

As Introduced

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H. B. No. 545

Representatives Driehaus, Dever

A BILL

To amend sections 1151.38, 1151.61, 1701.01, 1
1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 2
1701.591, and 1701.94 and to enact section 3
1701.96 of the Revised Code to allow a 4
corporation to become a benefit corporation. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1151.38, 1151.61, 1701.01, 6
1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 7
1701.94 be amended and section 1701.96 of the Revised Code be 8
enacted to read as follows: 9

Sec. 1151.38. As used in this section, "federal 10
association" means a federal savings and loan association, and 11
"state association" means a state savings and loan association. 12

Any federal association having its home office in this 13
state may convert or reorganize into a state association under 14
this section and section 1151.39 of the Revised Code by 15
proceeding as follows: 16

(A) The board of directors of the federal association, at 17
any regular or special meeting called for that purpose, shall 18
adopt a plan to convert or reorganize into a state association. 19

(B) The plan and any amendments or additions to the plan 20
shall be considered, and a vote shall be taken on the question 21
of its adoption, at an annual meeting of the members of the 22
federal association or at any special meeting of the members of 23
the federal association called to consider the action. If the 24
bylaws of the federal association do not require written notice 25
of the annual or special meeting, written notice of the time, 26
place, and purpose of such meeting shall be mailed by the 27
federal association, postage prepaid, at least ten days prior to 28
the date on which such meeting convenes, to each member of 29
record of the federal association, but the mailing shall not be 30
a condition precedent to, nor shall any defect in the mailing 31
affect the validity of, the meeting. The adoption of the plan 32
shall require the vote of fifty-one per cent or more of the 33
votes cast by the members present in person or by proxy at such 34
meeting. 35

(C) Two copies of the minutes of such meeting, together 36
with a statement showing the giving of the written notice, and 37
two copies of the minutes of the meeting of the members of the 38
board of the federal association, all verified by an affidavit 39
of the secretary or other proper custodian of the records of the 40
federal association, shall be filed both in the office of the 41
superintendent of financial institutions and with the federal 42
home loan bank board. Such verified copies, when filed, shall be 43
presumptive evidence of the holding and action of such meeting. 44

(D) A majority of the members of the board of the federal 45
association, which majority shall consist of not less than three 46
directors, a majority of whom are citizens of the United States, 47
shall subscribe to, acknowledge, and file articles of 48
incorporation in the office of the secretary of state. Two 49
copies of the articles shall be filed with the federal home loan 50

bank board. The articles shall set forth all of the following: 51

(1) All statements required by divisions (A) (1), (2), and 52
(3) of section 1701.04 of the Revised Code and any desired 53
provision authorized by divisions (B) ~~(3)~~, (4), ~~and (5)~~, and (6) 54
of that section; 55

(2) A statement showing that the state association is 56
incorporated by conversion or reorganization from the federal 57
association; 58

(3) A statement showing the assumption by the state 59
association of all shares, accounts, and liabilities of the 60
federal association as of the date on which the conversion or 61
reorganization is to be completed, and the manner in which each 62
class of such shares, accounts, and liabilities will be 63
discharged or adjusted by the state association. 64

Upon receipt of the articles, the secretary of state shall 65
forthwith transmit to the superintendent a copy of the articles. 66
If it appears that the state association, if formed, will be 67
entitled to commence the business for which it is organized, the 68
superintendent shall so certify to the secretary of state, who 69
shall record the articles upon that certificate. 70

(E) On the day and hour of such recording, the federal 71
association shall be deemed converted or reorganized into the 72
state association, and upon that conversion or reorganization, 73
both of the following apply: 74

(1) All the federal association's property and assets, and 75
every right, privilege, and interest then existing, belonging or 76
pertaining to it or which would inure to it, immediately, 77
without any conveyance or transfer and without any further act, 78
shall be vested in and become the property of the successor 79

state association, which shall hold and enjoy them in its own 80
right, to the same extent as they were held and enjoyed by the 81
federal association. All liens upon the property and assets of 82
the federal association existing at the time of conversion shall 83
be preserved unimpaired and limited in lien to the property or 84
assets then affected by liens. This section does not deprive any 85
person, firm, or corporation of any substantive right existing 86
at the time of conversion against the federal association, nor 87
of the right to enforce any such right of that nature by 88
proceedings against the property and assets transferred by 89
operation of this division, in the event and to the extent that 90
the substantive right is not satisfied or adjusted by the 91
successor state association in accordance with its articles. 92

(2) The state association shall commence business and 93
shall be subject to the laws of this state relating to domestic 94
savings and loan associations. 95

Any action or proceeding pending by or against the federal 96
association at the time of the conversion or reorganization may 97
be prosecuted to judgment, with right of appeal, as in other 98
cases, as if the conversion or reorganization had not taken 99
place, or the successor state association may be substituted for 100
the federal association. 101

A copy of the articles recorded in the office of the 102
secretary of state, certified by the secretary of state under 103
the seal of the secretary of state's office and showing the day 104
and hour of recording, shall be recorded in the office of the 105
county recorder of the county in which the federal association 106
had its principal office or place of business at the time of its 107
conversion or reorganization and in each county in the state in 108
which the federal association owned real estate at the time of 109

its conversion or reorganization, for which recording the 110
recorder shall charge the same fees as for the recording of 111
deeds. Two copies of the articles, as so recorded and certified 112
and showing the date and hour of the recording, shall be filed 113
with the federal home loan bank board. 114

Sec. 1151.61. A savings and loan association may be 115
reorganized, with the written consent of the deputy 116
superintendent of savings and loan associations, in the 117
following manner: 118

(A) The board of directors may adopt a plan of 119
reorganization, which may include any change in the articles of 120
incorporation, including changes of issued or unissued shares, 121
which could be effected by amendment to the articles, except as 122
otherwise provided in this section; the increase or reduction of 123
the authorized capital stock, the stock credits, and the fully 124
paid and issued capital stock; the determination or 125
redetermination of the fair value to the association of its 126
tangible or intangible assets; the allotment of a part of the 127
amount so determined or redetermined to stock credits and to 128
fully paid and issued capital stock, and a part to the reserve 129
fund; the retention as reserve and undivided profits of any of 130
the existing reserve and undivided profits; the manner, terms, 131
and basis of converting or exchanging shares; and any other 132
details that the board considers necessary or desirable. The 133
board shall not adopt, and the superintendent shall not approve, 134
any plan that, by amendment to the articles or otherwise, 135
changes the purpose of the association from that of a savings 136
and loan association within the meaning of section 1151.01 of 137
the Revised Code. 138

(B) A special meeting of the stockholders shall be called, 139

of which notice shall be given to each stockholder at the 140
stockholder's last known post-office address as it appears on 141
the records of the association, whether or not the stockholder 142
is entitled to vote. At such meeting, the plan of 143
reorganization, including any amendments of or additions to the 144
plan proposed at the meeting, shall be considered, and a vote 145
shall be taken on the question of its adoption. The adoption of 146
the plan requires the vote, in person or by proxy, of the 147
holders of fifty-one per cent of the stock. If the plan so 148
provides, the board , within forty-five days after the day on 149
which the vote is taken, may rescind the action of the 150
shareholders if in its judgment the consummation of the plan 151
will be against the best interests of the association because of 152
the number of dissenting shareholders or the amount of stock 153
owned by them. 154

(C) All shareholders dissenting from such plan are 155
entitled to relief in the manner and under the conditions 156
provided in section 1701.85 of the Revised Code, except that 157
when the plan includes only a reduction in the authorized 158
capital stock, in the stock credits, and in the fully paid and 159
issued capital stock, the filing of the dissenting shareholder's 160
demand for payment of the fair cash value of the dissenting 161
shareholder's stock credits shall constitute an application for 162
withdrawal or repurchase, and the fair cash value of the 163
dissenting shareholder's stock credits as finally determined in 164
accordance with that section shall be payable only at the times 165
that are permitted under the dissenting shareholder's right of 166
withdrawal or repurchase at the time such an application is 167
filed. 168

