individual.
- 17 (13a) "~~Mail,~~" Mail, when used as a verb, means to verb. – To deposit in the United
18 States mail with postage ~~thereon~~ prepaid and correctly addressed. When a
19 corporation mails an item to a shareholder, "correctly addressed" means
20 addressed to the shareholder's address as shown in the corporation's current
21 record of shareholders.
- 22 (14) "~~Means~~" denotes an exhaustive definition.
- 23 (14a) "~~Merger~~" Merger, as used in ~~Article 9~~ includes Article 9. – Includes a "share
24 exchange" as used in Article 11.
- 25 (15) "~~Notice~~" includes Notice. – Includes demand and is defined in G.S. 55-1-41.
- 26 (16) "~~Person~~" includes Person. – Includes individual and entity.
- 27 (17) "~~Principal office~~" means the office (in Principal office. – The office, in or out
28 of this ~~State)~~ State, where the principal executive offices of a domestic or
29 foreign corporation are located, as designated in its most recent annual report
30 filed with the Secretary of State or, in the case of a domestic or foreign
31 corporation that has not yet filed an annual report, in its articles of
32 incorporation or application for a certificate of authority, respectively.
- 33 (18) "~~Proceeding~~" includes Proceeding. – Includes civil suit and criminal,
34 administrative, and investigatory action.
- 35 (18a) "~~Public corporation~~" means any Public corporation. – Any corporation that
36 has a class of shares registered under Section 12 of the Securities Exchange
37 Act of 1934, as amended (15 U.S.C. § 78l).
- 38 (19) "~~Record date~~" means the Record date. – The date established under Article 6
39 or 7 on which a corporation determines the identity of its shareholders for
40 purposes of this Chapter.
- 41 (20) "~~Secretary~~" means the Secretary. – The corporate officer to whom the board
42 of directors has delegated responsibility under G.S. 55-8-40(c) for custody of
43 the minutes of the meetings of the board of directors and of the shareholders
44 and for authenticating records of the corporation.
- 45 (20a) "~~Service disabled veteran~~" means a Service-disabled veteran. – A veteran
46 with a disability that was incurred or aggravated during the veteran's service
47 in the Armed Forces of the United States.
- 48 (20b) "~~Service disabled veteran owned small business~~" means a Service-disabled
49 veteran-owned small business. – A business that satisfies both of the following
50 requirements:

- 1 a. The business's net annual receipts do not exceed one million dollars
 2 (\$1,000,000).
 3 b. One or more service-disabled veterans own more than fifty percent
 4 (50%) of the business.
- 5 (21) ~~"Shares" means the Shares.~~ – The units into which the proprietary interests in
 6 a corporation are divided.
- 7 (22) ~~"Shareholder" means the Shareholder.~~ – The person in whose name shares are
 8 registered in the records of a corporation or the beneficial owner of shares to
 9 the extent of the rights granted by a nominee certificate on file with a
 10 corporation.
- 11 (23) ~~"State", State,~~ when referring to a part of the United States, ~~includes States.~~ –
 12 Includes a state and commonwealth ~~(and and~~ their agencies and governmental
 13 ~~subdivisions)~~ subdivisions and a territory and insular possession ~~(and and~~ their
 14 ~~agencies and governmental subdivisions)~~ subdivisions of the United States.
- 15 (24) ~~"Subscriber" means a Subscriber.~~ – A person who subscribes for shares in a
 16 corporation, whether before or after incorporation.
- 17 (24a) ~~"Unincorporated entity" means a Unincorporated entity.~~ – A domestic or
 18 foreign limited liability company, a domestic or foreign limited partnership, a
 19 registered limited liability partnership or foreign limited liability partnership
 20 as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36,
 21 whether or not formed under the laws of this State.
- 22 (25) ~~"United States" includes United States.~~ – Includes district, authority, bureau,
 23 commission, department, and any other agency of the United States.
- 24 (25a) ~~"Veteran" means an Veteran.~~ – An individual entitled to any benefits or rights
 25 under the laws of the United States by reason of service in the Armed Forces
 26 of the United States.
- 27 (25b) ~~"Veteran-owned small business" means a Veteran-owned small business.~~ – A
 28 business that satisfies both of the following requirements:
 29 a. The business's net annual receipts do not exceed one million dollars
 30 (\$1,000,000).
 31 b. One or more veterans own more than fifty percent (50%) of the
 32 business.
- 33 (26) ~~"Voting group" means all Voting group.~~ – All shares of one or more classes
 34 or series that under the articles of incorporation or this Chapter are entitled to
 35 vote and be counted together collectively on a matter at a meeting of
 36 shareholders. All shares entitled by the articles of incorporation or this
 37 Chapter to vote generally on the matter are for that purpose a single voting
 38 group."

