

AN ACT

To amend sections 1701.01, 1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 1701.94 and to enact section 1701.96 of the Revised Code to allow a corporation to become a benefit corporation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1701.01, 1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 1701.94 be amended and section 1701.96 of the Revised Code be enacted to read as follows:

Sec. 1701.01. As used in sections 1701.01 to 1701.98 of the Revised Code, unless the context otherwise requires:

(A) "Corporation" or "domestic corporation" means a corporation for profit formed under the laws of this state.

(B) "Foreign corporation" means a corporation for profit formed under the laws of another state, and "foreign entity" means an entity formed under the laws of another state.

(C) "State" means the United States; any state, territory, insular possession, or other political subdivision of the United States, including the District of Columbia; any foreign country or nation; and any province, territory, or other political subdivision of such foreign country or nation.

(D) "Articles" includes original articles of incorporation, certificates of reorganization, amended articles, and amendments to any of these, and, in the case of a corporation created before September 1, 1851, the special charter and any amendments to it made by special act of the general assembly or pursuant to general law.

(E) "Incorporator" means a person who signed the original articles of incorporation.

(F) "Shareholder" means a person whose name appears on the books of the corporation as the owner of shares of the corporation. Unless the articles, the regulations adopted by the shareholders, the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code, or the contract of subscription otherwise provides, "shareholder" includes a subscriber to shares, whether the subscription is received by the incorporators or pursuant to authorization by the directors, and such shares shall be deemed to be outstanding shares.

(G) "Person" includes, without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

(H) The location of the "principal office" of a corporation is the place named as the principal office in its articles.

(I) The "express terms" of shares of a class are the statements expressed in the articles with respect to such shares.

(J) Shares of a class are "junior" to shares of another class when any of their dividend or

distribution rights are subordinate to, or dependent or contingent upon, any right of, or dividend on, or distribution to, shares of such other class.

(K) "Treasury shares" means shares belonging to the corporation and not retired that have been either issued and thereafter acquired by the corporation or paid as a dividend or distribution in shares of the corporation on treasury shares of the same class; such shares shall be deemed to be issued, but they shall not be considered as an asset or a liability of the corporation, or as outstanding for dividend or distribution, quorum, voting, or other purposes, except, when authorized by the directors, for dividends or distributions in authorized but unissued shares of the corporation of the same class.

(L) To "retire" a share means to restore it to the status of an authorized but unissued share.

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

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

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

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

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

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

(2) Voting shares of a foreign parent corporation are issued or transferred in consideration in whole or in part for the transfer of such assets to one or more of its domestic subsidiaries.

"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.

(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:

(1) A domestic corporation in consideration in whole or in part, for the issuance or transfer of its voting shares;

(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.

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

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

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

(V) "Constituent corporation" means an existing corporation merging into or into which is being merged one or more other entities in a merger or an existing corporation being consolidated with one or more other entities into a new entity in a consolidation, whether any of the entities is domestic or foreign, and "constituent entity" means any entity merging into or into which is being merged one or more other entities in a merger, or an existing entity being consolidated with one or more other entities into a new entity in a consolidation, whether any of the entities is domestic or foreign.

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

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

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

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

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

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

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

A bank, broker, nominee, trustee, or other person that acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code shall, however, be deemed to have voting power only of shares in respect of which such person would be able, without further instructions from others, to exercise or direct the exercise of votes on a proposed control share acquisition at a meeting of shareholders called under section 1701.831 of the Revised Code.

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

(a) Prior to November 19, 1982;

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

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

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

(e) Pursuant to a merger or consolidation adopted, or a combination or majority share acquisition authorized, by vote of the shareholders of the issuing public corporation in compliance with section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.83 of the Revised Code, or pursuant to a merger adopted in compliance with section 1701.802 of the Revised Code;

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

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

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

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

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

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

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

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

- (a) An acquiring person;
- (b) Any officer of the issuing public corporation elected or appointed by the directors of the issuing public corporation;
- (c) Any employee of the issuing public corporation who is also a director of such corporation;
- (d) Any person that acquires such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposal for, or expression of interest in, a control share acquisition of the issuing public corporation; a transaction pursuant to section 1701.76, 1701.78, 1701.781, 1701.79, 1701.791, 1701.83, or 1701.86 of the Revised Code that involves the issuing public corporation or its assets; or any action that would directly or indirectly result in a change in control of the issuing public corporation or its assets, and ending on the record date established by the directors pursuant to section 1701.45 and division (D) of section 1701.831 of the Revised Code, if either of the following applies:

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

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

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

(2) If any part of this division is held to be illegal or invalid in application, the illegality or invalidity does not affect any legal and valid application thereof or any other provision or application of this division or section 1701.831 of the Revised Code that can be given effect without the invalid or illegal provision, and the parts and applications of this division are severable.