(D) The plan shall become effective when it has been 169
adopted by the shareholders and approved in writing by the 170

superintendent, and the president or a vice-president, and the 171
secretary or an assistant secretary, of the association have 172
signed and filed in the office of the secretary of state a 173
certificate of reorganization, with the consent of the 174
superintendent endorsed on the certificate, containing a copy of 175
the plan of reorganization, and also containing the following 176
items, unless the item in question is included in the plan: 177

(1) All statements required by divisions (A) (1), (2), and 178
(3) of section 1701.04 of the Revised Code to be included in the 179
original articles of incorporation, and any provisions 180
authorized by divisions (B) ~~(3)~~, (4), ~~and (5)~~, and (6) of that 181
section which are to remain in effect or to be included as part 182
of the plan; 183

(2) A statement of the amount of fully paid and issued 184
capital stock, the amount of stock credits, and the amount of 185
authorized capital stock, both before and after the 186
reorganization. 187

(E) An association whose plan of reorganization is 188
disapproved by the superintendent, within thirty days after the 189
disapproval and by leave of court first obtained, may file, in 190
the court of common pleas of Franklin county or of the county in 191
which the association has its principal place of business, an 192
action against the superintendent, alleging the facts upon which 193
it relies for a reversal of the superintendent's action and 194
praying for such a reversal. The action of the superintendent 195
shall not be reversed unless the court finds that the 196
superintendent exceeded the superintendent's power or abused the 197
superintendent's discretion in disapproving the plan. 198

No order of court shall restrain the superintendent from 199
making an examination of the association and its affairs at any 200

time under sections 1155.09 and 1155.10 of the Revised Code.	201
Sec. 1701.01. As used in sections 1701.01 to 1701.98 of	202
the Revised Code, unless the context otherwise requires:	203
(A) "Corporation" or "domestic corporation" means a	204
corporation for profit formed under the laws of this state.	205
(B) "Foreign corporation" means a corporation for profit	206
formed under the laws of another state, and "foreign entity"	207
means an entity formed under the laws of another state.	208
(C) "State" means the United States; any state, territory,	209
insular possession, or other political subdivision of the United	210
States, including the District of Columbia; any foreign country	211
or nation; and any province, territory, or other political	212
subdivision of such foreign country or nation.	213
(D) "Articles" includes original articles of	214
incorporation, certificates of reorganization, amended articles,	215
and amendments to any of these, and, in the case of a	216
corporation created before September 1, 1851, the special	217
charter and any amendments to it made by special act of the	218
general assembly or pursuant to general law.	219
(E) "Incorporator" means a person who signed the original	220
articles of incorporation.	221
(F) "Shareholder" means a person whose name appears on the	222
books of the corporation as the owner of shares of the	223
corporation. Unless the articles, the regulations adopted by the	224
shareholders, the regulations adopted by the directors pursuant	225
to division (A) (1) of section 1701.10 of the Revised Code, or	226
the contract of subscription otherwise provides, "shareholder"	227
includes a subscriber to shares, whether the subscription is	228
received by the incorporators or pursuant to authorization by	229

the directors, and such shares shall be deemed to be outstanding	230
shares.	231
(G) "Person" includes, without limitation, a natural	232
person, a corporation, whether nonprofit or for profit, a	233
partnership, a limited liability company, an unincorporated	234
society or association, and two or more persons having a joint	235
or common interest.	236
(H) The location of the "principal office" of a	237
corporation is the place named as the principal office in its	238
articles.	239
(I) The "express terms" of shares of a class are the	240
statements expressed in the articles with respect to such	241
shares.	242
(J) Shares of a class are "junior" to shares of another	243
class when any of their dividend or distribution rights are	244
subordinate to, or dependent or contingent upon, any right of,	245
or dividend on, or distribution to, shares of such other class.	246
(K) "Treasury shares" means shares belonging to the	247
corporation and not retired that have been either issued and	248
thereafter acquired by the corporation or paid as a dividend or	249
distribution in shares of the corporation on treasury shares of	250
the same class; such shares shall be deemed to be issued, but	251
they shall not be considered as an asset or a liability of the	252
corporation, or as outstanding for dividend or distribution,	253
quorum, voting, or other purposes, except, when authorized by	254
the directors, for dividends or distributions in authorized but	255
unissued shares of the corporation of the same class.	256
(L) To "retire" a share means to restore it to the status	257
of an authorized but unissued share.	258

(M) "Redemption price of shares" means the amount required 259
by the articles to be paid on redemption of shares. 260

(N) "Liquidation price" means the amount or portion of 261
assets required by the articles to be distributed to the holders 262
of shares of any class upon dissolution, liquidation, merger, or 263
consolidation of the corporation, or upon sale of all or 264
substantially all of its assets. 265

(O) "Insolvent" means that the corporation is unable to 266
pay its obligations as they become due in the usual course of 267
its affairs. 268

(P) "Parent corporation" or "parent" means a domestic or 269
foreign corporation that owns and holds of record shares of 270
another corporation, domestic or foreign, entitling the holder 271
of the shares at the time to exercise a majority of the voting 272
power in the election of the directors of the other corporation 273
without regard to voting power that may thereafter exist upon a 274
default, failure, or other contingency; "subsidiary corporation" 275
or "subsidiary" means a domestic or foreign corporation of which 276
another corporation, domestic or foreign, is the parent. 277

(Q) "Combination" means a transaction, other than a merger 278
or consolidation, wherein either of the following applies: 279

(1) Voting shares of a domestic corporation are issued or 280
transferred in consideration in whole or in part for the 281
transfer to itself or to one or more of its subsidiaries, 282
domestic or foreign, of all or substantially all the assets of 283
one or more corporations, domestic or foreign, with or without 284
good will or the assumption of liabilities; 285

(2) Voting shares of a foreign parent corporation are 286
issued or transferred in consideration in whole or in part for 287

the transfer of such assets to one or more of its domestic subsidiaries.	288 289
"Transferee corporation" in a combination means the corporation, domestic or foreign, to which the assets are transferred, and "transferor corporation" in a combination means the corporation, domestic or foreign, transferring such assets and to which, or to the shareholders of which, the voting shares of the domestic or foreign corporation are issued or transferred.	290 291 292 293 294 295 296
(R) "Majority share acquisition" means the acquisition of shares of a corporation, domestic or foreign, entitling the holder of the shares to exercise a majority of the voting power in the election of directors of such corporation without regard to voting power that may thereafter exist upon a default, failure, or other contingency, by either of the following:	297 298 299 300 301 302
(1) A domestic corporation in consideration in whole or in part, for the issuance or transfer of its voting shares;	303 304
(2) A domestic or foreign subsidiary in consideration in whole or in part for the issuance or transfer of voting shares of its domestic parent.	305 306 307
(S) "Acquiring corporation" in a combination means the domestic corporation whose voting shares are issued or transferred by it or its subsidiary or subsidiaries to the transferor corporation or corporations or the shareholders of the transferor corporation or corporations; and "acquiring corporation" in a majority share acquisition means the domestic corporation whose voting shares are issued or transferred by it or its subsidiary in consideration for shares of a domestic or foreign corporation entitling the holder of the shares to	308 309 310 311 312 313 314 315 316

exercise a majority of the voting power in the election of 317
directors of such corporation. 318

(T) When used in connection with a combination or a 319
majority share acquisition, "voting shares" means shares of a 320
corporation, domestic or foreign, entitling the holder of the 321
shares to vote at the time in the election of directors of such 322
corporation without regard to voting power which may thereafter 323
exist upon a default, failure, or other contingency. 324

(U) "An emergency" exists when the governor, or any other 325
person lawfully exercising the power and discharging the duties 326
of the office of governor, proclaims that an attack on the 327
United States or any nuclear, atomic, or other disaster has 328
caused an emergency for corporations, and such an emergency 329
shall continue until terminated by proclamation of the governor 330
or any other person lawfully exercising the powers and 331
discharging the duties of the office of governor. 332

(V) "Constituent corporation" means an existing 333
corporation merging into or into which is being merged one or 334
more other entities in a merger or an existing corporation being 335
consolidated with one or more other entities into a new entity 336
in a consolidation, whether any of the entities is domestic or 337
foreign, and "constituent entity" means any entity merging into 338
or into which is being merged one or more other entities in a 339
merger, or an existing entity being consolidated with one or 340
more other entities into a new entity in a consolidation, 341
whether any of the entities is domestic or foreign. 342

