

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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**SENATE BILL 477
PROPOSED COMMITTEE SUBSTITUTE S477-PCS15331-TG-12**

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

(Public)

Sponsors:

Referred to:

April 4, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS
3 CORPORATION ACT AND TO ELIMINATE DUPLICATIVE STATE DISCLOSURE
4 REQUIREMENTS FOR BUSINESS OPPORTUNITY SELLERS THAT FILE
5 COMPARABLE DISCLOSURES WITH THE FEDERAL TRADE COMMISSION, AS
6 RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. FACILITATE THE USE OF EMAIL AND OTHER COMMUNICATIONS**
10 **WITH SHAREHOLDERS**

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

12 **"§ 55-1-40. Chapter definitions.**

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

- 14 (1) ~~"Articles of incorporation" include~~ Articles of incorporation. – Include
15 amended and restated articles of incorporation and articles of merger.
- 16 (2) ~~"Authorized shares" means the~~ Authorized shares. – The shares of all classes
17 a domestic or foreign corporation is authorized to issue.
- 18 (2a) ~~"Business entity," Business entity,~~ Business entity, as used in G.S. 55-11-10 and Article 11A
19 of this Chapter, ~~means a Chapter.~~ – A domestic corporation (including
20 corporation, including a professional corporation as defined in ~~G.S. 55B-2),~~
21 G.S. 55B-2, a foreign corporation, a domestic or foreign nonprofit
22 corporation, a domestic or foreign limited liability company, a domestic or
23 foreign limited partnership, a registered limited liability partnership or foreign
24 limited liability partnership as defined in G.S. 59-32, or any other partnership
25 as defined in G.S. 59-36 whether or not formed under the laws of this State.
- 26 (3) ~~"Conspicuous" means so~~ Conspicuous. – So written that a reasonable person
27 against whom the writing is to operate should have noticed it. For example,
28 printing in italics or boldface or contrasting color, or typing in capitals or
29 underlined, is conspicuous.
- 30 (4) ~~"Corporation" or "domestic corporation" means a~~ Corporation or domestic
31 corporation. – A corporation for profit or a corporation having capital stock
32 that is incorporated under or subject to the provisions of this Chapter and that
33 is not a foreign corporation except that in G.S. 55-9-01 and G.S. 55-15-21
34 "corporation" includes domestic and foreign corporations.
- 35 (5) ~~"Deliver" includes~~ Deliver. – Includes mail.



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

- 1 (10) ~~"Foreign corporation" means a Foreign corporation. – A corporation for profit~~
2 ~~incorporated under a law other than the law of this State.~~
- 3 (10a) ~~"Foreign limited liability company" has the Foreign limited liability company.~~
4 ~~– The same meaning as the term "foreign LLC" in G.S. 57D-1-03.~~
- 5 (10b) ~~"Foreign limited partnership" has the Foreign limited partnership. – The same~~
6 ~~meaning as in G.S. 59-102.~~
- 7 (10c) ~~"Foreign nonprofit corporation" means a Foreign nonprofit corporation. – A~~
8 ~~foreign corporation as defined in G.S. 55A-1-40.~~
- 9 (11) ~~"Governmental subdivision" includes Governmental subdivision. – Includes~~
10 ~~authority, county, district, and municipality.~~
- 11 (12) ~~"Includes" means a Includes. – A partial definition.~~
- 12 (13) ~~"Individual" denotes Individual. – Denotes a natural person legally competent~~
13 ~~to act and also includes the estate of an incompetent or deceased individual.~~
- 14 (13a) ~~"Mail," Mail, when used as a verb, means to verb. – To deposit in the United~~
15 ~~States mail with postage thereon prepaid and correctly addressed. When a~~
16 ~~corporation mails an item to a shareholder, "correctly addressed" means~~
17 ~~addressed to the shareholder's address as shown in the corporation's current~~
18 ~~record of shareholders.~~
- 19 (14) ~~"Means" denotes an exhaustive definition.~~
- 20 (14a) ~~"Merger" Merger, as used in Article 9 includes Article 9. – Includes a "share~~
21 ~~exchange" as used in Article 11.~~
- 22 (15) ~~"Notice" includes Notice. – Includes demand and is defined in G.S. 55-1-41.~~
- 23 (16) ~~"Person" includes Person. – Includes individual and entity.~~
- 24 (17) ~~"Principal office" means the office (in Principal office. – The office, in or out~~
25 ~~of this State) State, where the principal executive offices of a domestic or~~
26 ~~foreign corporation are located, as designated in its most recent annual report~~
27 ~~filed with the Secretary of State or, in the case of a domestic or foreign~~
28 ~~corporation that has not yet filed an annual report, in its articles of~~
29 ~~incorporation or application for a certificate of authority, respectively.~~
- 30 (18) ~~"Proceeding" includes Proceeding. – Includes civil suit and criminal,~~
31 ~~administrative, and investigatory action.~~
- 32 (18a) ~~"Public corporation" means any Public corporation. – Any corporation that~~
33 ~~has a class of shares registered under Section 12 of the Securities Exchange~~
34 ~~Act of 1934, as amended (15 U.S.C. § 78l).~~
- 35 (19) ~~"Record date" means the Record date. – The date established under Article 6~~
36 ~~or 7 on which a corporation determines the identity of its shareholders for~~
37 ~~purposes of this Chapter.~~
- 38 (20) ~~"Secretary" means the Secretary. – The corporate officer to whom the board~~
39 ~~of directors has delegated responsibility under G.S. 55-8-40(c) for custody of~~
40 ~~the minutes of the meetings of the board of directors and of the shareholders~~
41 ~~and for authenticating records of the corporation.~~
- 42 (20a) ~~"Service-disabled veteran" means a Service-disabled veteran. – A veteran~~
43 ~~with a disability that was incurred or aggravated during the veteran's service~~
44 ~~in the Armed Forces of the United States.~~
- 45 (20b) ~~"Service-disabled veteran-owned small business" means a Service-disabled~~
46 ~~veteran-owned small business. – A business that satisfies both of the following~~
47 ~~requirements:~~
- 48 a. The business's net annual receipts do not exceed one million dollars
49 (\$1,000,000).
- 50 b. One or more service-disabled veterans own more than fifty percent
51 (50%) of the business.

