

**As Reported by the Senate Judiciary Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Am. S. B. No. 21**

**Senator Dolan**

**Cosponsors: Senators Brenner, Thomas, Hackett, Maharath, Coley**

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**A BILL**

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

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

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

**Sec. 1701.01.** As used in sections 1701.01 to 1701.98 of 10  
the Revised Code, unless the context otherwise requires: 11

(A) "Corporation" or "domestic corporation" means a 12  
corporation for profit formed under the laws of this state. 13

(B) "Foreign corporation" means a corporation for profit 14  
formed under the laws of another state, and "foreign entity" 15  
means an entity formed under the laws of another state. 16

(C) "State" means the United States; any state, territory, 17

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. 47

(I) The "express terms" of shares of a class are the 48  
statements expressed in the articles with respect to such 49  
shares. 50

(J) Shares of a class are "junior" to shares of another 51  
class when any of their dividend or distribution rights are 52  
subordinate to, or dependent or contingent upon, any right of, 53  
or dividend on, or distribution to, shares of such other class. 54

(K) "Treasury shares" means shares belonging to the 55  
corporation and not retired that have been either issued and 56  
thereafter acquired by the corporation or paid as a dividend or 57  
distribution in shares of the corporation on treasury shares of 58  
the same class; such shares shall be deemed to be issued, but 59  
they shall not be considered as an asset or a liability of the 60  
corporation, or as outstanding for dividend or distribution, 61  
quorum, voting, or other purposes, except, when authorized by 62  
the directors, for dividends or distributions in authorized but 63  
unissued shares of the corporation of the same class. 64

(L) To "retire" a share means to restore it to the status 65  
of an authorized but unissued share. 66

(M) "Redemption price of shares" means the amount required 67  
by the articles to be paid on redemption of shares. 68

(N) "Liquidation price" means the amount or portion of 69  
assets required by the articles to be distributed to the holders 70  
of shares of any class upon dissolution, liquidation, merger, or 71  
consolidation of the corporation, or upon sale of all or 72  
substantially all of its assets. 73

(O) "Insolvent" means that the corporation is unable to 74  
pay its obligations as they become due in the usual course of 75

its affairs. 76

(P) "Parent corporation" or "parent" means a domestic or 77  
foreign corporation that owns and holds of record shares of 78  
another corporation, domestic or foreign, entitling the holder 79  
of the shares at the time to exercise a majority of the voting 80  
power in the election of the directors of the other corporation 81  
without regard to voting power that may thereafter exist upon a 82  
default, failure, or other contingency; "subsidiary corporation" 83  
or "subsidiary" means a domestic or foreign corporation of which 84  
another corporation, domestic or foreign, is the parent. 85

(Q) "Combination" means a transaction, other than a merger 86  
or consolidation, wherein either of the following applies: 87

(1) Voting shares of a domestic corporation are issued or 88  
transferred in consideration in whole or in part for the 89  
transfer to itself or to one or more of its subsidiaries, 90  
domestic or foreign, of all or substantially all the assets of 91  
one or more corporations, domestic or foreign, with or without 92  
good will or the assumption of liabilities; 93

(2) Voting shares of a foreign parent corporation are 94  
issued or transferred in consideration in whole or in part for 95  
the transfer of such assets to one or more of its domestic 96  
subsidiaries. 97

"Transferee corporation" in a combination means the 98  
corporation, domestic or foreign, to which the assets are 99  
transferred, and "transferor corporation" in a combination means 100  
the corporation, domestic or foreign, transferring such assets 101  
and to which, or to the shareholders of which, the voting shares 102  
of the domestic or foreign corporation are issued or 103  
transferred. 104

(R) "Majority share acquisition" means the acquisition of 105  
shares of a corporation, domestic or foreign, entitling the 106  
holder of the shares to exercise a majority of the voting power 107  
in the election of directors of such corporation without regard 108  
to voting power that may thereafter exist upon a default, 109  
failure, or other contingency, by either of the following: 110

(1) A domestic corporation in consideration in whole or in 111  
part, for the issuance or transfer of its voting shares; 112

(2) A domestic or foreign subsidiary in consideration in 113  
whole or in part for the issuance or transfer of voting shares 114  
of its domestic parent. 115

(S) "Acquiring corporation" in a combination means the 116  
domestic corporation whose voting shares are issued or 117  
transferred by it or its subsidiary or subsidiaries to the 118  
transferor corporation or corporations or the shareholders of 119  
the transferor corporation or corporations; and "acquiring 120  
corporation" in a majority share acquisition means the domestic 121  
corporation whose voting shares are issued or transferred by it 122  
or its subsidiary in consideration for shares of a domestic or 123  
foreign corporation entitling the holder of the shares to 124  
exercise a majority of the voting power in the election of 125  
directors of such corporation. 126

(T) When used in connection with a combination or a 127  
majority share acquisition, "voting shares" means shares of a 128  
corporation, domestic or foreign, entitling the holder of the 129  
shares to vote at the time in the election of directors of such 130  
corporation without regard to voting power which may thereafter 131  
exist upon a default, failure, or other contingency. 132

(U) "An emergency" exists when the governor, or any other 133

person lawfully exercising the power and discharging the duties 134  
of the office of governor, proclaims that an attack on the 135  
United States or any nuclear, atomic, or other disaster has 136  
caused an emergency for corporations, and such an emergency 137  
shall continue until terminated by proclamation of the governor 138  
or any other person lawfully exercising the powers and 139  
discharging the duties of the office of governor. 140

(V) "Constituent corporation" means an existing 141  
corporation merging into or into which is being merged one or 142  
more other entities in a merger or an existing corporation being 143  
consolidated with one or more other entities into a new entity 144  
in a consolidation, whether any of the entities is domestic or 145  
foreign, and "constituent entity" means any entity merging into 146  
or into which is being merged one or more other entities in a 147  
merger, or an existing entity being consolidated with one or 148  
more other entities into a new entity in a consolidation, 149  
whether any of the entities is domestic or foreign. 150

(W) "Surviving corporation" means the constituent domestic 151  
or foreign corporation that is specified as the corporation into 152  
which one or more other constituent entities are to be or have 153  
been merged, and "surviving entity" means the constituent 154  
domestic or foreign entity that is specified as the entity into 155  
which one or more other constituent entities are to be or have 156  
been merged. 157

(X) "Close corporation agreement" means an agreement that 158  
satisfies the three requirements of division (A) of section 159  
1701.591 of the Revised Code. 160

