

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  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S477-PCS35302-TG-37

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, TO MODIFY THE RIGHT OF A SHAREHOLDER OF A CORPORATION TO INSPECT THE RECORDS OF A SUBSIDIARY ENTITY OF THAT CORPORATION, AND TO STANDARDIZE THE EVIDENCE REQUIRED TO PROVE A DEBT STARTING AT THE POINT OF CHARGE-OFF.

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.**

~~In~~ 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.



\* S 4 7 7 - P C S 3 5 3 0 2 - T G - 3 7 \*

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

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

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

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

43 **"§ 55-1-41. Notice.**

44 ...

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

1 (c) Written notice by a ~~domestic or foreign~~ corporation to its shareholder is effective  
 2 when deposited in the United States mail with postage ~~thereon~~-prepaid and correctly addressed  
 3 to the shareholder's address shown in the corporation's current record of shareholders. Unless the  
 4 shareholder has previously notified the corporation in writing that the shareholder objects to  
 5 receiving notices and other communications by email, any notice by a corporation may be  
 6 delivered to its shareholder in the form of email to the email address shown in the corporation's  
 7 current record of shareholders and is effective when it is sent as provided in G.S. 66-325. To the  
 8 extent the corporation pursuant to G.S. 55-1-50 and the shareholder have agreed, and the  
 9 shareholder has not provided notice of objection to the corporation, notice by a domestic  
 10 corporation to its shareholder may be delivered in the form of an electronic record sent by any  
 11 other electronic means and is effective when it is sent as provided in G.S. 66-325. A shareholder  
 12 may terminate any such agreement provide notice to the corporation of the shareholder's  
 13 objection to receiving notices and other communications by email or other electronic means at  
 14 any time on a prospective basis effective upon written notice of termination to the corporation or  
 15 upon such later date as may be specified in the notice.

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

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

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

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

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

42 ...."

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

44 "**§ 55-7-20. Shareholders' list for meeting.**

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

1 (b) The shareholders' list shall be available for inspection by any shareholder, beginning  
 2 two business days after notice of the meeting is given for which the list was prepared and  
 3 continuing through the meeting, (i) at the corporation's principal office or at a place identified in  
 4 the meeting notice in the city where the meeting will be held or (ii) on a reasonably accessible  
 5 electronic network, ~~provided that network so long as~~ the information required to gain access to  
 6 the list is provided with the notice of the meeting. In the event that the corporation determines to  
 7 make the list available on an electronic network, the corporation may take reasonable steps to  
 8 ensure that the information is available only to shareholders of the corporation. A shareholder,  
 9 personally or by or with the shareholder's representative, is entitled on written demand to inspect  
 10 and, subject to the requirements of G.S. 55-16-02(c), to copy the list, during regular business  
 11 hours and at the shareholder's expense, during the period it is available for inspection.

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

21 ...."  
 22 **SECTION 1.(d)** G.S. 55-16-06 reads as rewritten:

23 **"§ 55-16-06. Exception to notice requirements.**

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

28 ...  
 29 (3) No address has been provided to the corporation by or on behalf of a  
 30 shareholder and the corporation has not otherwise obtained an address for the  
 31 shareholder it believes is reliable.

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

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

37  
 38 **PART II. PROVIDE GREATER FLEXIBILITY FOR THE USE OF WRITTEN**  
 39 **CONSENT WITHOUT MEETING**

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

41 **"§ 55-7-04. Action without meeting.**

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

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

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

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

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

- 15           (1) If cumulative voting is not authorized, the election of directors at the annual  
 16 ~~meeting; or meeting.~~  
 17           (2) If cumulative voting is authorized, the election of directors and the removal  
 18 of a director unless the entire board of directors is to be ~~removed, and if~~  
 19 removed. If G.S. 55-7-28(e) applies to the corporation, an amendment to the  
 20 articles of incorporation to deny or limit the right of shareholders to vote  
 21 cumulatively and an amendment to the articles of incorporation or bylaws to  
 22 decrease the number of directors.

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

35           ...

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

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

45  
 46 **PART III. PERMIT THE BOARD OF DIRECTORS TO DELETE FROM THE**  
 47 **ARTICLES OF INCORPORATION UNUSED CLASSES OF SHARES CREATED BY**  
 48 **THE BOARD**

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

50           "**§ 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 (5b) To delete a class of shares from the articles of ~~incorporation, as a result of the~~  
 6 ~~operation of G.S. 55-6-31(b), when incorporation in either of the following~~  
 7 circumstances:

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

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

15 ...."

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

17  
 18 **PART IV. PERMIT EXCEPTIONS TO CERTAIN REQUIREMENTS FOR SEPARATE**  
 19 **VOTES BY VOTING GROUPS**

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

21 "**§ 55-10-04. Voting on amendments by voting groups.**

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

26 (1) Increase or decrease the aggregate number of authorized shares of the  
 27 class;class.