(W) "Surviving corporation" means the constituent domestic 343
or foreign corporation that is specified as the corporation into 344
which one or more other constituent entities are to be or have 345
been merged, and "surviving entity" means the constituent 346

domestic or foreign entity that is specified as the entity into 347
which one or more other constituent entities are to be or have 348
been merged. 349

(X) "Close corporation agreement" means an agreement that 350
satisfies the three requirements of division (A) of section 351
1701.591 of the Revised Code. 352

(Y) "Issuing public corporation" means a domestic 353
corporation with fifty or more shareholders that has its 354
principal place of business, its principal executive offices, 355
assets having substantial value, or a substantial percentage of 356
its assets within this state, and as to which no valid close 357
corporation agreement exists under division (H) of section 358
1701.591 of the Revised Code. 359

(Z) (1) "Control share acquisition" means the acquisition, 360
directly or indirectly, by any person of shares of an issuing 361
public corporation that, when added to all other shares of the 362
issuing public corporation in respect of which the person may 363
exercise or direct the exercise of voting power as provided in 364
this division, would entitle the person, immediately after the 365
acquisition, directly or indirectly, alone or with others, to 366
exercise or direct the exercise of the voting power of the 367
issuing public corporation in the election of directors within 368
any of the following ranges of such voting power: 369

(a) One-fifth or more but less than one-third of such 370
voting power; 371

(b) One-third or more but less than a majority of such 372
voting power; 373

(c) A majority or more of such voting power. 374

A bank, broker, nominee, trustee, or other person that 375

acquires shares in the ordinary course of business for the 376
benefit of others in good faith and not for the purpose of 377
circumventing section 1701.831 of the Revised Code shall, 378
however, be deemed to have voting power only of shares in 379
respect of which such person would be able, without further 380
instructions from others, to exercise or direct the exercise of 381
votes on a proposed control share acquisition at a meeting of 382
shareholders called under section 1701.831 of the Revised Code. 383

(2) The acquisition by any person of any shares of an 384
issuing public corporation does not constitute a control share 385
acquisition for the purpose of section 1701.831 of the Revised 386
Code if the acquisition was or is consummated in, results from, 387
or is the consequence of any of the following circumstances: 388

(a) Prior to November 19, 1982; 389

(b) Pursuant to a contract existing prior to November 19, 390
1982; 391

(c) By bequest or inheritance, by operation of law upon 392
the death of an individual, or by any other transfer without 393
valuable consideration, including a gift, that is made in good 394
faith and not for the purpose of circumventing section 1701.831 395
of the Revised Code; 396

(d) Pursuant to the satisfaction of a pledge or other 397
security interest created in good faith and not for the purpose 398
of circumventing section 1701.831 of the Revised Code; 399

(e) Pursuant to a merger or consolidation adopted, or a 400
combination or majority share acquisition authorized, by vote of 401
the shareholders of the issuing public corporation in compliance 402
with section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.83 of 403
the Revised Code, or pursuant to a merger adopted in compliance 404

with section 1701.802 of the Revised Code; 405

(f) The person's being entitled, immediately thereafter, 406
to exercise or direct the exercise of voting power of the 407
issuing public corporation in the election of directors within 408
the same range theretofore attained by that person either in 409
compliance with the provisions of section 1701.831 of the 410
Revised Code or as a result solely of the issuing public 411
corporation's purchase of shares issued by it; 412

(g) The person's being engaged in business as an 413
underwriter of securities who acquires the shares directly from 414
the issuing public corporation or an affiliate or associate of 415
the issuing public corporation through its participation in good 416
faith in a firm commitment underwriting registered under the 417
"Securities Act of 1933," 15 U.S.C. 77a et seq., and not for the 418
purpose of circumventing section 1701.831 of the Revised Code. 419

The acquisition by any person of shares of an issuing 420
public corporation in a manner described under division (Z) (2) 421
of this section shall be deemed a control share acquisition 422
authorized pursuant to section 1701.831 of the Revised Code 423
within the range of voting power under division (Z) (1) (a), (b), 424
or (c) of this section that such person is entitled to exercise 425
after the acquisition, provided, in the case of an acquisition 426
in a manner described under division (Z) (2) (c) or (d) of this 427
section, the transferor of shares to such person had previously 428
obtained any authorization of shareholders required under 429
section 1701.831 of the Revised Code in connection with the 430
transferor's acquisition of shares of the issuing public 431
corporation. 432

(3) The acquisition of shares of an issuing public 433
corporation in good faith and not for the purpose of 434

circumventing section 1701.831 of the Revised Code from any 435
person whose control share acquisition previously had been 436
authorized by shareholders in compliance with section 1701.831 437
of the Revised Code, or from any person whose previous 438
acquisition of shares of an issuing public corporation would 439
have constituted a control share acquisition but for division 440
(Z) (2) or (3) of this section, does not constitute a control 441
share acquisition for the purpose of section 1701.831 of the 442
Revised Code unless such acquisition entitles the person making 443
the acquisition, directly or indirectly, alone or with others, 444
to exercise or direct the exercise of voting power of the 445
corporation in the election of directors in excess of the range 446
of voting power authorized pursuant to section 1701.831 of the 447
Revised Code, or deemed to be so authorized under division (Z) 448
(2) of this section. 449

(AA) "Acquiring person" means any person who has delivered 450
an acquiring person statement to an issuing public corporation 451
pursuant to section 1701.831 of the Revised Code. 452

(BB) "Acquiring person statement" means a written 453
statement that complies with division (B) of section 1701.831 of 454
the Revised Code. 455

(CC) (1) "Interested shares" means the shares of an issuing 456
public corporation in respect of which any of the following 457
persons may exercise or direct the exercise of the voting power 458
of the corporation in the election of directors: 459

(a) An acquiring person; 460

(b) Any officer of the issuing public corporation elected 461
or appointed by the directors of the issuing public corporation; 462

(c) Any employee of the issuing public corporation who is 463

also a director of such corporation; 464

(d) Any person that acquires such shares for valuable 465
consideration during the period beginning with the date of the 466
first public disclosure of a proposal for, or expression of 467
interest in, a control share acquisition of the issuing public 468
corporation; a transaction pursuant to section 1701.76, 1701.78, 469
1701.781, 1701.79, 1701.791, 1701.83, or 1701.86 of the Revised 470
Code that involves the issuing public corporation or its assets; 471
or any action that would directly or indirectly result in a 472
change in control of the issuing public corporation or its 473
assets, and ending on the record date established by the 474
directors pursuant to section 1701.45 and division (D) of 475
section 1701.831 of the Revised Code, if either of the following 476
applies: 477

(i) The aggregate consideration paid or given by the 478
person who acquired the shares, and any other persons acting in 479
concert with the person, for all such shares exceeds two hundred 480
fifty thousand dollars; 481

(ii) The number of shares acquired by the person who 482
acquired the shares, and any other persons acting in concert 483
with the person, exceeds one-half of one per cent of the 484
outstanding shares of the corporation entitled to vote in the 485
election of directors. 486

(e) Any person that transfers such shares for valuable 487
consideration after the record date described in division (CC) 488
(1)(d) of this section as to shares so transferred, if 489
accompanied by the voting power in the form of a blank proxy, an 490
agreement to vote as instructed by the transferee, or otherwise. 491

(2) If any part of this division is held to be illegal or 492

invalid in application, the illegality or invalidity does not 493
affect any legal and valid application thereof or any other 494
provision or application of this division or section 1701.831 of 495
the Revised Code that can be given effect without the invalid or 496
illegal provision, and the parts and applications of this 497
division are severable. 498

(DD) "Certificated security" and "uncertificated security" 499
have the same meanings as in section 1308.01 of the Revised 500
Code. 501

(EE) "Entity" means any of the following: 502

(1) A for profit corporation existing under the laws of 503
this state or any other state; 504

(2) Any of the following organizations existing under the 505
laws of this state, the United States, or any other state: 506