(Y) "Issuing public corporation" means a domestic 161  
corporation with fifty or more shareholders that has its 162  
principal place of business, its principal executive offices, 163

assets having substantial value, or a substantial percentage of 164  
its assets within this state, and as to which no valid close 165  
corporation agreement exists under division (H) of section 166  
1701.591 of the Revised Code. 167

(Z) (1) "Control share acquisition" means the acquisition, 168  
directly or indirectly, by any person of shares of an issuing 169  
public corporation that, when added to all other shares of the 170  
issuing public corporation in respect of which the person may 171  
exercise or direct the exercise of voting power as provided in 172  
this division, would entitle the person, immediately after the 173  
acquisition, directly or indirectly, alone or with others, to 174  
exercise or direct the exercise of the voting power of the 175  
issuing public corporation in the election of directors within 176  
any of the following ranges of such voting power: 177

(a) One-fifth or more but less than one-third of such 178  
voting power; 179

(b) One-third or more but less than a majority of such 180  
voting power; 181

(c) A majority or more of such voting power. 182

A bank, broker, nominee, trustee, or other person that 183  
acquires shares in the ordinary course of business for the 184  
benefit of others in good faith and not for the purpose of 185  
circumventing section 1701.831 of the Revised Code shall, 186  
however, be deemed to have voting power only of shares in 187  
respect of which such person would be able, without further 188  
instructions from others, to exercise or direct the exercise of 189  
votes on a proposed control share acquisition at a meeting of 190  
shareholders called under section 1701.831 of the Revised Code. 191

(2) The acquisition by any person of any shares of an 192

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| issuing public corporation does not constitute a control share   | 193 |
| acquisition for the purpose of section 1701.831 of the Revised   | 194 |
| Code if the acquisition was or is consummated in, results from,  | 195 |
| or is the consequence of any of the following circumstances:     | 196 |
| (a) Prior to November 19, 1982;                                  | 197 |
| (b) Pursuant to a contract existing prior to November 19,        | 198 |
| 1982;  | 199 |
| (c) By bequest or inheritance, by operation of law upon          | 200 |
| the death of an individual, or by any other transfer without     | 201 |
| valuable consideration, including a gift, that is made in good   | 202 |
| faith and not for the purpose of circumventing section 1701.831  | 203 |
| of the Revised Code;   | 204 |
| (d) Pursuant to the satisfaction of a pledge or other            | 205 |
| security interest created in good faith and not for the purpose  | 206 |
| of circumventing section 1701.831 of the Revised Code;           | 207 |
| (e) Pursuant to a merger or consolidation adopted, or a          | 208 |
| combination or majority share acquisition authorized, by vote of | 209 |
| the shareholders of the issuing public corporation in compliance | 210 |
| with section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.83 of | 211 |
| the Revised Code, or pursuant to a merger adopted in compliance  | 212 |
| with section 1701.802 of the Revised Code;                       | 213 |
| (f) The person's being entitled, immediately thereafter,         | 214 |
| to exercise or direct the exercise of voting power of the        | 215 |
| issuing public corporation in the election of directors within   | 216 |
| the same range theretofore attained by that person either in     | 217 |
| compliance with the provisions of section 1701.831 of the        | 218 |
| Revised Code or as a result solely of the issuing public         | 219 |
| corporation's purchase of shares issued by it;                   | 220 |
| (g) The person's being engaged in business as an                 | 221 |



underwriter of securities who acquires the shares directly from 222  
the issuing public corporation or an affiliate or associate of 223  
the issuing public corporation through its participation in good 224  
faith in a firm commitment underwriting registered under the 225  
"Securities Act of 1933," 15 U.S.C. 77a et seq., and not for the 226  
purpose of circumventing section 1701.831 of the Revised Code. 227

The acquisition by any person of shares of an issuing 228  
public corporation in a manner described under division (Z) (2) 229  
of this section shall be deemed a control share acquisition 230  
authorized pursuant to section 1701.831 of the Revised Code 231  
within the range of voting power under division (Z) (1) (a), (b), 232  
or (c) of this section that such person is entitled to exercise 233  
after the acquisition, provided, in the case of an acquisition 234  
in a manner described under division (Z) (2) (c) or (d) of this 235  
section, the transferor of shares to such person had previously 236  
obtained any authorization of shareholders required under 237  
section 1701.831 of the Revised Code in connection with the 238  
transferor's acquisition of shares of the issuing public 239  
corporation. 240

(3) The acquisition of shares of an issuing public 241  
corporation in good faith and not for the purpose of 242  
circumventing section 1701.831 of the Revised Code from any 243  
person whose control share acquisition previously had been 244  
authorized by shareholders in compliance with section 1701.831 245  
of the Revised Code, or from any person whose previous 246  
acquisition of shares of an issuing public corporation would 247  
have constituted a control share acquisition but for division 248  
(Z) (2) or (3) of this section, does not constitute a control 249  
share acquisition for the purpose of section 1701.831 of the 250  
Revised Code unless such acquisition entitles the person making 251  
the acquisition, directly or indirectly, alone or with others, 252

to exercise or direct the exercise of voting power of the 253  
corporation in the election of directors in excess of the range 254  
of voting power authorized pursuant to section 1701.831 of the 255  
Revised Code, or deemed to be so authorized under division (Z) 256  
(2) of this section. 257

(AA) "Acquiring person" means any person who has delivered 258  
an acquiring person statement to an issuing public corporation 259  
pursuant to section 1701.831 of the Revised Code. 260

(BB) "Acquiring person statement" means a written 261  
statement that complies with division (B) of section 1701.831 of 262  
the Revised Code. 263

(CC) (1) "Interested shares" means the shares of an issuing 264  
public corporation in respect of which any of the following 265  
persons may exercise or direct the exercise of the voting power 266  
of the corporation in the election of directors: 267

(a) An acquiring person; 268

(b) Any officer of the issuing public corporation elected 269  
or appointed by the directors of the issuing public corporation; 270

(c) Any employee of the issuing public corporation who is 271  
also a director of such corporation; 272

(d) Any person that acquires such shares for valuable 273  
consideration during the period beginning with the date of the 274  
first public disclosure of a proposal for, or expression of 275  
interest in, a control share acquisition of the issuing public 276  
corporation; a transaction pursuant to section 1701.76, 1701.78, 277  
1701.781, 1701.79, 1701.791, 1701.83, or 1701.86 of the Revised 278  
Code that involves the issuing public corporation or its assets; 279  
or any action that would directly or indirectly result in a 280  
change in control of the issuing public corporation or its 281

assets, and ending on the record date established by the 282  
directors pursuant to section 1701.45 and division (D) of 283  
section 1701.831 of the Revised Code, if either of the following 284  
applies: 285