39 **SECTION 1.(b)** G.S. 55-1-41 reads as rewritten:

40 **"§ 55-1-41. Notice.**

41 ...

42 (b) Notice may be communicated in person; by electronic means; or by mail or private
 43 carrier. If these forms of personal notice are impracticable as to one or more persons, notice may
 44 be communicated to ~~such those~~ persons by publishing notice in a newspaper in the county
 45 ~~wherein where~~ the corporation has its principal place of business in the State, or if it has no
 46 principal place of business in the State, the county ~~wherein where~~ it has its registered office; or
 47 by radio, television, or other form of public broadcast communication.

48 (c) Written notice by a ~~domestic or foreign~~ corporation to its shareholder is effective
 49 when deposited in the United States mail with postage ~~thereon~~ prepaid and correctly addressed
 50 to the shareholder's address shown in the corporation's current record of shareholders. Unless the
 51 shareholder has previously notified the corporation in writing that the shareholder objects to

1 receiving notices and other communications by email, any notice by a corporation may be
 2 delivered to its shareholder in the form of email to the email address shown in the corporation's
 3 current record of shareholders and is effective when it is sent as provided in G.S. 66-325. To the
 4 extent the corporation pursuant to G.S. 55-1-50 and the shareholder have agreed, and the
 5 shareholder has not provided notice of objection to the corporation, notice by a domestic
 6 corporation to its shareholder may be delivered in the form of an electronic record sent by any
 7 other electronic means and is effective when it is sent as provided in G.S. 66-325. A shareholder
 8 may ~~terminate any such agreement~~ provide notice to the corporation of the shareholder's
 9 objection to receiving notices and other communications by email or other electronic means at
 10 any time on a prospective basis effective upon written notice of ~~termination~~ to the corporation or
 11 upon such later date as may be specified in the notice.

12 (c1) A notice or other communication shall no longer be delivered to an email address or
 13 by other electronic means pursuant to subsection (c) of this section if (i) the corporation receives
 14 notice from the information processing system into which the notice or other communication was
 15 entered that two consecutive notices or other communications given by email or other electronic
 16 means have not been delivered as directed and (ii) the notice of non-delivery becomes known to
 17 the secretary, transfer agent, or another person responsible for the giving of notices or other
 18 communications for the corporation. The inadvertent failure to recognize the notice of
 19 non-delivery as a cessation of authority to provide a shareholder with notice by email or other
 20 electronic means shall not invalidate any meeting or other action.

21 (d) Written notice to a domestic or foreign corporation (~~authorized~~ authorized to transact
 22 business in this State) State may be addressed to its registered agent at its registered office or to
 23 the corporation or its secretary at its principal office shown in its most recent annual report on
 24 file in the office of the Secretary of State or, in the case of a domestic or foreign corporation that
 25 has not yet filed an annual report, in its articles of incorporation or application for a certificate of
 26 authority, respectively.

27 (e) Except as provided in subsection (~~e~~), (c) of this section, written notice is effective at
 28 the earliest of the following:

- 29 (1) When ~~received~~; received.
- 30 (2) Five days after its deposit in the United States mail, as evidenced by the
 31 postmark or otherwise, if mailed with at least first-class postage ~~thereon~~
 32 prepaid and correctly ~~addressed~~; addressed.
- 33 (3) On the date shown on the return receipt, if sent by registered or certified mail,
 34 return receipt requested, and the receipt is signed by or on behalf of the
 35 addressee.

36 In the case of notice in the form of an electronic record sent by electronic means, the time of
 37 receipt shall be determined as provided in G.S. 66-325.