(a) A business trust or association; 507

(b) A real estate investment trust; 508

(c) A common law trust; 509

(d) An unincorporated business or for profit organization, 510
including a general or limited partnership; 511

(e) A limited liability company; 512

(f) A nonprofit corporation. 513

(FF) "Benefit corporation" means a corporation that sets 514
forth in its articles of incorporation one or more beneficial 515
purposes among the purposes for which the corporation is formed. 516

(GG) "Beneficial purpose" means seeking to have a bona 517
fide positive effect or to reduce one or more bona fide negative 518
effects on persons, entities, communities, or interests other 519

than shareholders in their capacity as shareholders, including 520
effects of an artistic, charitable, cultural, economic, 521
educational, environmental, literary, medical, religious, 522
scientific, or technological nature. 523

Sec. 1701.03. (A) (1) A corporation may be formed under 524
this chapter for any purpose or combination of purposes for 525
which individuals lawfully may associate themselves, except 526
that, if the Revised Code contains special provisions pertaining 527
to the formation of any designated type of corporation other 528
than a professional association, as defined in section 1785.01 529
of the Revised Code, a corporation of that type shall be formed 530
in accordance with the special provisions. 531

(2) The purpose for which a corporation is formed may 532
include a beneficial purpose. Except to the extent that the 533
articles otherwise provide, both of the following apply: 534

(a) Having a beneficial purpose does not prevent a 535
corporation from seeking any of the other purposes for which the 536
corporation is formed, including operation of the corporation 537
for pecuniary gain or profit and distribution of net earnings. 538

(b) No particular purpose of a corporation has priority 539
over any other purpose of the corporation. 540

(3) A corporation that does not have a beneficial purpose 541
is not required to operate exclusively for profit or 542
distribution of net earnings of the corporation in all 543
instances. 544

(4) To be effective, a beneficial purpose shall be 545
expressly provided in the articles. A statement of purpose in 546
the articles that includes any purpose or combination of 547
purposes for which individuals lawfully may associate 548

themselves, without the express provision of a beneficial 549
purpose, does not establish a beneficial purpose as a purpose of 550
the corporation. 551

(B) On and after July 1, 1994, a corporation may be formed 552
under this chapter for the purpose of carrying on the practice 553
of any profession, including, but not limited to, a corporation 554
for the purpose of providing public accounting or certified 555
public accounting services, a corporation for the erection, 556
owning, and conducting of a sanitarium for receiving and caring 557
for patients, medical and hygienic treatment of patients, and 558
instruction of nurses in the treatment of disease and in 559
hygiene, a corporation for the purpose of providing 560
architectural, landscape architectural, professional 561
engineering, or surveying services or any combination of those 562
types of services, and a corporation for the purpose of 563
providing a combination of the professional services, as defined 564
in section 1785.01 of the Revised Code, of optometrists 565
authorized under Chapter 4725. of the Revised Code, 566
chiropractors authorized under Chapter 4734. of the Revised Code 567
to practice chiropractic or acupuncture, psychologists 568
authorized under Chapter 4732. of the Revised Code, registered 569
or licensed practical nurses authorized under Chapter 4723. of 570
the Revised Code, pharmacists authorized under Chapter 4729. of 571
the Revised Code, physical therapists authorized under sections 572
4755.40 to 4755.56 of the Revised Code, occupational therapists 573
authorized under sections 4755.04 to 4755.13 of the Revised 574
Code, mechanotherapists authorized under section 4731.151 of the 575
Revised Code, doctors of medicine and surgery, osteopathic 576
medicine and surgery, or podiatric medicine and surgery 577
authorized under Chapter 4731. of the Revised Code, and licensed 578
professional clinical counselors, licensed professional 579

counselors, independent social workers, social workers, 580
independent marriage and family therapists, or marriage and 581
family therapists authorized under Chapter 4757. of the Revised 582
Code. 583

This chapter does not restrict, limit, or otherwise affect 584
the authority or responsibilities of any agency, board, 585
commission, department, office, or other entity to license, 586
register, and otherwise regulate the professional conduct of 587
individuals or organizations of any kind rendering professional 588
services, as defined in section 1785.01 of the Revised Code, in 589
this state or to regulate the practice of any profession that is 590
within the jurisdiction of the agency, board, commission, 591
department, office, or other entity, notwithstanding that an 592
individual is a director, officer, employee, or other agent of a 593
corporation formed under this chapter and is rendering 594
professional services or engaging in the practice of a 595
profession through a corporation formed under this chapter or 596
that the organization is a corporation formed under this 597
chapter. 598

(C) Nothing in division (A) or (B) of this section 599
precludes the organization of a professional association in 600
accordance with this chapter and Chapter 1785. of the Revised 601
Code or the formation of a limited liability company under 602
Chapter 1705. of the Revised Code with respect to a business, as 603
defined in section 1705.01 of the Revised Code. 604

(D) No corporation formed for the purpose of providing a 605
combination of the professional services, as defined in section 606
1785.01 of the Revised Code, of optometrists authorized under 607
Chapter 4725. of the Revised Code, chiropractors authorized 608
under Chapter 4734. of the Revised Code to practice chiropractic 609

or acupuncture, psychologists authorized under Chapter 4732. of 610
the Revised Code, registered or licensed practical nurses 611
authorized under Chapter 4723. of the Revised Code, pharmacists 612
authorized under Chapter 4729. of the Revised Code, physical 613
therapists authorized under sections 4755.40 to 4755.56 of the 614
Revised Code, occupational therapists authorized under sections 615
4755.04 to 4755.13 of the Revised Code, mechanotherapists 616
authorized under section 4731.151 of the Revised Code, doctors 617
of medicine and surgery, osteopathic medicine and surgery, or 618
podiatric medicine and surgery authorized under Chapter 4731. of 619
the Revised Code, and licensed professional clinical counselors, 620
licensed professional counselors, independent social workers, 621
social workers, independent marriage and family therapists, or 622
marriage and family therapists authorized under Chapter 4757. of 623
the Revised Code shall control the professional clinical 624
judgment exercised within accepted and prevailing standards of 625
practice of a licensed, certificated, or otherwise legally 626
authorized optometrist, chiropractor, chiropractor practicing 627
acupuncture through the state chiropractic board, psychologist, 628
nurse, pharmacist, physical therapist, occupational therapist, 629
mechanotherapist, doctor of medicine and surgery, osteopathic 630
medicine and surgery, or podiatric medicine and surgery, 631
licensed professional clinical counselor, licensed professional 632
counselor, independent social worker, social worker, independent 633
marriage and family therapist, or marriage and family therapist 634
in rendering care, treatment, or professional advice to an 635
individual patient. 636

This division does not prevent a hospital, as defined in 637
section 3727.01 of the Revised Code, insurer, as defined in 638
section 3999.36 of the Revised Code, or intermediary 639
organization, as defined in section 1751.01 of the Revised Code, 640

from entering into a contract with a corporation described in 641
this division that includes a provision requiring utilization 642
review, quality assurance, peer review, or other performance or 643
quality standards. Those activities shall not be construed as 644
controlling the professional clinical judgment of an individual 645
practitioner listed in this division. 646

Sec. 1701.04. (A) Any person, singly or jointly with 647
others, and without regard to residence, domicile, or state of 648
incorporation, may form a corporation by signing and filing with 649
the secretary of state articles of incorporation that shall set 650
forth all of the following: 651

(1) The name of the corporation, which shall be in 652
compliance with division (A) of section 1701.05 of the Revised 653
Code; 654

(2) The place in this state where the principal office of 655
the corporation is to be located; 656

(3) The authorized number and the par value per share of 657
shares with par value, and the authorized number of shares 658
without par value, except that the articles of a banking, safe 659
deposit, trust, or insurance corporation shall not authorize 660
shares without par value; the express terms, if any, of the 661
shares; and, if the shares are classified, the designation of 662
each class, the authorized number and par value per share, if 663
any, of the shares of each class, and the express terms of the 664
shares of each class; 665

(4) If the corporation is to have an initial stated 666
capital, the amount of that stated capital. 667