(i) The aggregate consideration paid or given by the 286  
person who acquired the shares, and any other persons acting in 287  
concert with the person, for all such shares exceeds two hundred 288  
fifty thousand dollars; 289

(ii) The number of shares acquired by the person who 290  
acquired the shares, and any other persons acting in concert 291  
with the person, exceeds one-half of one per cent of the 292  
outstanding shares of the corporation entitled to vote in the 293  
election of directors. 294

(e) Any person that transfers such shares for valuable 295  
consideration after the record date described in division (CC) 296  
(1)(d) of this section as to shares so transferred, if 297  
accompanied by the voting power in the form of a blank proxy, an 298  
agreement to vote as instructed by the transferee, or otherwise. 299

(2) If any part of this division is held to be illegal or 300  
invalid in application, the illegality or invalidity does not 301  
affect any legal and valid application thereof or any other 302  
provision or application of this division or section 1701.831 of 303  
the Revised Code that can be given effect without the invalid or 304  
illegal provision, and the parts and applications of this 305  
division are severable. 306

(DD) "Certificated security" and "uncertificated security" 307  
have the same meanings as in section 1308.01 of the Revised 308  
Code. 309

(EE) "Entity" means any of the following: 310

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|---|---|
| (1) A for profit corporation existing under the laws of this state or any other state;  | 311<br>312                                    |
| (2) Any of the following organizations existing under the laws of this state, the United States, or any other state:  | 313<br>314                                    |
| (a) A business trust or association;  | 315   |
| (b) A real estate investment trust;   | 316   |
| (c) A common law trust;   | 317   |
| (d) An unincorporated business or for profit organization, including a general or limited partnership;  | 318<br>319                                    |
| (e) A limited liability company;  | 320   |
| (f) A nonprofit corporation.  | 321   |
| <u>(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.</u>  | 322<br>323<br>324                             |
| <u>(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.</u> | 325<br>326<br>327<br>328<br>329<br>330<br>331 |
| <b>Sec. 1701.03.</b> (A) <u>(1)</u> 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                      | 332<br>333<br>334<br>335<br>336<br>337        |

of the Revised Code, a corporation of that type shall be formed 338  
in accordance with the special provisions. 339

(2) The purpose for which a corporation is formed may 340  
include a beneficial purpose. Except to the extent that the 341  
articles otherwise provide, both of the following apply: 342

(a) Having a beneficial purpose does not prevent a 343  
corporation from seeking any of the other purposes for which the 344  
corporation is formed, including operation of the corporation 345  
for pecuniary gain or profit and distribution of net earnings. 346

(b) No particular purpose of a corporation has priority 347  
over any other purpose of the corporation. 348

(3) A corporation that does not have a beneficial purpose 349  
is not required to operate exclusively for profit or 350  
distribution of net earnings of the corporation in all 351  
instances. 352

(4) To be effective, a beneficial purpose shall be 353  
expressly provided in the articles. A statement of purpose in 354  
the articles that includes any purpose or combination of 355  
purposes for which individuals lawfully may associate 356  
themselves, without the express provision of a beneficial 357  
purpose, does not establish a beneficial purpose as a purpose of 358  
the corporation. 359

(B) On and after July 1, 1994, a corporation may be formed 360  
under this chapter for the purpose of carrying on the practice 361  
of any profession, including, but not limited to, a corporation 362  
for the purpose of providing public accounting or certified 363  
public accounting services, a corporation for the erection, 364  
owning, and conducting of a sanitarium for receiving and caring 365  
for patients, medical and hygienic treatment of patients, and 366

instruction of nurses in the treatment of disease and in 367  
hygiene, a corporation for the purpose of providing 368  
architectural, landscape architectural, professional 369  
engineering, or surveying services or any combination of those 370  
types of services, and a corporation for the purpose of 371  
providing a combination of the professional services, as defined 372  
in section 1785.01 of the Revised Code, of optometrists 373  
authorized under Chapter 4725. of the Revised Code, 374  
chiropractors authorized under Chapter 4734. of the Revised Code 375  
to practice chiropractic or acupuncture, psychologists 376  
authorized under Chapter 4732. of the Revised Code, registered 377  
or licensed practical nurses authorized under Chapter 4723. of 378  
the Revised Code, pharmacists authorized under Chapter 4729. of 379  
the Revised Code, physical therapists authorized under sections 380  
4755.40 to 4755.56 of the Revised Code, occupational therapists 381  
authorized under sections 4755.04 to 4755.13 of the Revised 382  
Code, mechanotherapists authorized under section 4731.151 of the 383  
Revised Code, doctors of medicine and surgery, osteopathic 384  
medicine and surgery, or podiatric medicine and surgery 385  
authorized under Chapter 4731. of the Revised Code, and licensed 386  
professional clinical counselors, licensed professional 387  
counselors, independent social workers, social workers, 388  
independent marriage and family therapists, or marriage and 389  
family therapists authorized under Chapter 4757. of the Revised 390  
Code. 391

This chapter does not restrict, limit, or otherwise affect 392  
the authority or responsibilities of any agency, board, 393  
commission, department, office, or other entity to license, 394  
register, and otherwise regulate the professional conduct of 395  
individuals or organizations of any kind rendering professional 396  
services, as defined in section 1785.01 of the Revised Code, in 397

this state or to regulate the practice of any profession that is 398  
within the jurisdiction of the agency, board, commission, 399  
department, office, or other entity, notwithstanding that an 400  
individual is a director, officer, employee, or other agent of a 401  
corporation formed under this chapter and is rendering 402  
professional services or engaging in the practice of a 403  
profession through a corporation formed under this chapter or 404  
that the organization is a corporation formed under this 405  
chapter. 406

(C) Nothing in division (A) or (B) of this section 407  
precludes the organization of a professional association in 408  
accordance with this chapter and Chapter 1785. of the Revised 409  
Code or the formation of a limited liability company under 410  
Chapter 1705. of the Revised Code with respect to a business, as 411  
defined in section 1705.01 of the Revised Code. 412