38"

39 **SECTION 1.(c)** G.S. 55-7-20 reads as rewritten:

40 "**§ 55-7-20. Shareholders' list for meeting.**

41 (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical
 42 list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The
 43 list shall be arranged by voting group, by class or series of shares within each voting group, and
 44 shall show the address of and number of shares held by each shareholder. If the notice or other
 45 communications regarding the meeting have been or will be sent by the corporation to a
 46 shareholder by email or other electronic means, the list shall also show that shareholder's email
 47 address or address for transmission by other electronic means.

48 (b) The shareholders' list shall be available for inspection by any shareholder, beginning
 49 two business days after notice of the meeting is given for which the list was prepared and
 50 continuing through the meeting, (i) at the corporation's principal office or at a place identified in
 51 the meeting notice in the city where the meeting will be held or (ii) on a reasonably accessible

1 electronic network, ~~provided that network so long as~~ the information required to gain access to
2 the list is provided with the notice of the meeting. In the event that the corporation determines to
3 make the list available on an electronic network, the corporation may take reasonable steps to
4 ensure that the information is available only to shareholders of the corporation. A shareholder,
5 personally or by or with the shareholder's representative, is entitled on written demand to inspect
6 and, subject to the requirements of G.S. 55-16-02(c), to copy the list, during regular business
7 hours and at the shareholder's expense, during the period it is available for inspection.

8 ...

9 (d) If the corporation refuses to allow a shareholder or the shareholder's representative to
10 inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection
11 (b) of this section, the superior court of the county where a corporation's principal office is
12 located, or, if the corporation has no principal office in this State, the superior court of the county
13 where the corporation's registered office is located, on application of the shareholder, after notice
14 is given to the corporation, may summarily order the inspection or copying at the corporation's
15 expense and may postpone the meeting for which the list was prepared until the inspection or
16 copying is complete.

17"

18 **SECTION 1.(d)** G.S. 55-16-06 reads as rewritten:

19 **"§ 55-16-06. Exception to notice requirements.**

20 (a) Whenever notice is required to be given to a shareholder under any provision of this
21 ~~Chapter to a shareholder, Chapter,~~ the notice ~~shall is not be required to be given if either the~~
22 corporation is not permitted to deliver notice by email or other electronic means pursuant to
23 G.S. 55-1-41 and any of the following applies:apply:

24 ...

25 (3) No address has been provided to the corporation by or on behalf of a
26 shareholder and the corporation has not otherwise obtained an address for the
27 shareholder it believes is reliable.

28 (b) If a shareholder delivers to the corporation a written notice setting forth ~~that the~~
29 shareholder's current address, the requirement that notice be given to the shareholder shall be is
30 reinstated."

31 **SECTION 1.(e)** This section becomes effective October 1, 2023, and applies to
32 notices provided on or after that date.

33 **PART II. PROVIDE GREATER FLEXIBILITY FOR THE USE OF WRITTEN** 34 **CONSENT WITHOUT MEETING**

35 **SECTION 2.(a)** G.S. 55-7-04 reads as rewritten:

36 **"§ 55-7-04. Action without meeting.**

37 (a) ~~Action~~ Any action required or permitted by this Chapter to be taken at a shareholders'
38 meeting may be taken without a meeting and without prior notice except as required by
39 subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the
40 ~~action or, subject~~ action or if the action is taken by either of the following:

41 (1) For corporations incorporated prior to October 1, 2023, subject to subsection
42 (a1) of this section, if so provided in the articles of incorporation of a
43 corporation that is not a public corporation at the time the action is taken, by
44 shareholders having not less than the minimum number of votes that would
45 be necessary to take the action at a meeting at which all shareholders entitled
46 to vote were present and voted.

47 (2) For corporations incorporated on or after October 1, 2023, subject to
48 subsection (a1) of this section, if not prohibited by the articles of incorporation
49 of a corporation that is not a public corporation at the time the action is taken,
50 by shareholders having not less than the minimum number of votes that would
51

1 be necessary to take the action at a meeting at which all shareholders entitled
2 to vote were present and voted.