28 (2) Effect an exchange or reclassification of all or part of the shares of the class  
 29 into shares of another class;class.

30 (3) Effect an exchange or reclassification, or create the right of exchange, of all  
 31 or part of the shares of another class into shares of the class;class.

32 (4) Change the designation, rights, preferences, or limitations of all or part of the  
 33 shares of the class;class.

34 (5) Change the shares of all or part of the class into a different number of shares  
 35 of the same class;class.

36 (6) Create a new class of shares having rights or preferences with respect to  
 37 distributions or to dissolution that are prior, superior, or substantially equal to  
 38 the shares of the class;class.

39 (7) Increase the rights, preferences, or number of authorized shares of any class  
 40 that, after giving effect to the amendment, have rights or preferences with  
 41 respect to distributions or to dissolution that are prior, superior, or  
 42 substantially equal to the shares of the class;class.

43 (8) Limit or deny an existing preemptive right of all or part of the shares of the  
 44 class;class.

45 (9) Cancel or otherwise affect rights to distributions or dividends that have  
 46 accumulated but not yet been declared on all or part of the shares of the ~~class;~~  
 47 or class.

48 (10) Change the corporation into a nonprofit corporation or a cooperative  
 49 organization.



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

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

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

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

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

16  
 17 **PART V. ELIMINATE DUPLICATIVE STATE DISCLOSURE REQUIREMENTS FOR**  
 18 **BUSINESS OPPORTUNITY SELLERS THAT FILE COMPARABLE DISCLOSURES**  
 19 **WITH THE FEDERAL TRADE COMMISSION**

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

21 "**§ 66-95. Required disclosure statement.**

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

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

37 (2) The following information:

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

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

50 ~~a.1.~~ Has been the The subject of any legal or administrative  
 51 proceeding alleging the violation of any business opportunity

- 1 or franchise law, ~~or~~—fraud, embezzlement, fraudulent  
 2 conversion, restraint of trade, unfair or deceptive practices,  
 3 misappropriation of ~~property—property,~~ or comparable  
 4 ~~allegations;allegations.~~
- 5 ~~b.2.~~ b.2. ~~Has been the~~ The subject of any bankruptcy, ~~reorganization~~  
 6 reorganization, or receivership ~~proceeding, proceeding~~ or was  
 7 an owner, a principal ~~officer—officer,~~ or a general partner of any  
 8 entity ~~which—that~~ has been subject to ~~such proceeding.any of~~  
 9 these proceedings.
- 10 The disclosure document shall set forth the name of the person, the  
 11 nature of and the parties to the action or proceeding, the court or other  
 12 forum, the date, the current status of the action or proceeding, the terms  
 13 and conditions of any order of decree, the penalties or damages  
 14 ~~assessed and/or—assessed, any~~ terms of settlement, and any other  
 15 information to enable the purchaser to assess the prior business  
 16 activities of the seller.
- 17 ~~(3)c.~~ (3)c. The prior business experience of the seller relating to business  
 18 opportunities ~~including;including~~ all of the following:  
 19 a.1. The name, address, and a description of any business  
 20 opportunity previously offered by the ~~seller;seller.~~  
 21 b.2. The length of time the seller has offered each ~~such—business~~  
 22 ~~opportunity;opportunity.~~  
 23 e.3. The length of time the seller has conducted the business  
 24 opportunity currently being offered to the purchaser.
- 25 ~~(4)d.~~ (4)d. A full and detailed description of the actual services that the business  
 26 opportunity seller undertakes to perform for the purchaser.
- 27 ~~(5)e.~~ (5)e. A copy of a current (not older than 13 months) financial statement of  
 28 the seller, updated to reflect any material changes in the seller's  
 29 financial condition.
- 30 ~~(6)f.~~ (6)f. If training of any type is promised by the seller, the disclosure  
 31 statement ~~must—shall~~ set forth a complete description of the training  
 32 and the length of the training.
- 33 ~~(7)g.~~ (7)g. If the seller promises services to be performed in connection with the  
 34 placement of ~~the—equipment, product(s)—products,~~ or supplies at  
 35 various ~~location(s),—locations,~~ the disclosure statement ~~must—shall~~ set  
 36 forth the full nature of those services as well as the nature of the  
 37 agreements to be made with the owners or managers of these  
 38 ~~location(s)—locations~~ where the purchaser's equipment, ~~product(s)~~  
 39 products, or supplies will be placed.
- 40 ~~(8)h.~~ (8)h. If the business opportunity seller is required to secure a bond or  
 41 establish a trust deposit pursuant to G.S. 66-96, the document shall  
 42 state ~~either;either of the following:~~  
 43 a.1. "As required by North Carolina law, the seller has secured a  
 44 bond issued by \_\_\_\_\_  
 45 (name and address of surety company)  
 46 a surety company authorized to do business in this State.  
 47 Before signing a contract to purchase this business  
 48 opportunity, you should check with the surety company to  
 49 determine the bond's current ~~status,—orstatus.~~"
- 50 ~~b.2.~~ b.2. "As required by North Carolina law, the seller has established  
 51 a trust account \_\_\_\_\_