(D) No corporation formed for the purpose of providing a 413  
combination of the professional services, as defined in section 414  
1785.01 of the Revised Code, of optometrists authorized under 415  
Chapter 4725. of the Revised Code, chiropractors authorized 416  
under Chapter 4734. of the Revised Code to practice chiropractic 417  
or acupuncture, psychologists authorized under Chapter 4732. of 418  
the Revised Code, registered or licensed practical nurses 419  
authorized under Chapter 4723. of the Revised Code, pharmacists 420  
authorized under Chapter 4729. of the Revised Code, physical 421  
therapists authorized under sections 4755.40 to 4755.56 of the 422  
Revised Code, occupational therapists authorized under sections 423  
4755.04 to 4755.13 of the Revised Code, mechanotherapists 424  
authorized under section 4731.151 of the Revised Code, doctors 425  
of medicine and surgery, osteopathic medicine and surgery, or 426  
podiatric medicine and surgery authorized under Chapter 4731. of 427  
the Revised Code, and licensed professional clinical counselors, 428

licensed professional counselors, independent social workers, 429  
social workers, independent marriage and family therapists, or 430  
marriage and family therapists authorized under Chapter 4757. of 431  
the Revised Code shall control the professional clinical 432  
judgment exercised within accepted and prevailing standards of 433  
practice of a licensed, certificated, or otherwise legally 434  
authorized optometrist, chiropractor, chiropractor practicing 435  
acupuncture through the state chiropractic board, psychologist, 436  
nurse, pharmacist, physical therapist, occupational therapist, 437  
mechanotherapist, doctor of medicine and surgery, osteopathic 438  
medicine and surgery, or podiatric medicine and surgery, 439  
licensed professional clinical counselor, licensed professional 440  
counselor, independent social worker, social worker, independent 441  
marriage and family therapist, or marriage and family therapist 442  
in rendering care, treatment, or professional advice to an 443  
individual patient. 444

This division does not prevent a hospital, as defined in 445  
section 3727.01 of the Revised Code, insurer, as defined in 446  
section 3999.36 of the Revised Code, or intermediary 447  
organization, as defined in section 1751.01 of the Revised Code, 448  
from entering into a contract with a corporation described in 449  
this division that includes a provision requiring utilization 450  
review, quality assurance, peer review, or other performance or 451  
quality standards. Those activities shall not be construed as 452  
controlling the professional clinical judgment of an individual 453  
practitioner listed in this division. 454

**Sec. 1701.04.** (A) Any person, singly or jointly with 455  
others, and without regard to residence, domicile, or state of 456  
incorporation, may form a corporation by signing and filing with 457  
the secretary of state articles of incorporation that shall set 458  
forth all of the following: 459



(1) The name of the corporation, which shall be in 460  
compliance with division (A) of section 1701.05 of the Revised 461  
Code; 462

(2) The place in this state where the principal office of 463  
the corporation is to be located; 464

(3) The authorized number and the par value per share of 465  
shares with par value, and the authorized number of shares 466  
without par value, except that the articles of a banking, safe 467  
deposit, trust, or insurance corporation shall not authorize 468  
shares without par value; the express terms, if any, of the 469  
shares; and, if the shares are classified, the designation of 470  
each class, the authorized number and par value per share, if 471  
any, of the shares of each class, and the express terms of the 472  
shares of each class; 473

(4) If the corporation is to have an initial stated 474  
capital, the amount of that stated capital. 475

(B) The articles also may set forth any of the following: 476

(1) The names of the individuals who are to serve as 477  
initial directors; 478

(2) The purpose or purposes for which the corporation is 479  
formed, but in the absence of a statement of the purpose or 480  
purposes or except as expressly set forth in such statement, the 481  
purpose for which any corporation is formed is to engage in any 482  
lawful act or activity for which a corporation may be formed 483  
under this chapter, and all lawful acts and activities of the 484  
corporation are within the purposes of the corporation; 485

(3) Any priority or other method for balancing the 486  
purposes for which the corporation is formed; 487

(4) Any lawful provision for the purpose of defining, 488  
limiting, or regulating the exercise of the authority of the 489  
corporation, the incorporators, the directors, the officers, the 490  
shareholders, or the holders of any class of shares; 491

~~(4)~~(5) Any provision that may be set forth in the 492  
regulations; 493

~~(5)~~(6) A provision specifying the period of existence of 494  
the corporation if it is to be otherwise than perpetual; 495

~~(6)~~(7) A provision eliminating the right of every 496  
shareholder to vote cumulatively in the election of directors; 497

~~(7)~~(8) Any additional provision permitted by this 498  
chapter. 499

(C) A written appointment of a statutory agent for the 500  
purposes set forth in section 1701.07 of the Revised Code shall 501  
be filed with the articles, unless the corporation belongs to 502  
one of the classes mentioned in division (O) of that section. 503

(D) The legal existence of the corporation begins upon the 504  
filing of the articles or on a later date specified in the 505  
articles that is not more than ninety days after filing, and, 506  
unless the articles otherwise provide, its period of existence 507  
shall be perpetual. 508

**Sec. 1701.05.** (A) Except as provided in this section, and 509  
in sections 1701.75, 1701.78, and 1701.82 of the Revised Code, 510  
which sections relate to the reorganization, merger, and 511  
consolidation of corporations, the corporate name of a domestic 512  
corporation shall comply with all of the following: 513

(1) It shall end with or include the word or abbreviation 514  
"company," "co.," "corporation," "corp.," "incorporated," or 515

|  |                                 |
|--|---------------------------------|
| "inc."   | 516                             |
| (2) <u>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.</u> | 517<br>518<br>519<br>520<br>521 |
| (3) <u>It shall be distinguishable upon the records in the office of the secretary of state from all of the following:</u>   | 522<br>523                      |
| (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;   | 524<br>525<br>526               |
| (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;   | 527<br>528<br>529               |
| (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;  | 530<br>531<br>532<br>533        |
| (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;   | 534<br>535<br>536               |
| (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.   | 537<br>538<br>539               |
| <del>(3)</del> (4) <u>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.</u>   | 540<br>541<br>542               |
| (B) The secretary of state shall determine for purposes of   | 543                             |

this section whether a name is "distinguishable" from another 544  
name upon the secretary of state's records. Without excluding 545  
other names that may not constitute distinguishable names in 546  
this state, a name is not considered distinguishable from 547  
another name for purposes of this section solely because it 548  
differs from the other name in only one or more of the following 549  
manners: 550

(1) The use of the word "corporation," "company," 551  
"incorporated," "limited," or any abbreviation of any of those 552  
words; 553

(2) The use of any article, conjunction, contraction, 554  
abbreviation, or punctuation; 555

(3) The use of a different tense or number of the same 556  
word. 557

(C) A corporation may apply to the secretary of state for 558  
authorization to use a name that is not distinguishable upon the 559  
secretary of state's records from the name of any other 560  
corporation, limited liability company, limited liability 561  
partnership, or limited partnership, or from a registered trade 562  
name, if there also is filed in the office of the secretary of 563  
state, on a form prescribed by the secretary of state, the 564  
consent of the other entity or, in the case of a registered 565  
trade name, the person in whose name is registered the exclusive 566  
right to use the name, which consent is evidenced in a writing 567  
signed by any authorized officer or any authorized 568  
representative of the other entity or person. 569