3 The action must be evidenced by one or more unrevoked written consents ~~bearing the date of~~
4 ~~signature and~~ signed by shareholders sufficient to take the action without a meeting, before or
5 after ~~such the~~ action, describing the action taken and delivered to the corporation for inclusion in
6 the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant
7 to G.S. 55-1-50, a shareholder's consent or revocation of consent to action taken without meeting
8 ~~or revocation thereof~~ may be in electronic form and delivered by electronic means.

9 (a1) Notwithstanding subsection (a) of this section, the following actions may be taken
10 without a meeting only by all the shareholders entitled to vote on the action:

11 (1) If cumulative voting is not authorized, the election of directors at the annual
12 ~~meeting; or meeting.~~

13 (2) If cumulative voting is authorized, the election of directors and the removal
14 of a director unless the entire board of directors is to be ~~removed, and if~~
15 removed. If G.S. 55-7-28(e) applies to the corporation, an amendment to the
16 articles of incorporation to deny or limit the right of shareholders to vote
17 cumulatively and an amendment to the articles of incorporation or bylaws to
18 decrease the number of directors.

19 (b) A shareholder's written consent to action to be taken without a meeting shall ~~cease to~~
20 not be effective on the sixty first day after the date of signature appearing on the consent unless
21 prior to the sixty first day the corporation has to take the corporate action referred to in the
22 consent unless the corporation has, within 60 days following the first date on which a consent for
23 that action is received by the corporation, received unrevoked written consents sufficient under
24 subsection (a) of this section to take the action without meeting. If not otherwise fixed under
25 G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action
26 without a meeting is the earliest date of signature appearing on that any consent that is to be
27 counted in satisfying the requirements of subsection (a) of this section. section is received by the
28 corporation. A shareholder may only revoke a written consent if such the shareholder delivers to
29 the corporation a written revocation prior to the corporation's receipt of unrevoked written
30 consents sufficient under subsection (a) of this section to take the action.

31 ...

32 (e) If action is taken without a meeting by fewer than all shareholders entitled to vote on
33 the action, the corporation shall give written notice to all shareholders who have not consented
34 to the action and who, if the action had been taken at a meeting, would have been entitled to
35 notice of the meeting with the same record date as the action taken without a meeting, within 10
36 days after the action is taken. The notice shall describe the action and indicate that the action has
37 been taken without a meeting of shareholders. Failure to comply with the requirements of this
38 subsection ~~shall does not~~ invalidate any action taken that otherwise complies with this section."

39 **SECTION 2.(b)** This section becomes effective October 1, 2023, and applies to
40 written consents received on or after that date.

41
42 **PART III. PERMIT THE BOARD OF DIRECTORS TO DELETE FROM THE**
43 **ARTICLES OF INCORPORATION UNUSED CLASSES OF SHARES CREATED BY**
44 **THE BOARD**

45 **SECTION 3.(a)** G.S. 55-10-02 reads as rewritten:

46 "**§ 55-10-02. Amendment by board of directors.**

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

50 ...

(5b) To delete a class of shares from the articles of incorporation, as a result of the operation of G.S. 55-6-31(b), when incorporation in either of the following circumstances:

a. If, as a result of the operation of G.S. 55-6-31(b), there are no remaining authorized shares of the class because the corporation has acquired all authorized shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

b. If, under G.S. 55-6-02, the articles of incorporation authorized the board of directors to create the class and no shares of the class or rights to acquire shares of the class are outstanding.

...."

SECTION 3.(b) This section becomes effective October 1, 2023.

PART IV. PERMIT EXCEPTIONS TO CERTAIN REQUIREMENTS FOR SEPARATE VOTES BY VOTING GROUPS

SECTION 4.(a) G.S. 55-10-04 reads as rewritten:

"§ 55-10-04. Voting on amendments by voting groups.

(a) ~~The~~ Except as provided in subsection (e) of this section, the holders of the outstanding shares of a class are entitled to vote as a separate voting group (if group, if shareholder voting is otherwise required by this Chapter) Chapter, on a proposed amendment if the amendment would do any of the following:

- (1) Increase or decrease the aggregate number of authorized shares of the class; class.
- (2) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class; class.
- (3) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class; class.
- (4) Change the designation, rights, preferences, or limitations of all or part of the shares of the class; class.
- (5) Change the shares of all or part of the class into a different number of shares of the same class; class.
- (6) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class; class.
- (7) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class; class.
- (8) Limit or deny an existing preemptive right of all or part of the shares of the class; class.
- (9) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class; or class.
- (10) Change the corporation into a nonprofit corporation or a cooperative organization.