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

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

36 **"§ 55-1-41. Notice.**

37 ...

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

44 (c) Written notice by a ~~domestic or foreign~~ corporation to its shareholder is effective
 45 when deposited in the United States mail with postage ~~thereon~~ prepaid and correctly addressed
 46 to the shareholder's address shown in the corporation's current record of shareholders. Unless the
 47 shareholder has previously notified the corporation in writing that the shareholder objects to
 48 receiving notices and other communications by email, any notice by a corporation may be
 49 delivered to its shareholder in the form of email to the email address shown in the corporation's
 50 current record of shareholders and is effective when it is sent as provided in G.S. 66-325. To the
 51 extent the corporation pursuant to G.S. 55-1-50 and the shareholder have agreed, and the

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

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

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

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

25 (1) When ~~received~~; received.

26 (2) Five days after its deposit in the United States mail, as evidenced by the
27 postmark or otherwise, if mailed with at least first-class postage ~~thereon~~
28 prepaid and correctly ~~addressed~~; addressed.

29 (3) On the date shown on the return receipt, if sent by registered or certified mail,
30 return receipt requested, and the receipt is signed by or on behalf of the
31 addressee.

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

34"

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

36 **"§ 55-7-20. Shareholders' list for meeting.**

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

44 (b) The shareholders' list shall be available for inspection by any shareholder, beginning
45 two business days after notice of the meeting is given for which the list was prepared and
46 continuing through the meeting, (i) at the corporation's principal office or at a place identified in
47 the meeting notice in the city where the meeting will be held or (ii) on a reasonably accessible
48 electronic network, ~~provided that network so long as~~ the information required to gain access to
49 the list is provided with the notice of the meeting. In the event that the corporation determines to
50 make the list available on an electronic network, the corporation may take reasonable steps to
51 ensure that the information is available only to shareholders of the corporation. A shareholder,

1 personally or by or with the shareholder's representative, is entitled on written demand to inspect
 2 and, subject to the requirements of G.S. 55-16-02(c), to copy the list, during regular business
 3 hours and at the shareholder's expense, during the period it is available for inspection.

4 ...

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

13"

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

15 "**§ 55-16-06. Exception to notice requirements.**

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

20 ...

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

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

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

29
 30 **PART II. PROVIDE GREATER FLEXIBILITY FOR THE USE OF WRITTEN**
 31 **CONSENT WITHOUT MEETING**

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

33 "**§ 55-7-04. Action without meeting.**

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

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

44 (2) For corporations incorporated on or after October 1, 2023, subject to
 45 subsection (a1) of this section, if not prohibited by the articles of incorporation
 46 of a corporation that is not a public corporation at the time the action is taken,
 47 by shareholders having not less than the minimum number of votes that would
 48 be necessary to take the action at a meeting at which all shareholders entitled
 49 to vote were present and voted.