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(number of account)

with \_\_\_\_\_  
(name and address of bank or savings institution)

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

~~(9)~~i. The following statement:

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

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

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

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

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

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

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

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

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

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

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

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

8  
 9 **PART VI. RIGHT OF A SHAREHOLDER OF A CORPORATION TO INSPECT**  
 10 **RECORDS OF SUBSIDIARY ENTITY OF THAT CORPORATION**

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

12 **"§ 55-16-01.1. Definitions.**

13 In this Article, the following definitions apply:

14 ...

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

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

23 **"§ 55-16-02. Inspection of records by shareholders.**

24 ...

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

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

33 ...

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

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

46 ...."

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

49  
 50 **PART VII. STANDARDIZE THE EVIDENCE TO PROVE A DEBT STARTING AT THE**  
 51 **POINT OF CHARGE-OFF**

1           **SECTION 7.1.(a)** G.S. 58-70-90 reads as rewritten:

2   "**§ 58-70-90. Definitions.**

3       As used in this Part, the following terms have the meanings specified:

- 4           (1)   ~~"Collection agency" means a Collection agency. – A collection agency as~~  
5                    defined in G.S. 58-70-15 which engages, directly or indirectly, in debt  
6                    collection from a consumer.
- 7           (2)   ~~"Consumer" means an Consumer. – An individual, aggregation of individuals,~~  
8                    corporation, company, association, or partnership that has incurred a debt or  
9                    alleged debt.
- 10          (3)   ~~"Debt" means any Debt. – Any obligation owed or due or alleged to be owed~~  
11                    or due from a consumer.
- 12          (4)   Itemized accounting. – An accounting of the amount claimed to be owed,  
13                    which shall include at least the following:
- 14                a.     If the debt has not been charged off: (i) the amount of principal; (ii)  
15                    each additional amount added for any interest, fees, or charges; and  
16                    (iii) the identity of the person imposing each additional amount.
- 17                b.     If the debt has been charged off: (i) the charge-off balance; (ii) any  
18                    post charge-off interest and fees; and (iii) any post charge-off  
19                    payments or credits."

20           **SECTION 7.1.(b)** G.S. 58-70-115 reads as rewritten:

21   "**§ 58-70-115. Unfair practices.**

22       No collection agency shall collect or attempt to collect any debt by use of any unfair practices.  
23       Such practices include, but are not limited to, the following:

24       ...

- 25          (5)   When the collection agency is a debt buyer or acting on behalf of a debt buyer,  
26                    bringing suit or initiating an arbitration proceeding against the debtor, or  
27                    otherwise attempting to collect on the debt without access to (i) valid  
28                    documentation that the debt buyer is the owner of the specific debt instrument  
29                    or account at issue and (ii) reasonable verification of the amount of the debt  
30                    allegedly owed by the debtor. For purposes of this subdivision, reasonable  
31                    verification shall include documentation of the name of the original creditor,  
32                    the name and address of the debtor as appearing on the original creditor's  
33                    records, the original consumer account number, a copy of the contract or other  
34                    document evidencing the consumer debt, and an itemized accounting of the  
35                    amount claimed to be owed, including all fees and charges.

36       ...."

37           **SECTION 7.1.(c)** G.S. 58-70-155(b) reads as rewritten:

38       "(b)   The only evidence sufficient to establish the amount and nature of the debt shall be  
39       properly authenticated business records that satisfy the requirements of Rule 803(6) of the North  
40       Carolina Rules of Evidence. The authenticated business records shall include at least all of the  
41       following items:

- 42           (1)   The original account number.
- 43           (2)   The original creditor.
- 44           (3)   ~~The amount of the original debt.~~ An itemized accounting, as defined in  
45                    G.S. 58-70-90.
- 46           (4)   ~~An itemization of charges and fees claimed to be owed.~~
- 47           (5)   ~~The original charge off balance, or, if the balance has not been charged off,~~  
48                    ~~an explanation of how the balance was calculated.~~
- 49           (6)   ~~An itemization of post charge-off additions, where applicable.~~
- 50           (7)   ~~The date of last payment.~~
- 51           (8)   ~~The amount of interest claimed and the basis for the interest charged."~~

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**PART VIII. EFFECTIVE DATE AND AUTHORIZATION TO PRINT COMMENTS**

**SECTION 8.(a)** The Revisor of Statutes shall cause to be printed, as annotations to Chapter 55 of the published General Statutes, all relevant portions of the Official Comments to the Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

**SECTION 8.(b)** Except as otherwise provided, this act is effective when it becomes law.