(b) ~~If~~ Except as provided in subsection (e) of this section, if a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a

1 substantially similar way, the shares of all the series so affected must vote together as a single
2 voting group on the proposed amendment.

3 (d) A class or series of shares is entitled to the voting rights granted by this section
4 although the articles of incorporation provide that the shares are nonvoting shares.

5 (e) The right of a class or series to vote as a separate voting group under subdivision (6)
6 or (7) of subsection (a) of this section may be restricted in whole or in part if so provided in the
7 original articles of incorporation or by an amendment to the articles of incorporation that is
8 adopted prior to the issuance of any shares of the class or series or that is approved by a majority
9 of the votes of the class or series entitled to be cast on the amendment."

10 **SECTION 4.(b)** This section becomes effective October 1, 2023.

11
12 **PART V. ELIMINATE DUPLICATIVE STATE DISCLOSURE REQUIREMENTS FOR**
13 **BUSINESS OPPORTUNITY SELLERS THAT FILE COMPARABLE DISCLOSURES**
14 **WITH THE FEDERAL TRADE COMMISSION**

15 **SECTION 5.(a)** G.S. 66-95 reads as rewritten:

16 **"§ 66-95. Required disclosure statement.**

17 At least 48 hours prior to the time the purchaser signs a business opportunity contract, or at
18 least 48 hours prior to the receipt of any consideration by the seller, whichever occurs first, the
19 seller ~~must~~ shall provide the prospective purchaser a written document, ~~the a cover sheet of which~~
20 ~~is that includes~~ a statement entitled in at least 10-point bold face capital letters "DISCLOSURES
21 REQUIRED BY NORTH CAROLINA LAW." Under this title shall appear the statement in at
22 least 10-point type that "The State of North Carolina has not reviewed and does not approve,
23 recommend, endorse or sponsor any business opportunity. The information contained in this
24 disclosure has not been verified by the State. If you have any questions about this investment,
25 see an attorney before you sign a contract or agreement." ~~Nothing except~~ Only the title and
26 required statement shall appear on the cover ~~sheet-sheet,~~ except that franchisors subject to this
27 Article may include other material pursuant to 16 C.F.R. Part 436 or guidelines of the North
28 American Securities Administrators Association. The disclosure document shall contain ~~the~~
29 either of the following:

30 (1) A franchise disclosure document that complies in all material respects with 16
31 C.F.R. Part 436.

32 (2) The following information:

33 ~~(1)a.~~ The name of the seller, whether the seller is doing business as an
34 individual, partnership, or corporation, the names under which the
35 seller has done, is ~~doing~~ doing, or intends to do business, and the name
36 of any parent or affiliated company that will engage in business
37 transactions with purchasers or ~~who~~ that takes responsibility for
38 statements made by the seller.

39 ~~(2)b.~~ The names and addresses and titles of the seller's officers, directors,
40 trustees, general partners, general managers, principal executives, and
41 any other persons charged with responsibility for the seller's business
42 activities relating to the sale of business opportunities. The disclosure
43 document shall additionally contain a statement disclosing who, if any,
44 of the above ~~persons;~~ persons has been either of the following:

45 ~~a.1.~~ ~~Has been the~~ The subject of any legal or administrative
46 proceeding alleging the violation of any business opportunity
47 or franchise law, ~~or~~ fraud, embezzlement, fraudulent
48 conversion, restraint of trade, unfair or deceptive practices,
49 misappropriation of ~~property~~ property, or comparable
50 ~~allegations;~~ allegations.

~~b.2.~~ ~~Has been the~~ The subject of any bankruptcy, reorganization reorganization, or receivership proceeding, proceeding or was an owner, a principal ~~officer-officer,~~ or a general partner of any entity ~~which that~~ has been subject to ~~such proceeding.~~ any of these proceedings.