(B) The articles also may set forth any of the following: 668

(1) The names of the individuals who are to serve as 669

initial directors; 670

(2) The purpose or purposes for which the corporation is 671
formed, but in the absence of a statement of the purpose or 672
purposes or except as expressly set forth in such statement, the 673
purpose for which any corporation is formed is to engage in any 674
lawful act or activity for which a corporation may be formed 675
under this chapter, and all lawful acts and activities of the 676
corporation are within the purposes of the corporation; 677

(3) Any priority or other method for balancing the 678
purposes for which the corporation is formed; 679

(4) Any lawful provision for the purpose of defining, 680
limiting, or regulating the exercise of the authority of the 681
corporation, the incorporators, the directors, the officers, the 682
shareholders, or the holders of any class of shares; 683

~~(4)~~(5) Any provision that may be set forth in the 684
regulations; 685

~~(5)~~(6) A provision specifying the period of existence of 686
the corporation if it is to be otherwise than perpetual; 687

~~(6)~~(7) A provision eliminating the right of every 688
shareholder to vote cumulatively in the election of directors; 689

~~(7)~~(8) Any additional provision permitted by this 690
chapter. 691

(C) A written appointment of a statutory agent for the 692
purposes set forth in section 1701.07 of the Revised Code shall 693
be filed with the articles, unless the corporation belongs to 694
one of the classes mentioned in division (O) of that section. 695

(D) The legal existence of the corporation begins upon the 696
filing of the articles or on a later date specified in the 697

articles that is not more than ninety days after filing, and, 698
unless the articles otherwise provide, its period of existence 699
shall be perpetual. 700

Sec. 1701.05. (A) Except as provided in this section, and 701
in sections 1701.75, 1701.78, and 1701.82 of the Revised Code, 702
which sections relate to the reorganization, merger, and 703
consolidation of corporations, the corporate name of a domestic 704
corporation shall comply with all of the following: 705

(1) It shall end with or include the word or abbreviation 706
"company," "co.," "corporation," "corp.," "incorporated," or 707
"inc." 708

(2) It shall not include the word "benefit" or "b-" in its 709
name as a prefix to "company," "co.," "corporation," "corp," 710
"incorporated," or "inc.," unless the corporation is a benefit 711
corporation or had a name which included such combination of 712
words prior to the effective date of this bill. 713

(3) It shall be distinguishable upon the records in the 714
office of the secretary of state from all of the following: 715

(a) The name of any other corporation, whether nonprofit 716
or for profit and whether that of a domestic or of a foreign 717
corporation authorized to do business in this state; 718

(b) The name of any limited liability company registered 719
in the office of the secretary of state pursuant to Chapter 720
1705. of the Revised Code, whether domestic or foreign; 721

(c) The name of any limited liability partnership 722
registered in the office of the secretary of state pursuant to 723
Chapter 1775. or 1776. of the Revised Code, whether domestic or 724
foreign; 725

(d) The name of any limited partnership registered in the office of the secretary of state pursuant to Chapter 1782. of the Revised Code, whether domestic or foreign;

(e) Any trade name the exclusive right to which is at the time in question registered in the office of the secretary of state pursuant to Chapter 1329. of the Revised Code.

~~(3)~~ (4) It shall not contain any language that indicates or implies that the corporation is connected with a government agency of this state, another state, or the United States.

(B) The secretary of state shall determine for purposes of this section whether a name is "distinguishable" from another name upon the secretary of state's records. Without excluding other names that may not constitute distinguishable names in this state, a name is not considered distinguishable from another name for purposes of this section solely because it differs from the other name in only one or more of the following manners:

(1) The use of the word "corporation," "company," "incorporated," "limited," or any abbreviation of any of those words;

(2) The use of any article, conjunction, contraction, abbreviation, or punctuation;

(3) The use of a different tense or number of the same word.

(C) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from the name of any other corporation, limited liability company, limited liability partnership, or limited partnership, or from a registered trade

name, if there also is filed in the office of the secretary of 755
state, on a form prescribed by the secretary of state, the 756
consent of the other entity or, in the case of a registered 757
trade name, the person in whose name is registered the exclusive 758
right to use the name, which consent is evidenced in a writing 759
signed by any authorized officer or any authorized 760
representative of the other entity or person. 761

(D) In case of judicial sale or judicial transfer, by sale 762
or transfer of good will or otherwise, of the right to use the 763
name of a corporation, whether nonprofit or for profit, and 764
whether that of a domestic corporation or of a foreign 765
corporation authorized to exercise its corporate privileges in 766
this state or to do business in this state, the secretary of 767
state, at the instance of the purchaser or transferee of such 768
right, shall accept for filing articles of a corporation with a 769
name the same as or similar to the name of such other 770
corporation, if there also is filed in the office of the 771
secretary of state a certified copy of the decree or order of 772
court confirming or otherwise evidencing the purchase or 773
transfer. 774

(E) Any person who wishes to reserve a name for a proposed 775
new corporation, or any corporation intending to change its 776
name, may submit to the secretary of state a written 777
application, on a form prescribed by the secretary of state, for 778
the exclusive right to use a specified name as the name of a 779
corporation. If the secretary of state finds that, under this 780
section, the specified name is available for such use, the 781
secretary of state shall file the application and, from the date 782
of the filing, the applicant shall have the exclusive right for 783
one hundred eighty days to use the specified name as the name of 784
a corporation, counting the date of such filing as the first of 785

one hundred eighty days. The right so obtained may be 786
transferred by the applicant or other holder thereof by the 787
filing in the office of the secretary of state of a written 788
transfer, on a form prescribed by the secretary of state, 789
stating the name and address of the transferee. 790

Sec. 1701.38. (A) At the annual meeting of shareholders, 791
or the meeting held in lieu of it, every corporation, except a 792
banking corporation, shall lay before the shareholders financial 793
statements, which may be consolidated, and, as applicable, 794
written statements or reports, consisting of: 795

(1) A balance sheet containing a summary of the assets, 796
liabilities, stated capital, if any, and surplus (showing 797
separately any capital surplus arising from unrealized 798
appreciation of assets, other capital surplus, and earned 799
surplus) as of the end of the corporation's most recent fiscal 800
year, except that, if consolidated financial statements are laid 801
before the shareholders, the consolidated balance sheet shall 802
show separately or disclose by a note the amount of consolidated 803
surplus that does not constitute under the Revised Code earned 804
surplus of the corporation or any of its subsidiaries and that 805
is not classified as stated capital or capital surplus on the 806
consolidated balance sheet; 807

(2) A statement of profit and loss and surplus, including 808
a summary of profits, dividends or distributions paid, and other 809
changes in the surplus accounts, for the period commencing with 810
the date marking the end of the period for which the last 811
preceding statement of profit and loss required under this 812
section was made and ending with the date of the balance sheet 813
or, in the case of the first statement of profit and loss, for 814
the period commencing with the date of incorporation of the 815

corporation and ending with the date of the balance sheet; 816

(3) If the corporation is a benefit corporation, any 817
written statement or report required by the articles, 818
regulations, or a written agreement of the benefit corporation 819
concerning the beneficial purposes of the benefit corporation 820
and the activities of the benefit corporation toward those 821
beneficial purposes and related provisions set forth in the 822
corporation's articles. 823

(B) The financial statements shall have appended to them 824
an opinion signed by the president or a vice-president or the 825
treasurer or an assistant treasurer of the corporation or by a 826
public accountant or firm of public accountants to the effect 827
that the financial statement presents fairly the financial 828
position of the corporation and the results of its operations in 829
conformity with generally accepted accounting principles applied 830
on a basis consistent with that of the preceding period, or to 831
the effect that the financial statements have been prepared on 832
the basis of accounting practices and principles that are 833
reasonable in the circumstances. 834

(C) Upon request of any shareholder made in writing or by 835
any other means of communication authorized by the corporation 836
prior to the date of the meeting described in division (A) of 837
this section, the corporation shall send a copy of ~~the any~~ 838
financial statements, written statements, and reports, as 839
applicable, laid or to be laid before the shareholders at the 840
meeting to the shareholder by mail, overnight delivery service, 841
or any other means of communication authorized by the 842
shareholder to whom the copy is sent on or before the later of 843
the following: 844