(D) In case of judicial sale or judicial transfer, by sale 570  
or transfer of good will or otherwise, of the right to use the 571  
name of a corporation, whether nonprofit or for profit, and 572

whether that of a domestic corporation or of a foreign 573  
corporation authorized to exercise its corporate privileges in 574  
this state or to do business in this state, the secretary of 575  
state, at the instance of the purchaser or transferee of such 576  
right, shall accept for filing articles of a corporation with a 577  
name the same as or similar to the name of such other 578  
corporation, if there also is filed in the office of the 579  
secretary of state a certified copy of the decree or order of 580  
court confirming or otherwise evidencing the purchase or 581  
transfer. 582

(E) Any person who wishes to reserve a name for a proposed 583  
new corporation, or any corporation intending to change its 584  
name, may submit to the secretary of state a written 585  
application, on a form prescribed by the secretary of state, for 586  
the exclusive right to use a specified name as the name of a 587  
corporation. If the secretary of state finds that, under this 588  
section, the specified name is available for such use, the 589  
secretary of state shall file the application and, from the date 590  
of the filing, the applicant shall have the exclusive right for 591  
one hundred eighty days to use the specified name as the name of 592  
a corporation, counting the date of such filing as the first of 593  
one hundred eighty days. The right so obtained may be 594  
transferred by the applicant or other holder thereof by the 595  
filing in the office of the secretary of state of a written 596  
transfer, on a form prescribed by the secretary of state, 597  
stating the name and address of the transferee. 598

**Sec. 1701.38.** (A) At the annual meeting of shareholders, 599  
or the meeting held in lieu of it, every corporation, except a 600  
banking corporation, shall lay before the shareholders financial 601  
statements, which may be consolidated, and, as applicable, 602  
written statements or reports, consisting of: 603

(1) A balance sheet containing a summary of the assets, 604  
liabilities, stated capital, if any, and surplus (showing 605  
separately any capital surplus arising from unrealized 606  
appreciation of assets, other capital surplus, and earned 607  
surplus) as of the end of the corporation's most recent fiscal 608  
year, except that, if consolidated financial statements are laid 609  
before the shareholders, the consolidated balance sheet shall 610  
show separately or disclose by a note the amount of consolidated 611  
surplus that does not constitute under the Revised Code earned 612  
surplus of the corporation or any of its subsidiaries and that 613  
is not classified as stated capital or capital surplus on the 614  
consolidated balance sheet; 615

(2) A statement of profit and loss and surplus, including 616  
a summary of profits, dividends or distributions paid, and other 617  
changes in the surplus accounts, for the period commencing with 618  
the date marking the end of the period for which the last 619  
preceding statement of profit and loss required under this 620  
section was made and ending with the date of the balance sheet 621  
or, in the case of the first statement of profit and loss, for 622  
the period commencing with the date of incorporation of the 623  
corporation and ending with the date of the balance sheet; 624

(3) If the corporation is a benefit corporation, any 625  
written statement or report required by the articles, 626  
regulations, or a written agreement of the benefit corporation 627  
concerning the beneficial purposes of the benefit corporation 628  
and the activities of the benefit corporation toward those 629  
beneficial purposes and related provisions set forth in the 630  
corporation's articles. 631

(B) The financial statements shall have appended to them 632  
an opinion signed by the president or a vice-president or the 633

treasurer or an assistant treasurer of the corporation or by a 634  
public accountant or firm of public accountants to the effect 635  
that the financial statement presents fairly the financial 636  
position of the corporation and the results of its operations in 637  
conformity with generally accepted accounting principles applied 638  
on a basis consistent with that of the preceding period, or to 639  
the effect that the financial statements have been prepared on 640  
the basis of accounting practices and principles that are 641  
reasonable in the circumstances. 642

(C) Upon request of any shareholder made in writing or by 643  
any other means of communication authorized by the corporation 644  
prior to the date of the meeting described in division (A) of 645  
this section, the corporation shall send a copy of ~~the any~~ 646  
financial statements, written statements, and reports, as 647  
applicable, laid or to be laid before the shareholders at the 648  
meeting to the shareholder by mail, overnight delivery service, 649  
or any other means of communication authorized by the 650  
shareholder to whom the copy is sent on or before the later of 651  
the following: 652

(1) The fifth day after the receipt of the written 653  
request; 654

(2) The earlier of the following: 655

(a) The fifth day before the date of the meeting; 656

(b) The fifth day after the expiration of four months from 657  
the date of the balance sheet described in division (A) (1) of 658  
this section. 659

(D) If the meeting described in division (A) of this 660  
section is to be held solely by means of communications 661  
equipment, the corporation shall make the financial statements, 662

written statements, and reports described in that division, as 663  
applicable, open to the examination of any shareholder or 664  
proxyholder during the whole time of the meeting on a reasonably 665  
accessible electronic network. The directors may adopt 666  
guidelines and procedures to permit the corporation to verify 667  
that any person accessing the financial statements, written 668  
statements, or reports is a shareholder or proxyholder. 669

**Sec. 1701.59.** (A) Except where the law, the articles, or 670  
the regulations require action to be authorized or taken by 671  
shareholders, all of the authority of a corporation shall be 672  
exercised by or under the direction of its directors. For their 673  
own government, the directors may adopt bylaws that are not 674  
inconsistent with the articles or the regulations. The selection 675  
of a time frame for the achievement of corporate goals shall be 676  
the responsibility of the directors. 677

(B) A director shall perform the director's duties as a 678  
director, including the duties as a member of any committee of 679  
the directors upon which the director may serve, in good faith, 680  
in a manner the director reasonably believes to be in or not 681  
opposed to the best interests of the corporation, and with the 682  
care that an ordinarily prudent person in a like position would 683  
use under similar circumstances. A director serving on a 684  
committee of directors is acting as a director. 685

(C) In performing a director's duties, a director is 686  
entitled to rely on information, opinions, reports, or 687  
statements, including financial statements and other financial 688  
data, that are prepared or presented by any of the following: 689

(1) One or more directors, officers, or employees of the 690  
corporation who the director reasonably believes are reliable 691  
and competent in the matters prepared or presented; 692



(2) Counsel, public accountants, or other persons as to 693  
matters that the director reasonably believes are within the 694  
person's professional or expert competence; 695

(3) A committee of the directors upon which the director 696  
does not serve, duly established in accordance with a provision 697  
of the articles or the regulations, as to matters within its 698  
designated authority, which committee the director reasonably 699  
believes to merit confidence. 700