50 The action must be evidenced by one or more unrevoked written consents ~~bearing the date of~~
 51 ~~signature and~~ signed by shareholders sufficient to take the action without a meeting, before or

1 after ~~such~~the action, describing the action taken and delivered to the corporation for inclusion in
2 the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant
3 to G.S. 55-1-50, a shareholder's consent or revocation of consent to action taken without meeting
4 ~~or revocation thereof~~ may be in electronic form and delivered by electronic means.

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

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

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

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

27 ...

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

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

37
38 **PART III. PERMIT THE BOARD OF DIRECTORS TO DELETE FROM THE**
39 **ARTICLES OF INCORPORATION UNUSED CLASSES OF SHARES CREATED BY**
40 **THE BOARD**

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

42 "**§ 55-10-02. Amendment by board of directors.**

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

46 ...

47 (5b) To delete a class of shares from the articles of ~~incorporation, as a result of the~~
48 ~~operation of G.S. 55-6-31(b), when incorporation in either of the following~~
49 circumstances:

50 a. If, as a result of the operation of G.S. 55-6-31(b), there are no
51 remaining authorized shares of the class because the corporation has

1 acquired all authorized shares of the class and the articles of
2 incorporation prohibit the reissue of the acquired shares.

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

6"

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

8
9 **PART IV. PERMIT EXCEPTIONS TO CERTAIN REQUIREMENTS FOR SEPARATE**
10 **VOTES BY VOTING GROUPS**

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

12 **"§ 55-10-04. Voting on amendments by voting groups.**

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

- 17 (1) Increase or decrease the aggregate number of authorized shares of the
18 ~~class;~~class.
19 (2) Effect an exchange or reclassification of all or part of the shares of the class
20 into shares of another ~~class;~~class.
21 (3) Effect an exchange or reclassification, or create the right of exchange, of all
22 or part of the shares of another class into shares of the ~~class;~~class.
23 (4) Change the designation, rights, preferences, or limitations of all or part of the
24 shares of the ~~class;~~class.
25 (5) Change the shares of all or part of the class into a different number of shares
26 of the same ~~class;~~class.
27 (6) Create a new class of shares having rights or preferences with respect to
28 distributions or to dissolution that are prior, superior, or substantially equal to
29 the shares of the ~~class;~~class.
30 (7) Increase the rights, preferences, or number of authorized shares of any class
31 that, after giving effect to the amendment, have rights or preferences with
32 respect to distributions or to dissolution that are prior, superior, or
33 substantially equal to the shares of the ~~class;~~class.
34 (8) Limit or deny an existing preemptive right of all or part of the shares of the
35 ~~class;~~class.
36 (9) Cancel or otherwise affect rights to distributions or dividends that have
37 accumulated but not yet been declared on all or part of the shares of the ~~class;~~
38 ~~or~~class.
39 (10) Change the corporation into a nonprofit corporation or a cooperative
40 organization.

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

44 (c) If a proposed amendment that entitles two or more series of shares to vote as separate
45 voting groups under this section would affect those two or more series in the same or a
46 substantially similar way, the shares of all the series so affected must vote together as a single
47 voting group on the proposed amendment.

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

50 (e) The right of a class or series to vote as a separate voting group under subdivision (6)
51 or (7) of subsection (a) of this section may be restricted in whole or in part if so provided in the

1 original articles of incorporation or by an amendment to the articles of incorporation that is
 2 adopted prior to the issuance of any shares of the class or series or that is approved by a majority
 3 of the votes of the class or series entitled to be cast on the amendment."

4 SECTION 4.(b) This section becomes effective October 1, 2023.
 5

6 **PART V. ELIMINATE DUPLICATIVE STATE DISCLOSURE REQUIREMENTS FOR**
 7 **BUSINESS OPPORTUNITY SELLERS THAT FILE COMPARABLE DISCLOSURES**
 8 **WITH THE FEDERAL TRADE COMMISSION**

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

10 "§ 66-95. **Required disclosure statement.**

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

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

26 (2) The following information:

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

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

39 a.1. ~~Has been the~~ The subject of any legal or administrative
 40 proceeding alleging the violation of any business opportunity
 41 or franchise law, ~~or~~ fraud, embezzlement, fraudulent
 42 conversion, restraint of trade, unfair or deceptive practices,
 43 misappropriation of ~~property~~ property, or comparable
 44 ~~allegations;~~ allegations.

