

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SENATE BILL 507
RATIFIED BILL**

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA BUSINESS CORPORATION ACT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

PART I. CLARIFY THAT VOTING SHARES CONTROLLED BY CORPORATION ARE NOT ENTITLED TO VOTE

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

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

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

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

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

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

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

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

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

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

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

Unless the articles of incorporation or bylaws provide otherwise, the board of directors, without regard to personal interest, may fix the compensation of directors for services in any ~~capacity.~~ capacity as a director. The compensation established pursuant to this section of directors of a public corporation or of a corporation that so provides in its articles of incorporation is



presumed to be fair to the corporation unless proven not to be fair to the corporation by a preponderance of the evidence."

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

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

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

"§ 55-8-24. Quorum and voting.

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

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

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

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

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

- (1) The director objects at the beginning of the ~~meeting (or meeting, or promptly upon the director's arrival)~~ arrival, to holding it or transacting business at the meeting.
- (2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting.
- (3) The director files written notice of the director's dissent or abstention with the presiding officer of the meeting before its adjournment or with the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken."

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

PART IV. AUTHORIZE CHANGE OF CORPORATE NAME WITHOUT SHAREHOLDER APPROVAL

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

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

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

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

- a. ~~To change~~ Change each issued and unissued authorized share of the class into a greater number of whole shares of the ~~class; or class.~~
 - b. ~~To increase~~ Increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.
- (5) ~~To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.~~

...."

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

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

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

"§ 55-13-30. Court Action.

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

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

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

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

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

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

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

PART VI. MODERNIZE CORPORATE RECORDS REQUIREMENTS AND CLARIFY INSPECTION RIGHTS

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

"§ 55-16-01. Corporate records.

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

- (1) Its articles of incorporation as currently in effect.
- (2) Its bylaws as currently in effect.
- (3) All written communications within the past three years to shareholders generally.
- (4) Minutes of all meetings of, and records of all actions taken without a meeting by, its shareholders, its board of directors, and board committees established under section G.S. 55-8-25.
- (5) A list of the names and business addresses of its current directors and officers.
- (6) Its most recent annual report delivered as required by G.S. 55-16-22.

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

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

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

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

- (1) ~~Its articles or restated articles of incorporation and all amendments to them currently in effect;~~
- (2) ~~Its bylaws or restated bylaws and all amendments to them currently in effect;~~
- (3) ~~Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;~~
- (4) ~~The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;~~
- (5) ~~All written communications to shareholders generally within the past three years and the financial statements required to be made available to the shareholders for the past three years under G.S. 55-16-20;~~
- (6) ~~A list of the names and business addresses of its current directors and officers;~~
~~and~~
- (7) ~~Its most recent annual report delivered as required by G.S. 55-16-22.~~

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

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

"§ 55-16-01A. Definitions.

In this Article, the following definitions apply:

- (1) Reserved.
- (2) Reserved.
- (3) Qualified shareholder. – A person who has been a shareholder in the corporation for at least six months immediately preceding the shareholder's demand for inspection of records or who holds at least five percent (5%) of the corporation's outstanding shares of any class.
- (4) Shareholder. – A record shareholder or a beneficial shareholder whose shares are held in a voting trust or by a nominee on the beneficial shareholder's behalf and whose beneficial ownership is certified to the corporation by that voting trust or nominee."

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

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

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

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

- (1) Records of any final action taken with or without a meeting by the board of directors, or by a committee of the board of directors while acting in place of the board of directors on behalf of the ~~corporation, minutes of any meeting of the shareholders and records of action taken by the shareholders without a meeting, to the extent not subject to inspection under G.S. 55-16-02 (a);~~ corporation maintained in accordance with G.S. 55-16-01(a).
- (2) Accounting records of the ~~corporation;~~ and corporation.
- (3) The record of ~~shareholders;~~ shareholders maintained in accordance with G.S. 55-16-01(c).
- (4) The financial statements of the corporation maintained in accordance with G.S. 55-16-01(b).

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

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

- (1) ~~His~~ The qualified shareholder's demand is made in good faith and for a proper purpose; ~~purpose.~~
- (2) ~~He~~ The qualified shareholder describes with reasonable particularity ~~his the qualified shareholder's purpose and the records he the qualified shareholder desires to inspect; and~~ inspect.
- (3) The records are directly connected with ~~his the qualified shareholder's~~ purpose.

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

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

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

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

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

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

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

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

(i) Notwithstanding the provisions of this section or any other provisions of this Chapter or interpretations ~~thereof~~ to the contrary, a shareholder of a public corporation ~~shall have~~has no common law rights to inspect or copy any accounting records of the corporation or any other records of the corporation that may not be inspected or copied by a shareholder of a public corporation as provided in ~~G.S. 55-16-02(b)~~subsection (b) of this section."

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

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

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

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

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

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

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

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

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

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

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

- (1) The corporation had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.
- (2) The corporation required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding qualified shareholder had been unwilling to agree.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

- (1) Written notice that appraisal rights are, are not, or may be available ~~must~~shall be given to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, ~~must~~shall be accompanied by a copy of this Article.
- (2) Written notice that appraisal rights are, are not, or may be available ~~must~~shall be delivered together with the notice to the applicable shareholders required by subsections (d) and (e) of G.S. 55-7-04, may include the materials described in G.S. 55-13-22, and, if the corporation has concluded that appraisal rights are or may be available, ~~must~~shall be accompanied by a copy of this Article.

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

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

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

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

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

"§ 55-13-25. Payment.

...

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

- (1) The following financial information:
 - a. ~~The annual~~Annual financial statements ~~specified as described in~~ G.S. 55-16-20(a) of the corporation that issued the shares to be appraised. The date of the financial statements shall not be more than 16 months before the date of ~~payment and shall comply with G.S. 55-16-20(b).~~payment. If annual financial statements that meet the requirements of this sub-subdivision are not reasonably available, the corporation shall provide reasonably equivalent financial ~~information.~~information and in any case shall provide a balance sheet

as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year.

- b. The latest ~~available quarterly interim~~ financial statements, if any.
- (2) A statement of the corporation's estimate of the fair value of the shares. The estimate ~~must~~ shall equal or exceed the corporation's estimate given pursuant to G.S. 55-13-22(b)(2)c.
- (3) A statement that the shareholders described in subsection (a) of this section have the right to demand further payment under G.S. 55-13-28 and that if a shareholder does not do so within the time period specified ~~therein, in~~ G.S. 55-13-28, then the shareholder shall be deemed to have accepted ~~such~~ payment in full satisfaction of the corporation's obligations under this Article."

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

"§ 57D-3-04. Information rights.

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

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

...."

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

PART VII. INSTRUCTION TO THE REVISOR OF STATUTES AND EFFECTIVE DATE

SECTION 7.(a) The Revisor of Statutes shall cause to be printed, as annotations to 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.

law. **SECTION 7.(b)** Except as otherwise provided, this act is effective when it becomes
In the General Assembly read three times and ratified this the 5th day of August, 2021.

s/ Warren Daniel
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2021