(1) The fifth day after the receipt of the written 845

request; 846

(2) The earlier of the following: 847

(a) The fifth day before the date of the meeting; 848

(b) The fifth day after the expiration of four months from 849
the date of the balance sheet described in division (A) (1) of 850
this section. 851

(D) If the meeting described in division (A) of this 852
section is to be held solely by means of communications 853
equipment, the corporation shall make the financial statements, 854
written statements, and reports described in that division, as 855
applicable, open to the examination of any shareholder or 856
proxyholder during the whole time of the meeting on a reasonably 857
accessible electronic network. The directors may adopt 858
guidelines and procedures to permit the corporation to verify 859
that any person accessing the financial statements, written 860
statements, or reports is a shareholder or proxyholder. 861

Sec. 1701.59. (A) Except where the law, the articles, or 862
the regulations require action to be authorized or taken by 863
shareholders, all of the authority of a corporation shall be 864
exercised by or under the direction of its directors. For their 865
own government, the directors may adopt bylaws that are not 866
inconsistent with the articles or the regulations. The selection 867
of a time frame for the achievement of corporate goals shall be 868
the responsibility of the directors. 869

(B) A director shall perform the director's duties as a 870
director, including the duties as a member of any committee of 871
the directors upon which the director may serve, in good faith, 872
in a manner the director reasonably believes to be in or not 873
opposed to the best interests of the corporation, and with the 874

care that an ordinarily prudent person in a like position would 875
use under similar circumstances. A director serving on a 876
committee of directors is acting as a director. 877

(C) In performing a director's duties, a director is 878
entitled to rely on information, opinions, reports, or 879
statements, including financial statements and other financial 880
data, that are prepared or presented by any of the following: 881

(1) One or more directors, officers, or employees of the 882
corporation who the director reasonably believes are reliable 883
and competent in the matters prepared or presented; 884

(2) Counsel, public accountants, or other persons as to 885
matters that the director reasonably believes are within the 886
person's professional or expert competence; 887

(3) A committee of the directors upon which the director 888
does not serve, duly established in accordance with a provision 889
of the articles or the regulations, as to matters within its 890
designated authority, which committee the director reasonably 891
believes to merit confidence. 892

(D) For purposes of division (B) of this section, the 893
following apply: 894

(1) A director shall not be found to have violated the 895
director's duties under division (B) of this section unless it 896
is proved by clear and convincing evidence that the director has 897
not acted in good faith, in a manner the director reasonably 898
believes to be in or not opposed to the best interests of the 899
corporation, or with the care that an ordinarily prudent person 900
in a like position would use under similar circumstances, in any 901
action brought against a director, including actions involving 902
or affecting any of the following: 903

(a) A change or potential change in control of the corporation, including a determination to resist a change or potential change in control made pursuant to division (F) (7) of section 1701.13 of the Revised Code;

(b) A termination or potential termination of the director's service to the corporation as a director;

(c) The director's service in any other position or relationship with the corporation.

(2) A director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by the persons described in divisions (C) (1) to (3) of this section to be unwarranted.

(3) A director's duties under division (B) of this section are not owed by a director of a benefit corporation to a person who is a beneficiary of a beneficial purpose of the benefit corporation based solely on the status of that person as a beneficiary.

(4) Nothing contained in this division limits relief available under section 1701.60 of the Revised Code.

(E) A director shall be liable in damages for any action that the director takes or fails to take as a director only if it is proved by clear and convincing evidence in a court of competent jurisdiction that the director's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation or undertaken with reckless disregard for the best interests of the corporation. Nothing contained in this division affects the liability of

directors under section 1701.95 of the Revised Code or limits 933
relief available under section 1701.60 of the Revised Code. This 934
division does not apply if, and only to the extent that, at the 935
time of a director's act or omission that is the subject of 936
complaint, the articles or the regulations of the corporation 937
state by specific reference to this division that the provisions 938
of this division do not apply to the corporation. 939

(F) For purposes of this section, a director, in 940
determining what the director reasonably believes to be in the 941
best interests of the corporation, shall consider the interests 942
of the corporation's shareholders and any beneficial purposes 943
and related provisions set forth in the corporation's articles. 944
The director shall consider any priority among purposes provided 945
in the corporation's articles and shall consider any other 946
method for balancing the purposes of the corporation that is set 947
forth in the corporation's articles. In addition, the director 948
may, in the director's discretion, ~~may~~ consider any of the 949
following: 950

(1) The interests of the corporation's employees, 951
suppliers, creditors, and customers; 952

(2) The economy of the state and nation; 953

(3) Community and societal considerations; 954

(4) The long-term as well as short-term interests of the 955
corporation and its shareholders, including the possibility that 956
these interests or any beneficial purpose set forth in the 957
corporation's articles may be best served by the continued 958
independence of the corporation. 959

(G) Nothing contained in division (D) or (E) of this 960
section affects the duties of either of the following: 961

(1) A director who acts in any capacity other than the	962
director's capacity as a director;	963
(2) A director of a corporation that does not have issued	964
and outstanding shares that are listed on a national securities	965
exchange or are regularly quoted in an over-the-counter market	966
by one or more members of a national or affiliated securities	967
association, who votes for or assents to any action taken by the	968
directors of the corporation that, in connection with a change	969
in control of the corporation, directly results in the holder or	970
holders of a majority of the outstanding shares of the	971
corporation receiving a greater consideration for their shares	972
than other shareholders.	973
Sec. 1701.591. (A) In order to qualify as a close	974
corporation agreement under this section, the agreement shall	975
meet the following requirements:	976
(1) Every person who is a shareholder of the corporation	977
at the time of the agreement's adoption, whether or not entitled	978
to vote, shall have assented to the agreement in writing;	979
(2) The agreement shall be set forth in the articles, the	980
regulations, or another written instrument;	981
(3) The agreement shall include a statement that it is to	982
be governed by this section.	983
(B) A close corporation agreement that is not set forth in	984
the articles or the regulations shall be entered in the record	985
of minutes of the proceedings of the shareholders of the	986
corporation and shall be subject to the provisions of division	987
(C) of section 1701.92 of the Revised Code.	988
(C) Irrespective of any other provisions of this chapter,	989
but subject to division (D)(2) of this section, a close	990

corporation agreement may contain provisions, which shall be 991
binding on the corporation and all of its shareholders, 992
regulating any aspect of the internal affairs of the corporation 993
or the relations of the shareholders among themselves, including 994
the following: 995

(1) Regulation of the management of the business and 996
affairs of the corporation; 997

(2) The right of one or more shareholders to dissolve the 998
corporation at will or on the occurrence of a specified event or 999
contingency; 1000

(3) The obligation to vote the shares of a person as 1001
specified, or voting requirements, including the requirement of 1002
the affirmative vote or approval of all shareholders or of all 1003
directors, which voting requirements need not appear in the 1004
articles unless the close corporation agreement is set forth in 1005
the articles; 1006

(4) The designation of the persons who shall be the 1007
officers or directors of the corporation; 1008

(5) The authority of any individual who holds more than 1009
one office of the corporation to execute, acknowledge, or 1010
certify in more than one capacity any instrument required to be 1011
executed, acknowledged, or certified by the holders of two or 1012
more offices; 1013

(6) The terms and conditions of employment of an officer 1014
or employee of the corporation without regard to the period of 1015
employment; 1016

(7) The declaration and payment of dividends or 1017
distributions or the division of profits; 1018