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

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

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

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

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

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

(e) A limited liability company;

(f) A nonprofit corporation.

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

(GG) "Beneficial purpose" means seeking to have a bona fide positive effect or to reduce one or more bona fide negative effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature for the benefit of persons, entities, communities, or interests other than shareholders in their capacity as shareholders.

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

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

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

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

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

(4) To be effective, a beneficial purpose shall be expressly provided in the articles. A statement of purpose in the articles that includes any purpose or combination of purposes for which individuals lawfully may associate themselves, without the express provision of a beneficial purpose, does not establish a beneficial purpose as a purpose of the corporation.

(5) A corporation that meets both of the following shall not amend its articles of incorporation to include a beneficial purpose:

(a) The corporation has issued and has outstanding shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(b) The initial articles of the corporation did not include a beneficial purpose.

(B) On and after July 1, 1994, a corporation may be formed under this chapter for the purpose of carrying on the practice of any profession, including, but not limited to, a corporation for the purpose of providing public accounting or certified public accounting services, a corporation for the erection, owning, and conducting of a sanitarium for receiving and caring for patients, medical and hygienic treatment of patients, and instruction of nurses in the treatment of disease and in hygiene, a corporation for the purpose of providing architectural, landscape architectural, professional engineering, or surveying services or any combination of those types of services, and a corporation for the purpose of providing a combination of the professional services, as defined in section 1785.01 of the Revised Code, of optometrists authorized under Chapter 4725. of the Revised Code, chiropractors authorized under Chapter 4734. of the Revised Code to practice chiropractic or acupuncture, psychologists authorized under Chapter 4732. of the Revised Code, registered or licensed practical nurses authorized under Chapter 4723. of the Revised Code, pharmacists authorized under Chapter 4729. of the Revised Code, physical therapists authorized under sections 4755.40 to 4755.56 of the Revised Code, occupational therapists authorized under sections 4755.04 to 4755.13 of the Revised Code, mechanotherapists authorized under section 4731.151 of the Revised Code, doctors of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery authorized under Chapter 4731. of the Revised Code, and licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, or marriage and family therapists authorized under Chapter 4757. of the Revised Code.

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

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

(D) No corporation formed for the purpose of providing a combination of the professional services, as defined in section 1785.01 of the Revised Code, of optometrists authorized under Chapter 4725. of the Revised Code, chiropractors authorized under Chapter 4734. of the Revised Code to practice chiropractic or acupuncture, psychologists authorized under Chapter 4732. of the Revised Code, registered or licensed practical nurses authorized under Chapter 4723. of the Revised Code, pharmacists authorized under Chapter 4729. of the Revised Code, physical therapists authorized under sections 4755.40 to 4755.56 of the Revised Code, occupational therapists authorized under sections 4755.04 to 4755.13 of the Revised Code, mechanotherapists authorized

under section 4731.151 of the Revised Code, doctors of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery authorized under Chapter 4731. of the Revised Code, and licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, or marriage and family therapists authorized under Chapter 4757. of the Revised Code shall control the professional clinical judgment exercised within accepted and prevailing standards of practice of a licensed, certificated, or otherwise legally authorized optometrist, chiropractor, chiropractor practicing acupuncture through the state chiropractic board, psychologist, nurse, pharmacist, physical therapist, occupational therapist, mechanotherapist, doctor of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery, licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist in rendering care, treatment, or professional advice to an individual patient.

This division does not prevent a hospital, as defined in section 3727.01 of the Revised Code, insurer, as defined in section 3999.36 of the Revised Code, or intermediary organization, as defined in section 1751.01 of the Revised Code, from entering into a contract with a corporation described in this division that includes a provision requiring utilization review, quality assurance, peer review, or other performance or quality standards. Those activities shall not be construed as controlling the professional clinical judgment of an individual practitioner listed in this division.

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

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

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

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

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

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

(1) The names of the individuals who are to serve as initial directors;

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

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

(4) Any lawful provision for the purpose of defining, limiting, or regulating the exercise of

the authority of the corporation, the incorporators, the directors, the officers, the shareholders, or the holders of any class of shares;

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

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

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

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

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

(D) The legal existence of the corporation begins upon the filing of the articles or on a later date specified in the articles that is not more than ninety days after filing, and, unless the articles otherwise provide, its period of existence shall be perpetual.