(D) For purposes of division (B) of this section, the 701  
following apply: 702

(1) A director shall not be found to have violated the 703  
director's duties under division (B) of this section unless it 704  
is proved by clear and convincing evidence that the director has 705  
not acted in good faith, in a manner the director reasonably 706  
believes to be in or not opposed to the best interests of the 707  
corporation, or with the care that an ordinarily prudent person 708  
in a like position would use under similar circumstances, in any 709  
action brought against a director, including actions involving 710  
or affecting any of the following: 711

(a) A change or potential change in control of the 712  
corporation, including a determination to resist a change or 713  
potential change in control made pursuant to division (F) (7) of 714  
section 1701.13 of the Revised Code; 715

(b) A termination or potential termination of the 716  
director's service to the corporation as a director; 717

(c) The director's service in any other position or 718  
relationship with the corporation. 719

(2) A director shall not be considered to be acting in 720  
good faith if the director has knowledge concerning the matter 721

in question that would cause reliance on information, opinions, 722  
reports, or statements that are prepared or presented by the 723  
persons described in divisions (C) (1) to (3) of this section to 724  
be unwarranted. 725

(3) A director's duties under division (B) of this section 726  
are not owed by a director of a benefit corporation to a person 727  
who is a beneficiary of a beneficial purpose of the benefit 728  
corporation based solely on the status of that person as a 729  
beneficiary. 730

(4) Nothing contained in this division limits relief 731  
available under section 1701.60 of the Revised Code. 732

(E) A director shall be liable in damages for any action 733  
that the director takes or fails to take as a director only if 734  
it is proved by clear and convincing evidence in a court of 735  
competent jurisdiction that the director's action or failure to 736  
act involved an act or omission undertaken with deliberate 737  
intent to cause injury to the corporation or undertaken with 738  
reckless disregard for the best interests of the corporation. 739  
Nothing contained in this division affects the liability of 740  
directors under section 1701.95 of the Revised Code or limits 741  
relief available under section 1701.60 of the Revised Code. This 742  
division does not apply if, and only to the extent that, at the 743  
time of a director's act or omission that is the subject of 744  
complaint, the articles or the regulations of the corporation 745  
state by specific reference to this division that the provisions 746  
of this division do not apply to the corporation. 747

(F) For purposes of this section, a director, in 748  
determining what the director reasonably believes to be in the 749  
best interests of the corporation, shall consider the interests 750  
of the corporation's shareholders and any beneficial purposes 751

and related provisions set forth in the corporation's articles. 752  
The director shall consider any priority among purposes provided 753  
in the corporation's articles and shall consider any other 754  
method for balancing the purposes of the corporation that is set 755  
forth in the corporation's articles. In addition, the director 756  
may, in the director's discretion, may~~may~~consider any of the 757  
following: 758

(1) The interests of the corporation's employees, 759  
suppliers, creditors, and customers; 760

(2) The economy of the state and nation; 761

(3) Community and societal considerations; 762

(4) The long-term as well as short-term interests of the 763  
corporation and its shareholders, including the possibility that 764  
these interests or any beneficial purpose set forth in the 765  
corporation's articles may be best served by the continued 766  
independence of the corporation. 767

(G) Nothing contained in division (D) or (E) of this 768  
section affects the duties of either of the following: 769

(1) A director who acts in any capacity other than the 770  
director's capacity as a director; 771

(2) A director of a corporation that does not have issued 772  
and outstanding shares that are listed on a national securities 773  
exchange or are regularly quoted in an over-the-counter market 774  
by one or more members of a national or affiliated securities 775  
association, who votes for or assents to any action taken by the 776  
directors of the corporation that, in connection with a change 777  
in control of the corporation, directly results in the holder or 778  
holders of a majority of the outstanding shares of the 779  
corporation receiving a greater consideration for their shares 780

than other shareholders. 781

**Sec. 1701.591.** (A) In order to qualify as a close 782  
corporation agreement under this section, the agreement shall 783  
meet the following requirements: 784

(1) Every person who is a shareholder of the corporation 785  
at the time of the agreement's adoption, whether or not entitled 786  
to vote, shall have assented to the agreement in writing; 787

(2) The agreement shall be set forth in the articles, the 788  
regulations, or another written instrument; 789

(3) The agreement shall include a statement that it is to 790  
be governed by this section. 791

(B) A close corporation agreement that is not set forth in 792  
the articles or the regulations shall be entered in the record 793  
of minutes of the proceedings of the shareholders of the 794  
corporation and shall be subject to the provisions of division 795  
(C) of section 1701.92 of the Revised Code. 796

(C) Irrespective of any other provisions of this chapter, 797  
but subject to division (D) (2) of this section, a close 798  
corporation agreement may contain provisions, which shall be 799  
binding on the corporation and all of its shareholders, 800  
regulating any aspect of the internal affairs of the corporation 801  
or the relations of the shareholders among themselves, including 802  
the following: 803

(1) Regulation of the management of the business and 804  
affairs of the corporation; 805

(2) The right of one or more shareholders to dissolve the 806  
corporation at will or on the occurrence of a specified event or 807  
contingency; 808

|   |  |
|---|--|
| (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; | 809<br>810<br>811<br>812<br>813<br>814 |
| (4) The designation of the persons who shall be the officers or directors of the corporation;   | 815<br>816                             |
| (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;   | 817<br>818<br>819<br>820<br>821        |
| (6) The terms and conditions of employment of an officer or employee of the corporation without regard to the period of employment;   | 822<br>823<br>824                      |
| (7) The declaration and payment of dividends or distributions or the division of profits;   | 825<br>826                             |
| (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;   | 827<br>828<br>829<br>830               |
| (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;                                | 831<br>832<br>833<br>834<br>835        |
| (10) Prohibition of or limitation upon the issuance or sale by the corporation of any of its shares, including treasury   | 836<br>837                             |

shares, without the affirmative vote or approval of the holders 838  
of all or a proportion of the outstanding shares or unless other 839  
specified terms and conditions are met; 840

(11) Arbitration of issues on which the shareholders are 841  
deadlocked in voting power or on which the directors or other 842  
parties managing the corporation are deadlocked; 843

(12) Dispensing with the annual meeting of shareholders 844  
unless a shareholder, by written notice to the president or 845  
secretary either by personal delivery or by mail within thirty 846  
days after the end of the most recent fiscal year of the 847  
corporation, requests that the meeting be held. 848

(D) Except as may be necessary to give effect to divisions 849  
(C) (3), (5), (8), (9), and (12) and division (I) of this 850  
section, any provision of a close corporation agreement that 851  
does either of the following shall be invalid: 852