(8) Elimination of the board of directors, restrictions upon the exercise by directors of their authority, or delegation to one or more shareholders or other persons of all or part of the authority of the directors;	1019 1020 1021 1022
(9) Conferring on any shareholder or agent of a shareholder the absolute right, without the necessity of stating any purpose, to examine and copy during usual business hours any of the corporation's records or documents to which reference is made in section 1701.37 of the Revised Code;	1023 1024 1025 1026 1027
(10) Prohibition of or limitation upon the issuance or sale by the corporation of any of its shares, including treasury shares, without the affirmative vote or approval of the holders of all or a proportion of the outstanding shares or unless other specified terms and conditions are met;	1028 1029 1030 1031 1032
(11) Arbitration of issues on which the shareholders are deadlocked in voting power or on which the directors or other parties managing the corporation are deadlocked;	1033 1034 1035
(12) Dispensing with the annual meeting of shareholders unless a shareholder, by written notice to the president or secretary either by personal delivery or by mail within thirty days after the end of the most recent fiscal year of the corporation, requests that the meeting be held.	1036 1037 1038 1039 1040
(D) Except as may be necessary to give effect to divisions (C) (3), (5), (8), (9), and (12) and division (I) of this section, any provision of a close corporation agreement that does either of the following shall be invalid:	1041 1042 1043 1044
(1) Eliminates the filing with the secretary of state of any document required under this chapter or changes the required form or content of the document;	1045 1046 1047

(2) Waives or alters the effect of any of the provisions 1048
of section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31, 1049
1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591, 1050
1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of 1051
section 1701.64 of the Revised Code. 1052

Unless otherwise provided in the close corporation 1053
agreement, the invalidity of a provision pursuant to this 1054
division does not affect the validity of the remainder of the 1055
agreement. 1056

Any certificate that is required to be filed with the 1057
secretary of state with respect to the authorization or taking 1058
of any action pursuant to a close corporation agreement that 1059
would not be permitted under this chapter in the absence of 1060
division (C) of this section shall recite the existence of a 1061
close corporation agreement that authorizes the action. 1062

(E) (1) Except as provided in division (E) (2) of this 1063
section, a close corporation agreement may be amended or 1064
terminated by the affirmative vote or written consent of the 1065
holders, then parties to the close corporation agreement, of all 1066
of the outstanding shares of each class or, as may be provided 1067
by the close corporation agreement, of the holders, then parties 1068
to the close corporation agreement, of a proportion of not less 1069
than four-fifths of the outstanding shares of each class. If a 1070
close corporation agreement is amended or terminated by the 1071
written consent of the holders of fewer than all of the shares, 1072
the secretary of the corporation shall mail a copy of the 1073
amendment or a notice of the termination to each shareholder who 1074
did not so consent. If a close corporation agreement set forth 1075
in the articles is amended, the amendment shall not be effective 1076
unless it is filed as an amendment to the articles pursuant to 1077

section 1701.73 of the Revised Code. No corporation with respect 1078
to which a close corporation agreement is in effect shall cause 1079
to occur any of the actions described in division (I) (1) (a), 1080
(b), or (c) of this section unless the action has been 1081
authorized by the affirmative vote or written consent of the 1082
holders, then parties to the close corporation agreement, of 1083
that proportion of shares of each class that is required to 1084
terminate the close corporation agreement. 1085

(2) A close corporation agreement that was in existence on 1086
December 31, 1993, and that did not specify on that date and 1087
that has not specified since that date the proportion of shares 1088
required to amend or terminate the close corporation agreement 1089
may be amended or terminated by the affirmative vote or written 1090
consent of the holders, then parties to the close corporation 1091
agreement, of four-fifths of the outstanding shares of each 1092
class. 1093

(F) No close corporation agreement is invalid among the 1094
parties or in respect of the corporation on any of the following 1095
grounds: 1096

(1) The agreement is an attempt to treat the corporation 1097
as if it were a partnership or to arrange the relationship of 1098
the parties in a manner that would be appropriate only among 1099
partners; 1100

(2) The agreement provides for the conduct of the affairs 1101
of a corporation or relations among shareholders in any manner 1102
that would be inappropriate or unlawful under provisions of this 1103
chapter other than those set forth in division (D) (2) of this 1104
section or under other applicable law; 1105

(3) The agreement interferes with the authority or 1106

discretion of the directors; 1107

(4) The agreement has not been filed with the minutes as 1108
required by division (B) of this section. 1109

(G) If a close corporation agreement provides that there 1110
shall be no board of directors, both of the following apply: 1111

(1) The shareholders, for the purposes of any statute or 1112
rule of law relating to corporations, are deemed to be the 1113
directors and to have all of the liabilities, immunities, 1114
defenses, and indemnifications of directors with respect to any 1115
action or inaction of the corporation, except that any 1116
shareholder who is not permitted by the articles, the 1117
regulations, or the close corporation agreement to vote on or 1118
assent to an action or assent to an inaction shall not be liable 1119
as a director with respect to the action or inaction. 1120

(2) Except to the extent that the voting rights of the 1121
shares of a class are increased, limited, or denied by the 1122
articles, the regulations, or the close corporation agreement, 1123
each outstanding share regardless of class shall entitle its 1124
holder to one vote on each matter, including any matter normally 1125
voted on by directors, that is properly submitted to the 1126
shareholders for their vote, consent, waiver, release, or other 1127
action. 1128

(H) The existence of a close corporation agreement shall 1129
be noted conspicuously on the face or the back of every 1130
certificate for shares of the corporation and a purchaser or 1131
transferee of shares represented by a certificate on which such 1132
a notation so appears shall be conclusively considered to have 1133
taken delivery with notice of the close corporation agreement. 1134
Any transferee of shares by gift, bequest, or inheritance and 1135

any purchaser or transferee of shares with knowledge or notice 1136
of a close corporation agreement is bound by the agreement and 1137
shall be considered to be a party to the agreement. 1138

(I) (1) A close corporation agreement becomes invalid under 1139
any of the following circumstances: 1140

(a) Shares of the corporation are listed on a national 1141
securities exchange. 1142

(b) Shares of the corporation are registered under section 1143
12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 1144
U.S.C. 781, as amended. 1145

(c) Shares of the corporation have been included in a 1146
registration statement that has become effective pursuant to the 1147
"Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and 1148
the corporation is required to file periodic reports and 1149
information pursuant to section 15(d) of the "Securities 1150
Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended. 1151

(d) Shares of the corporation are transferred or issued to 1152
a person who takes delivery of the certificate for the shares 1153
other than by gift, bequest, or inheritance and without 1154
knowledge or notice of the close corporation agreement; that 1155
person delivers to the corporation a written rejection of the 1156
close corporation agreement within ninety days after the date on 1157
which that person first received notice of the existence of the 1158
close corporation agreement or within three years of the date of 1159
transfer or issuance, whichever is earlier; and the corporation 1160
does not offer in writing, within thirty days after the date on 1161
which the corporation received the written rejection, to 1162
purchase the shares from that person for the full amount paid 1163
for the shares, or, having made an offer to purchase the shares 1164

for that amount, the corporation, upon that person's acceptance 1165
of the offer, does not purchase the shares in accordance with 1166
division (I) (3) of this section. 1167

(2) A close corporation agreement does not become invalid 1168
and the person to whom the shares are transferred or issued is 1169
not entitled to any payment from the corporation pursuant to 1170
division (I) (3) of this section if both of the following apply: 1171

(a) Shares of the corporation are transferred or issued to 1172
a person who takes delivery of the certificate for the shares 1173
other than by gift, bequest, or inheritance and without 1174
knowledge or notice of the close corporation agreement; 1175

(b) That person does either of the following: 1176

(i) Fails to deliver a written rejection of the close 1177
corporation agreement to the corporation within ninety days 1178
after the date on which that person first received notice of the 1179
existence of the close corporation agreement or within three 1180
years of the date of transfer or issuance, whichever is earlier; 1181

(ii) Fails, within thirty days after the date on which 1182
that person receives a written offer by the corporation to 1183
purchase the shares from that person for the full amount paid 1184
for the shares, to accept the offer. 1185

(3) If shares of a corporation are transferred or issued 1186
to a person who takes delivery of the certificate for the shares 1187
other than by gift, bequest, or inheritance and without 1188
knowledge or notice of the close corporation agreement and that 1189
person accepts an offer by the corporation to purchase the 1190
shares, the corporation shall pay to that person the full amount 1191
paid for the shares within seven days after that person delivers 1192
to the corporation the certificate for the shares and proof of 1193

payment of the amount paid for the shares. If the amount paid 1194
for the shares included property other than cash, the 1195
corporation, at its option, may return the property to that 1196
person or may pay to that person cash in an amount equal to the 1197
fair market value of the property on the date of transfer or 1198
issuance of the shares, as determined in good faith by the 1199
corporation. A shareholder who transfers shares to a person who 1200
takes delivery of the certificate for the shares other than by 1201
gift, bequest, or inheritance and without knowledge or notice of 1202
the close corporation agreement is liable to the corporation, 1203
upon the corporation's written demand made upon the shareholder 1204
within ninety days after the date on which the corporation made 1205
payment for the shares, for the full amount that the corporation 1206
paid for the shares. Upon receiving payment in that amount from 1207
the shareholder, the corporation shall transfer the shares to 1208
the shareholder. 1209