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

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

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

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

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

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

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

(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 state, on a form prescribed by the secretary of state, the consent of the other entity or, in the case of a registered trade name, the person in whose name is registered the exclusive right to use the name, which consent is evidenced in a writing signed by any authorized officer or any authorized representative of the other entity or person.

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

(E) Any person who wishes to reserve a name for a proposed new corporation, or any corporation intending to change its name, may submit to the secretary of state a written application, on a form prescribed by the secretary of state, for the exclusive right to use a specified name as the name of a corporation. If the secretary of state finds that, under this section, the specified name is available for such use, the secretary of state shall file the application and, from the date of the filing, the applicant shall have the exclusive right for one hundred eighty days to use the specified name as the name of a corporation, counting the date of such filing as the first of one hundred eighty days. The right so obtained may be transferred by the applicant or other holder thereof by the filing in the office of the secretary of state of a written transfer, on a form prescribed by the secretary of state, stating the name and address of the transferee.

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

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

- (2) A statement of profit and loss and surplus, including a summary of profits, dividends or distributions paid, and other changes in the surplus accounts, for the period commencing with the date marking the end of the period for which the last preceding statement of profit and loss required

under this section was made and ending with the date of the balance sheet or, in the case of the first statement of profit and loss, for the period commencing with the date of incorporation of the corporation and ending with the date of the balance sheet;

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

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

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

- (1) The fifth day after the receipt of the written request;
- (2) The earlier of the following:
 - (a) The fifth day before the date of the meeting;
 - (b) The fifth day after the expiration of four months from the date of the balance sheet described in division (A)(1) of this section.

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

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

(B) A director shall perform the director's duties as a director, including the duties as a member of any committee of the directors upon which the director may serve, in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. A director serving on a committee of directors is acting as a director.

(C) In performing a director's duties, a director is entitled to rely on information, opinions,

reports, or statements, including financial statements and other financial data, that are prepared or presented by any of the following:

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

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

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

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

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

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

(F) For purposes of this section, a director, in determining what the director reasonably believes to be in the best interests of the corporation, shall consider the interests of the corporation's

shareholders and any beneficial purposes and related provisions set forth in the corporation's articles. The director shall consider any priority among purposes provided in the corporation's articles and shall consider any other method for balancing the purposes of the corporation that is set forth in the corporation's articles. In addition, the director may, in the director's discretion, ~~may~~ consider any of the following:

- (1) The interests of the corporation's employees, suppliers, creditors, and customers;
- (2) The economy of the state and nation;
- (3) Community and societal considerations;
- (4) The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests or any beneficial purpose set forth in the corporation's articles may be best served by the continued independence of the corporation.

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

- (1) A director who acts in any capacity other than the director's capacity as a director;
- (2) A director of a corporation that does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, who votes for or assents to any action taken by the directors of the corporation that, in connection with a change in control of the corporation, directly results in the holder or holders of a majority of the outstanding shares of the corporation receiving a greater consideration for their shares than other shareholders.

Sec. 1701.591. (A) In order to qualify as a close corporation agreement under this section, the agreement shall meet the following requirements:

- (1) Every person who is a shareholder of the corporation at the time of the agreement's adoption, whether or not entitled to vote, shall have assented to the agreement in writing;
- (2) The agreement shall be set forth in the articles, the regulations, or another written instrument;
- (3) The agreement shall include a statement that it is to be governed by this section.

(B) A close corporation agreement that is not set forth in the articles or the regulations shall be entered in the record of minutes of the proceedings of the shareholders of the corporation and shall be subject to the provisions of division (C) of section 1701.92 of the Revised Code.

(C) Irrespective of any other provisions of this chapter, but subject to division (D)(2) of this section, a close corporation agreement may contain provisions, which shall be binding on the corporation and all of its shareholders, regulating any aspect of the internal affairs of the corporation or the relations of the shareholders among themselves, including the following:

- (1) Regulation of the management of the business and affairs of the corporation;
- (2) The right of one or more shareholders to dissolve the corporation at will or on the occurrence of a specified event or contingency;
- (3) The obligation to vote the shares of a person as specified, or voting requirements, including the requirement of the affirmative vote or approval of all shareholders or of all directors, which voting requirements need not appear in the articles unless the close corporation agreement is set forth in the articles;
- (4) The designation of the persons who shall be the officers or directors of the corporation;

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

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

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

(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;

(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;

(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;

(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;

(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.