The disclosure document shall set forth the name of the person, the nature of and the parties to the action or proceeding, the court or other forum, the date, the current status of the action or proceeding, the terms and conditions of any order of decree, the penalties or damages assessed ~~and/or assessed,~~ any terms of settlement, and any other information to enable the purchaser to assess the prior business activities of the seller.

~~(3)c.~~ The prior business experience of the seller relating to business opportunities ~~including:~~ including all of the following:

~~a.1.~~ The name, address, and a description of any business opportunity previously offered by the ~~seller;~~ seller.

~~b.2.~~ The length of time the seller has offered each ~~such~~ business opportunity; opportunity.

~~e.3.~~ The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

~~(4)d.~~ A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser.

~~(5)e.~~ A copy of a current (not older than 13 months) financial statement of the seller, updated to reflect any material changes in the seller's financial condition.

~~(6)f.~~ If training of any type is promised by the seller, the disclosure statement ~~must shall~~ set forth a complete description of the training and the length of the training.

~~(7)g.~~ If the seller promises services to be performed in connection with the placement of ~~the~~ equipment, ~~product(s)~~ products, or supplies at various ~~location(s),~~ locations, the disclosure statement ~~must shall~~ set forth the full nature of those services as well as the nature of the agreements to be made with the owners or managers of these ~~location(s)~~ locations where the purchaser's equipment, ~~product(s)~~ products, or supplies will be placed.

~~(8)h.~~ If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to G.S. 66-96, the document shall state ~~either;~~ either of the following:

~~a.1.~~ "As required by North Carolina law, the seller has secured a bond issued by _____

(name and address of surety company)

a surety company authorized to do business in this State. Before signing a contract to purchase this business opportunity, you should check with the surety company to determine the bond's current ~~status,"~~ or status."

~~b.2.~~ "As required by North Carolina law, the seller has established a trust account _____

(number of account)

with _____

(name and address of bank or savings institution)

1 Before signing a contract to purchase this business
2 opportunity, you should check with the bank or savings
3 institution to determine the current status of the trust account."

4 (9)i. The following statement:

5 "If the seller fails to deliver the product(s), equipment or supplies
6 necessary to begin substantial operation of the business within 45 days
7 of the delivery date stated in your contract, you may notify the seller
8 in writing and demand that the contract be cancelled."

9 (10)i. If the seller makes any statement concerning sales or ~~earnings,~~
10 earnings or range of sales or earnings that may be made through this
11 business opportunity, the document ~~must disclose;~~shall disclose all of
12 the following:

13 a.1. The total number of purchasers of business opportunities
14 involving the ~~product(s), products,~~ equipment, supplies
15 supplies, or services being offered ~~who that,~~ to the seller's
16 ~~knowledge~~ knowledge, have actually received earnings in the
17 amount or range ~~specified,~~ specified within three years prior to
18 the date of the disclosure statement.

19 b.2. The total number of purchasers of business opportunities
20 involving the ~~product(s), products,~~ equipment, supplies
21 supplies, or services being offered within three years prior to
22 the date of the disclosure statement."

23 **SECTION 5.(b)** G.S. 66-97 reads as rewritten:

24 **"§ 66-97. Filing with Secretary of State.**

25 (a) The seller of every business opportunity shall file with the Secretary of State two
26 copies of ~~the either~~ disclosure statement ~~required by used to satisfy the requirements of~~
27 G.S. 66-95, accompanied by a fee in the amount of two hundred fifty dollars (\$250.00) made
28 payable to the Secretary of State, prior to placing any advertisement or making any other
29 representations to prospective purchasers in this State. The seller shall update this filing as any
30 material change in the required information occurs, but no less than annually.

31 (b) Every seller shall file, in ~~such a~~ form as the Secretary of State may prescribe, an
32 irrevocable consent appointing the Secretary of State or his or her successors in office to be ~~his~~
33 the seller's attorney to receive service of any lawful process in any noncriminal suit, ~~action~~ action,
34 or proceeding against the seller or ~~his the seller's~~ successor, ~~executor~~ executor, or administrator
35 ~~which that~~ arises under this Article after the consent has been filed, with the same force and
36 validity as if served personally on the person filing the consent. Service may be made by leaving
37 a copy of the process in the office of the Secretary of State, but is not effective unless (i) the
38 plaintiff, who may be the Attorney General in a suit, ~~action~~ action, or proceeding instituted by
39 ~~him,~~ forthwith the Attorney General, immediately sends notice of the service and a copy of the
40 process by registered mail to the defendant or respondent at his or her address on file with the
41 Secretary of State, and (ii) the plaintiff 's affidavit of compliance with this section is filed in the
42 case on or before the return date of the process, if any, or within ~~such~~ further time as the court
43 allows.