(4) In the event of the invalidity of a close corporation 1210
agreement and unless otherwise provided in the close corporation 1211
agreement, any provision contained in the close corporation 1212
agreement that would not be invalid under any other section of 1213
this chapter or under other applicable law remains valid and 1214
binding on the parties to the close corporation agreement. 1215

Any officer of the corporation who learns of the 1216
occurrence of any event causing the invalidity of the close 1217
corporation agreement shall immediately give written notice of 1218
the invalidity to all of the shareholders. 1219

If a close corporation agreement set forth in the articles 1220
of the corporation is terminated or becomes invalid, the 1221
officers of the corporation shall promptly sign and file the 1222
certificate of amendment prescribed by section 1701.73 of the 1223

Revised Code, setting forth the reason for the termination or 1224
invalidity and deleting the close corporation agreement from the 1225
articles. If the officers fail to execute and file the 1226
certificate within thirty days after the occurrence of the event 1227
giving rise to the termination or invalidity, the certificate 1228
may be signed and filed by any shareholder and shall set forth a 1229
statement that the person signing the certificate is a 1230
shareholder and is filing the certificate because of the failure 1231
of the officers to do so. 1232

(J) A close corporation agreement, in the sound discretion 1233
of a court exercising its equity powers, is enforceable by 1234
injunction, specific performance, or other relief that the court 1235
may determine to be fair and appropriate. 1236

(K) This section shall not be construed as prohibiting any 1237
other lawful agreement among two or more shareholders. 1238

(L) No corporation with respect to which a close 1239
corporation agreement is in effect, shall issue shares in 1240
uncertificated form, and any provision of the articles or 1241
regulations or any resolution of the directors of such a 1242
corporation, providing for the issuance of shares in 1243
uncertificated form, shall be ineffective during any period in 1244
which a close corporation agreement is in effect. The adoption 1245
of a close corporation agreement shall act as a transfer 1246
instruction to the corporation to replace uncertificated 1247
securities with appropriate certificated securities. 1248

(M) If the annual meeting of the shareholders is dispensed 1249
with in accordance with a provision in the close corporation 1250
agreement authorized by division (C) (12) of this section, the 1251
annual financial statements and any written statements or 1252
reports required by section 1701.38 of the Revised Code shall be 1253

delivered to each shareholder on or before the last date upon 1254
which the annual meeting otherwise could have been held. 1255

(N) The amendments to this section that are effective 1256
April 4, 1985, are remedial in nature and apply to all close 1257
corporation agreements created on or after November 17, 1981. 1258
The amendments to this section that are effective December 31, 1259
1993, are remedial in nature and, except as those amendments 1260
otherwise provide, apply to all close corporation agreements 1261
created on or after November 17, 1981. 1262

Sec. 1701.94. (A) Every corporation that fails to: 1263

(1) Keep the books of account, minutes of proceedings, or 1264
records of shareholders as required by section 1701.37 of the 1265
Revised Code; 1266

(2) Comply with division (C) of section 1701.11 of the 1267
Revised Code with respect to mailing a copy of an amendment to, 1268
or copy of new, regulations; 1269

(3) Perform the obligation imposed on it by division (C) 1270
of section 1701.25 of the Revised Code; 1271

(4) Send to any shareholder making written request 1272
therefor, within the period provided for in division (C) of 1273
section 1701.38 of the Revised Code, a copy of ~~the~~ any financial 1274
statement, written statement, or report, as applicable, referred 1275
to in that section; 1276

(5) Lay before the shareholders or make available in the 1277
manner provided for in division (D) of section 1701.38 of the 1278
Revised Code at a proper meeting of shareholders, upon request 1279
of any shareholder at such meeting, such financial statement, 1280
written statement, or report, as applicable; 1281

(6) Produce at a meeting of shareholders, upon request of 1282
any shareholder at such meeting, the list or lists of 1283
shareholders required by section 1701.37 of the Revised Code; 1284
shall be subject to a forfeiture of one hundred dollars and in 1285
cases under paragraphs (1), (2), (3), and (4) to a further 1286
forfeiture of ten dollars for every day that such failure 1287
continues, beginning, in cases under paragraphs (1) or (2), with 1288
the fifth day after written request by a shareholder that the 1289
corporation comply with said respective paragraphs, and in cases 1290
under paragraphs (3) and (4) beginning with the day following 1291
the day on which the corporation becomes delinquent in complying 1292
with said paragraph, which amount shall be paid to every 1293
shareholder making such request. The right of a shareholder to 1294
enforce any such forfeiture is in addition to all other 1295
remedies. 1296

(B) If any officer charged with one of the duties 1297
specified in division (A) of this section fails to perform such 1298
duty after written request by any shareholder, the officer shall 1299
be subject to a forfeiture of one hundred dollars, and to the 1300
further forfeiture of ten dollars for every day that such 1301
default continues, beginning in cases under paragraphs (1), (2), 1302
(3), and (4) of division (A) on the same respective days as are 1303
provided for in division (A), which amount shall be paid to each 1304
shareholder making such request. The right of each shareholder 1305
to enforce any such forfeiture is in addition to all other 1306
remedies. 1307

(C) The court in which an action is brought to enforce any 1308
forfeiture under this section may reduce, remit, or suspend such 1309
forfeiture on such terms as it deems reasonable when it appears 1310
that the failure was excusable or that the imposition of the 1311
full forfeiture would be unreasonable or unjust. 1312

Sec. 1701.96. (A) A benefit corporation owes no duty to a 1313
person who is a beneficiary of a beneficial purpose of the 1314
benefit corporation based solely on the status of that person as 1315
a beneficiary. 1316

(B) A benefit corporation is not liable in damages for any 1317
failure to seek, achieve, or comply with any beneficial purpose 1318
of the benefit corporation or any related provision set forth in 1319
the articles of the corporation. A benefit corporation may be 1320
subject to equitable remedies, including injunction and specific 1321
performance, for failing to seek, achieve, or comply with a 1322
beneficial purpose. 1323

(C) An action for equitable relief for failing to seek, 1324
achieve, or comply with a beneficial purpose set forth in the 1325
articles of a benefit corporation may be brought only by the 1326
benefit corporation or in a derivative action on behalf of the 1327
benefit corporation by any of the following: 1328

(1) A director of the corporation; 1329

(2) Persons who, in the aggregate, hold twenty-five per 1330
cent of all shares outstanding and entitled to vote at a meeting 1331
of the shareholders, unless the articles, the regulations 1332
adopted by the shareholders, or the regulations adopted by the 1333
directors pursuant to division (A)(1) of section 1701.10 of the 1334
Revised Code prescribe a smaller proportion; 1335

(3) If the benefit corporation has issued and has 1336
outstanding shares listed on a national securities exchange or 1337
regularly quoted in an over-the-counter market by one or more 1338
members of a national or affiliated securities association, 1339
persons who, in the aggregate, hold shares of at least two 1340
million dollars in market value; 1341

(4) Any other person that the articles or regulations 1342
authorize to bring such an action. 1343

(D) The provisions of divisions (B) and (C) of this 1344
section do not alter the obligation of a benefit corporation to 1345
comply with all laws otherwise applicable to a domestic 1346
corporation or contracts by which the benefit corporation is 1347
bound, and divisions (B) and (C) of this section shall not limit 1348
or restrict the imposition of any remedy available under such 1349
otherwise applicable laws or contracts. 1350

Section 2. That existing sections 1151.38, 1151.61, 1351
1701.01, 1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, 1352
and 1701.94 of the Revised Code are hereby repealed. 1353