(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:

(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;

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

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

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

(E)(1) Except as provided in division (E)(2) of this section, a close corporation agreement may be amended or terminated by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of all of the outstanding shares of each class or, as may be provided by the close corporation agreement, of the holders, then parties to the close corporation agreement, of a proportion of not less than four-fifths of the outstanding shares of each class. If a close corporation agreement is amended or terminated by the written consent of the holders of fewer than all of the shares, the secretary of the corporation shall mail a copy of the amendment or a notice

of the termination to each shareholder who did not so consent. If a close corporation agreement set forth in the articles is amended, the amendment shall not be effective unless it is filed as an amendment to the articles pursuant to section 1701.73 of the Revised Code. No corporation with respect to which a close corporation agreement is in effect shall cause to occur any of the actions described in division (I)(1)(a), (b), or (c) of this section unless the action has been authorized by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of that proportion of shares of each class that is required to terminate the close corporation agreement.

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

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

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

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

(3) The agreement interferes with the authority or discretion of the directors;

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

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

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

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

(H) The existence of a close corporation agreement shall be noted conspicuously on the face or the back of every certificate for shares of the corporation and a purchaser or transferee of shares represented by a certificate on which such a notation so appears shall be conclusively considered to have taken delivery with notice of the close corporation agreement. Any transferee of shares by gift, bequest, or inheritance and any purchaser or transferee of shares with knowledge or notice of a close corporation agreement is bound by the agreement and shall be considered to be a party to the agreement.

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

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

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

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

(d) Shares of the corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement; that person delivers to the corporation a written rejection of the close corporation agreement within ninety days after the date on which that person first received notice of the existence of the close corporation agreement or within three years of the date of transfer or issuance, whichever is earlier; and the corporation does not offer in writing, within thirty days after the date on which the corporation received the written rejection, to purchase the shares from that person for the full amount paid for the shares, or, having made an offer to purchase the shares for that amount, the corporation, upon that person's acceptance of the offer, does not purchase the shares in accordance with division (I)(3) of this section.

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

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

(b) That person does either of the following:

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

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

(3) If shares of a corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement and that person accepts an offer by the corporation to purchase the shares, the corporation shall pay to that person the full amount paid for the shares within seven days after that person delivers to the corporation the certificate for the shares and proof of payment of the amount paid for the shares. If the amount paid for the shares included property other than cash, the corporation, at its option, may return the property to that person or may pay to that person cash in an amount equal to the fair market value of the property on the date of transfer or issuance of the shares, as determined in good faith by the corporation. A shareholder who transfers shares to a person who

takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement is liable to the corporation, upon the corporation's written demand made upon the shareholder within ninety days after the date on which the corporation made payment for the shares, for the full amount that the corporation paid for the shares. Upon receiving payment in that amount from the shareholder, the corporation shall transfer the shares to the shareholder.

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

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

If a close corporation agreement set forth in the articles of the corporation is terminated or becomes invalid, the officers of the corporation shall promptly sign and file the certificate of amendment prescribed by section 1701.73 of the Revised Code, setting forth the reason for the termination or invalidity and deleting the close corporation agreement from the articles. If the officers fail to execute and file the certificate within thirty days after the occurrence of the event giving rise to the termination or invalidity, the certificate may be signed and filed by any shareholder and shall set forth a statement that the person signing the certificate is a shareholder and is filing the certificate because of the failure of the officers to do so.

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

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

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

(M) If the annual meeting of the shareholders is dispensed with in accordance with a provision in the close corporation agreement authorized by division (C)(12) of this section, the annual financial statements and any written statements or reports required by section 1701.38 of the Revised Code shall be delivered to each shareholder on or before the last date upon which the annual meeting otherwise could have been held.

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

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

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

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

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

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

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

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

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

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

Sec. 1701.96. (A) A benefit corporation owes no duty 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.

(B) A benefit corporation is not liable in monetary damages for any failure to seek, achieve, or comply with any beneficial purpose of the benefit corporation set forth in the articles of the corporation.

(C) An action to require a benefit corporation to comply with a beneficial purpose set forth in its articles may be brought only by the benefit corporation or in a derivative action on behalf of the benefit corporation by any of the following:

(1) A director of the corporation;

(2) Persons who, in the aggregate, hold twenty-five per cent of all shares outstanding and

entitled to vote at a meeting of the shareholders, unless the articles, the regulations adopted by the shareholders, or the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code prescribe a smaller proportion;

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

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

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

SECTION 2. That existing sections 1701.01, 1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 1701.94 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 21

133rd G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____