(1) Eliminates the filing with the secretary of state of 853  
any document required under this chapter or changes the required 854  
form or content of the document; 855

(2) Waives or alters the effect of any of the provisions 856  
of section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31, 857  
1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591, 858  
1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of 859  
section 1701.64 of the Revised Code. 860

Unless otherwise provided in the close corporation 861  
agreement, the invalidity of a provision pursuant to this 862  
division does not affect the validity of the remainder of the 863  
agreement. 864

Any certificate that is required to be filed with the 865  
secretary of state with respect to the authorization or taking 866

of any action pursuant to a close corporation agreement that 867  
would not be permitted under this chapter in the absence of 868  
division (C) of this section shall recite the existence of a 869  
close corporation agreement that authorizes the action. 870

(E) (1) Except as provided in division (E) (2) of this 871  
section, a close corporation agreement may be amended or 872  
terminated by the affirmative vote or written consent of the 873  
holders, then parties to the close corporation agreement, of all 874  
of the outstanding shares of each class or, as may be provided 875  
by the close corporation agreement, of the holders, then parties 876  
to the close corporation agreement, of a proportion of not less 877  
than four-fifths of the outstanding shares of each class. If a 878  
close corporation agreement is amended or terminated by the 879  
written consent of the holders of fewer than all of the shares, 880  
the secretary of the corporation shall mail a copy of the 881  
amendment or a notice of the termination to each shareholder who 882  
did not so consent. If a close corporation agreement set forth 883  
in the articles is amended, the amendment shall not be effective 884  
unless it is filed as an amendment to the articles pursuant to 885  
section 1701.73 of the Revised Code. No corporation with respect 886  
to which a close corporation agreement is in effect shall cause 887  
to occur any of the actions described in division (I) (1) (a), 888  
(b), or (c) of this section unless the action has been 889  
authorized by the affirmative vote or written consent of the 890  
holders, then parties to the close corporation agreement, of 891  
that proportion of shares of each class that is required to 892  
terminate the close corporation agreement. 893

(2) A close corporation agreement that was in existence on 894  
December 31, 1993, and that did not specify on that date and 895  
that has not specified since that date the proportion of shares 896  
required to amend or terminate the close corporation agreement 897

may be amended or terminated by the affirmative vote or written 898  
consent of the holders, then parties to the close corporation 899  
agreement, of four-fifths of the outstanding shares of each 900  
class. 901

(F) No close corporation agreement is invalid among the 902  
parties or in respect of the corporation on any of the following 903  
grounds: 904

(1) The agreement is an attempt to treat the corporation 905  
as if it were a partnership or to arrange the relationship of 906  
the parties in a manner that would be appropriate only among 907  
partners; 908

(2) The agreement provides for the conduct of the affairs 909  
of a corporation or relations among shareholders in any manner 910  
that would be inappropriate or unlawful under provisions of this 911  
chapter other than those set forth in division (D)(2) of this 912  
section or under other applicable law; 913

(3) The agreement interferes with the authority or 914  
discretion of the directors; 915

(4) The agreement has not been filed with the minutes as 916  
required by division (B) of this section. 917

(G) If a close corporation agreement provides that there 918  
shall be no board of directors, both of the following apply: 919

(1) The shareholders, for the purposes of any statute or 920  
rule of law relating to corporations, are deemed to be the 921  
directors and to have all of the liabilities, immunities, 922  
defenses, and indemnifications of directors with respect to any 923  
action or inaction of the corporation, except that any 924  
shareholder who is not permitted by the articles, the 925  
regulations, or the close corporation agreement to vote on or 926



assent to an action or assent to an inaction shall not be liable 927  
as a director with respect to the action or inaction. 928

(2) Except to the extent that the voting rights of the 929  
shares of a class are increased, limited, or denied by the 930  
articles, the regulations, or the close corporation agreement, 931  
each outstanding share regardless of class shall entitle its 932  
holder to one vote on each matter, including any matter normally 933  
voted on by directors, that is properly submitted to the 934  
shareholders for their vote, consent, waiver, release, or other 935  
action. 936

(H) The existence of a close corporation agreement shall 937  
be noted conspicuously on the face or the back of every 938  
certificate for shares of the corporation and a purchaser or 939  
transferee of shares represented by a certificate on which such 940  
a notation so appears shall be conclusively considered to have 941  
taken delivery with notice of the close corporation agreement. 942  
Any transferee of shares by gift, bequest, or inheritance and 943  
any purchaser or transferee of shares with knowledge or notice 944  
of a close corporation agreement is bound by the agreement and 945  
shall be considered to be a party to the agreement. 946

(I) (1) A close corporation agreement becomes invalid under 947  
any of the following circumstances: 948

(a) Shares of the corporation are listed on a national 949  
securities exchange. 950

(b) Shares of the corporation are registered under section 951  
12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 952  
U.S.C. 781, as amended. 953

(c) Shares of the corporation have been included in a 954  
registration statement that has become effective pursuant to the 955

"Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and 956  
the corporation is required to file periodic reports and 957  
information pursuant to section 15(d) of the "Securities 958  
Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended. 959

(d) Shares of the corporation are transferred or issued to 960  
a person who takes delivery of the certificate for the shares 961  
other than by gift, bequest, or inheritance and without 962  
knowledge or notice of the close corporation agreement; that 963  
person delivers to the corporation a written rejection of the 964  
close corporation agreement within ninety days after the date on 965  
which that person first received notice of the existence of the 966  
close corporation agreement or within three years of the date of 967  
transfer or issuance, whichever is earlier; and the corporation 968  
does not offer in writing, within thirty days after the date on 969  
which the corporation received the written rejection, to 970  
purchase the shares from that person for the full amount paid 971  
for the shares, or, having made an offer to purchase the shares 972  
for that amount, the corporation, upon that person's acceptance 973  
of the offer, does not purchase the shares in accordance with 974  
division (I) (3) of this section. 975

(2) A close corporation agreement does not become invalid 976  
and the person to whom the shares are transferred or issued is 977  
not entitled to any payment from the corporation pursuant to 978  
division (I) (3) of this section if both of the following apply: 979

(a) Shares of the corporation are transferred or issued to 980  
a person who takes delivery of the certificate for the shares 981  
other than by gift, bequest, or inheritance and without 982  
knowledge or notice of the close corporation agreement; 983

(b) That person does either of the following: 984

(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 1016  
the shareholder. 1017