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

50 The disclosure document shall set forth the name of the person, the
 51 nature of and the parties to the action or proceeding, the court or other

- 1 forum, the date, the current status of the action or proceeding, the terms
 2 and conditions of any order of decree, the penalties or damages
 3 ~~assessed and/or assessed, any~~ terms of settlement, and any other
 4 information to enable the purchaser to assess the prior business
 5 activities of the seller.
- 6 ~~(3)c.~~ The prior business experience of the seller relating to business
 7 opportunities ~~including~~ including all of the following:
- 8 a.1. The name, address, and a description of any business
 9 opportunity previously offered by the ~~seller~~ seller.
- 10 b.2. The length of time the seller has offered each ~~such~~ business
 11 ~~opportunity~~ opportunity.
- 12 e.3. The length of time the seller has conducted the business
 13 opportunity currently being offered to the purchaser.
- 14 ~~(4)d.~~ A full and detailed description of the actual services that the business
 15 opportunity seller undertakes to perform for the purchaser.
- 16 ~~(5)e.~~ A copy of a current (not older than 13 months) financial statement of
 17 the seller, updated to reflect any material changes in the seller's
 18 financial condition.
- 19 ~~(6)f.~~ If training of any type is promised by the seller, the disclosure
 20 statement ~~must~~ shall set forth a complete description of the training
 21 and the length of the training.
- 22 ~~(7)g.~~ If the seller promises services to be performed in connection with the
 23 placement of ~~the~~ equipment, ~~product(s)~~ products, or supplies at
 24 various ~~location(s),~~ locations, the disclosure statement ~~must~~ shall set
 25 forth the full nature of those services as well as the nature of the
 26 agreements to be made with the owners or managers of these
 27 ~~location(s)~~ locations where the purchaser's equipment, ~~product(s)~~
 28 products, or supplies will be placed.
- 29 ~~(8)h.~~ If the business opportunity seller is required to secure a bond or
 30 establish a trust deposit pursuant to G.S. 66-96, the document shall
 31 state ~~either~~ either of the following:
- 32 a.1. "As required by North Carolina law, the seller has secured a
 33 bond issued by _____
 34 (name and address of surety company)
 35 a surety company authorized to do business in this State.
 36 Before signing a contract to purchase this business
 37 opportunity, you should check with the surety company to
 38 determine the bond's current ~~status,~~ or status."
- 39 b.2. "As required by North Carolina law, the seller has established
 40 a trust account _____
 41 (number of account)
 42 with _____
 43 (name and address of bank or savings institution)
 44 Before signing a contract to purchase this business
 45 opportunity, you should check with the bank or savings
 46 institution to determine the current status of the trust account."
- 47 ~~(9)i.~~ The following statement:
 48 "If the seller fails to deliver the product(s), equipment or supplies
 49 necessary to begin substantial operation of the business within 45 days
 50 of the delivery date stated in your contract, you may notify the seller
 51 in writing and demand that the contract be cancelled."

1 (10)j. If the seller makes any statement concerning sales or earnings,
 2 earnings or range of sales or earnings that may be made through this
 3 business opportunity, the document ~~must disclose:~~shall disclose all of
 4 the following:

5 a.1. The total number of purchasers of business opportunities
 6 involving the ~~product(s),~~products, equipment, ~~supplies~~
 7 supplies, or services being offered ~~who that,~~ to the seller's
 8 ~~knowledge~~knowledge, have actually received earnings in the
 9 amount or range ~~specified,~~specified within three years prior to
 10 the date of the disclosure statement.

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

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

16 "**§ 66-97. Filing with Secretary of State.**

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

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

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

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

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

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

47
 48 **PART VI. EFFECTIVE DATE AND AUTHORIZATION TO PRINT COMMENTS**

49 **SECTION 6.(a)** The Revisor of Statutes shall cause to be printed, as annotations to
 50 Chapter 55 of the published General Statutes, all relevant portions of the Official Comments to

1 the Model Business Corporation Act and all explanatory comments of the drafters of this act as
2 the Revisor may deem appropriate.
3 **SECTION 6.(b)** Except as otherwise provided, this act is effective when it becomes
4 law.