44 (c) If the seller of a business opportunity is required by G.S. 66-96 to provide a bond or
45 establish a trust account, ~~he the seller~~ shall file with the Secretary of State two copies of the bond
46 or two copies of the formal notification by the depository that the trust account is established
47 contemporaneously with compliance with ~~subsections (a) or (d).~~ subsection (a) of this section.

48 (d) ~~The Secretary of State may accept the Uniform Franchise Offering Circular (UFOC)~~
49 ~~or the Federal Trade Commission Basic Disclosure Document, provided, that the alternative~~
50 ~~disclosure document shall be accompanied by a separate sheet setting forth the caption and~~
51 ~~statement and any other information required by G.S. 66-95.~~

1 (e) Failure to ~~so file shall be as required by this section is~~ a Class 1 misdemeanor."

2 SECTION 5.(c) This section is effective when it becomes law and applies to required
3 disclosure statements and filings provided on or after that date.

4
5 **PART VI. RIGHT OF A SHAREHOLDER OF A CORPORATION TO INSPECT**
6 **RECORDS OF SUBSIDIARY ENTITY OF THAT CORPORATION**

7 SECTION 6.(a) G.S. 55-16-01.1 reads as rewritten:

8 "**§ 55-16-01.1. Definitions.**

9 In this Article, the following definitions apply:

10 ...

11 (5) Subsidiary. – Any domestic or foreign entity directly or indirectly owned, in
12 whole or in part, by the corporation of which the shareholder is a shareholder
13 and over the affairs of which the corporation directly or indirectly exercises
14 control. The term includes domestic and foreign corporations, including
15 professional corporations and nonprofit corporations, partnerships, limited
16 partnerships, limited liability partnerships, limited liability companies,
17 business trusts, and joint ventures."

18 SECTION 6.(b) G.S. 55-16-02 reads as rewritten:

19 "**§ 55-16-02. Inspection of records by shareholders.**

20 ...

21 (c) A qualified shareholder may inspect and copy the records described in subsection (b)
22 of this section only if all of the following apply:

- 23 (1) The qualified shareholder's demand is made in good faith and for a proper
24 purpose.
25 (2) The qualified shareholder describes with reasonable particularity the qualified
26 shareholder's purpose and the records the qualified shareholder desires to
27 inspect.
28 (3) The records are directly connected with the qualified shareholder's purpose.

29 ...

30 (h) A qualified shareholder of a corporation ~~that has the power to elect, appoint, or~~
31 ~~designate a majority of the directors of another domestic or foreign corporation or of a domestic~~
32 ~~or foreign nonprofit corporation,~~ has the inspection rights provided in this section with respect to
33 the records of ~~that other corporation~~ a subsidiary of the corporation to the extent that either of the
34 following applies:

- 35 (1) The corporation has actual possession and control of the records of the
36 subsidiary.
37 (2) The corporation could obtain the records through the exercise of control over
38 the subsidiary and, as of the date of the making of the demand, the qualified
39 shareholder inspection of the books and records of the subsidiary would not
40 constitute a breach of an agreement between the corporation or the subsidiary
41 and a person not affiliated with the corporation.

42"

43 SECTION 6.(c) This section becomes effective October 1, 2023, and applies to
44 written notices of demand for inspection given on or after that date.

45
46 **PART VII. EFFECTIVE DATE AND AUTHORIZATION TO PRINT COMMENTS**

47 SECTION 7.(a) The Revisor of Statutes shall cause to be printed, as annotations to
48 Chapter 55 of the published General Statutes, all relevant portions of the Official Comments to
49 the Model Business Corporation Act and all explanatory comments of the drafters of this act as
50 the Revisor may deem appropriate.

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