(4) In the event of the invalidity of a close corporation 1018  
agreement and unless otherwise provided in the close corporation 1019  
agreement, any provision contained in the close corporation 1020  
agreement that would not be invalid under any other section of 1021  
this chapter or under other applicable law remains valid and 1022  
binding on the parties to the close corporation agreement. 1023

Any officer of the corporation who learns of the 1024  
occurrence of any event causing the invalidity of the close 1025  
corporation agreement shall immediately give written notice of 1026  
the invalidity to all of the shareholders. 1027

If a close corporation agreement set forth in the articles 1028  
of the corporation is terminated or becomes invalid, the 1029  
officers of the corporation shall promptly sign and file the 1030  
certificate of amendment prescribed by section 1701.73 of the 1031  
Revised Code, setting forth the reason for the termination or 1032  
invalidity and deleting the close corporation agreement from the 1033  
articles. If the officers fail to execute and file the 1034  
certificate within thirty days after the occurrence of the event 1035  
giving rise to the termination or invalidity, the certificate 1036  
may be signed and filed by any shareholder and shall set forth a 1037  
statement that the person signing the certificate is a 1038  
shareholder and is filing the certificate because of the failure 1039  
of the officers to do so. 1040

(J) A close corporation agreement, in the sound discretion 1041  
of a court exercising its equity powers, is enforceable by 1042  
injunction, specific performance, or other relief that the court 1043  
may determine to be fair and appropriate. 1044

(K) This section shall not be construed as prohibiting any 1045  
other lawful agreement among two or more shareholders. 1046

(L) No corporation with respect to which a close 1047  
corporation agreement is in effect, shall issue shares in 1048  
uncertificated form, and any provision of the articles or 1049  
regulations or any resolution of the directors of such a 1050  
corporation, providing for the issuance of shares in 1051  
uncertificated form, shall be ineffective during any period in 1052  
which a close corporation agreement is in effect. The adoption 1053  
of a close corporation agreement shall act as a transfer 1054  
instruction to the corporation to replace uncertificated 1055  
securities with appropriate certificated securities. 1056

(M) If the annual meeting of the shareholders is dispensed 1057  
with in accordance with a provision in the close corporation 1058  
agreement authorized by division (C)(12) of this section, the 1059  
annual financial statements and any written statements or 1060  
reports required by section 1701.38 of the Revised Code shall be 1061  
delivered to each shareholder on or before the last date upon 1062  
which the annual meeting otherwise could have been held. 1063

(N) The amendments to this section that are effective 1064  
April 4, 1985, are remedial in nature and apply to all close 1065  
corporation agreements created on or after November 17, 1981. 1066  
The amendments to this section that are effective December 31, 1067  
1993, are remedial in nature and, except as those amendments 1068  
otherwise provide, apply to all close corporation agreements 1069  
created on or after November 17, 1981. 1070

**Sec. 1701.94.** (A) Every corporation that fails to: 1071

(1) Keep the books of account, minutes of proceedings, or 1072  
records of shareholders as required by section 1701.37 of the 1073

Revised Code; 1074

(2) Comply with division (C) of section 1701.11 of the 1075  
Revised Code with respect to mailing a copy of an amendment to, 1076  
or copy of new, regulations; 1077

(3) Perform the obligation imposed on it by division (C) 1078  
of section 1701.25 of the Revised Code; 1079

(4) Send to any shareholder making written request 1080  
therefor, within the period provided for in division (C) of 1081  
section 1701.38 of the Revised Code, a copy of ~~the any~~ financial 1082  
statement, written statement, or report, as applicable, referred 1083  
to in that section; 1084

(5) Lay before the shareholders or make available in the 1085  
manner provided for in division (D) of section 1701.38 of the 1086  
Revised Code at a proper meeting of shareholders, upon request 1087  
of any shareholder at such meeting, such financial statement,  1088  
written statement, or report, as applicable; 1089

(6) Produce at a meeting of shareholders, upon request of 1090  
any shareholder at such meeting, the list or lists of 1091  
shareholders required by section 1701.37 of the Revised Code; 1092  
shall be subject to a forfeiture of one hundred dollars and in 1093  
cases under paragraphs (1), (2), (3), and (4) to a further 1094  
forfeiture of ten dollars for every day that such failure 1095  
continues, beginning, in cases under paragraphs (1) or (2), with 1096  
the fifth day after written request by a shareholder that the 1097  
corporation comply with said respective paragraphs, and in cases 1098  
under paragraphs (3) and (4) beginning with the day following 1099  
the day on which the corporation becomes delinquent in complying 1100  
with said paragraph, which amount shall be paid to every 1101  
shareholder making such request. The right of a shareholder to 1102

enforce any such forfeiture is in addition to all other 1103  
remedies. 1104

(B) If any officer charged with one of the duties 1105  
specified in division (A) of this section fails to perform such 1106  
duty after written request by any shareholder, the officer shall 1107  
be subject to a forfeiture of one hundred dollars, and to the 1108  
further forfeiture of ten dollars for every day that such 1109  
default continues, beginning in cases under paragraphs (1), (2), 1110  
(3), and (4) of division (A) on the same respective days as are 1111  
provided for in division (A), which amount shall be paid to each 1112  
shareholder making such request. The right of each shareholder 1113  
to enforce any such forfeiture is in addition to all other 1114  
remedies. 1115

(C) The court in which an action is brought to enforce any 1116  
forfeiture under this section may reduce, remit, or suspend such 1117  
forfeiture on such terms as it deems reasonable when it appears 1118  
that the failure was excusable or that the imposition of the 1119  
full forfeiture would be unreasonable or unjust. 1120

Sec. 1701.96. (A) A benefit corporation owes no duty to a 1121  
person who is a beneficiary of a beneficial purpose of the 1122  
benefit corporation based solely on the status of that person as 1123  
a beneficiary. 1124

(B) A benefit corporation is not liable in damages for any 1125  
failure to seek, achieve, or comply with any beneficial purpose 1126  
of the benefit corporation set forth in the articles of the 1127  
corporation. A benefit corporation may be subject only to 1128  
equitable remedies, including injunction and specific 1129  
performance, for failing to seek, achieve, or comply with a 1130  
beneficial purpose. 1131

(C) An action for equitable relief for failing to seek, achieve, or comply with a beneficial purpose set forth in the articles of a benefit corporation may be brought only by the benefit corporation or in a derivative action on behalf of the benefit corporation by any of the following: 1132  
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(1) A director of the corporation; 1137

(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; 1138  
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(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; 1144  
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(4) Any other person that the articles or regulations authorize to bring such an action. 1150  
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(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. 1152  
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**Section 2.** That existing sections 1701.01, 1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 1701.94 of the 1159  
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Revised Code are hereby repealed.

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