

AN ACT

To amend sections 1151.38, 1151.61, 1701.04, 1701.06, 1701.09, 1701.11, 1701.15, 1701.18, 1701.24, 1701.33, 1701.45, 1701.59, 1701.63, 1701.70, 1701.71, and 1701.95, to enact new section 1701.10, and to repeal section 1701.10 of the Revised Code to modify the General Corporation Law, including modifications to alter the requirements for the formation of a corporation, including the contents of the articles of incorporation, the terms of and subscription for shares, and the adoption of corporate regulations; to specify limits on pre-emptive rights of shareholders; to specify the rights of fractional shareholders; to specify the liability of shareholders to the corporation and its creditors; to specify the determination of the date for measuring the effect of a dividend or distribution on a corporation; to specify a record date for determining the eligibility of shareholders for a dividend or distribution; to specify the authority of incorporators, initial directors, and subsequent directors of a corporation to amend the articles of incorporation; and to make nonsubstantive technical modifications to the law.

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

SECTION 1. That sections 1151.38, 1151.61, 1701.04, 1701.06, 1701.09, 1701.11, 1701.15, 1701.18, 1701.24, 1701.33, 1701.45, 1701.59, 1701.63, 1701.70, 1701.71, and 1701.95 be amended and new section 1701.10 of the Revised Code be enacted to read as follows:

Sec. 1151.38. ~~In~~ As used in this section, "federal association" means a federal savings and loan association, and "state association" means a ~~building~~ state savings and loan association.

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

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

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

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

(D) A majority of the members of the board of the federal association, which majority shall consist of not less than three directors, a majority of whom are citizens of the United States, shall subscribe to, acknowledge, and file articles of incorporation in the office of the secretary of state. Two copies of the articles shall be filed with the federal home loan bank board. The articles shall set forth all of the following:

(1) All statements required by ~~paragraphs~~ divisions (A)(1), (2), and (3); and (4) of division (A) of section 1701.04 of the Revised Code and any desired provision authorized by ~~paragraphs (1) divisions (B)(3), (2) (4), and (3) of division (B) (5)~~ of such that section;

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

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

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

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

(1) All the federal association's property and assets, and every right, privilege, and interest then existing, belonging or pertaining to it or which would inure to it, ~~shall~~ immediately, without any conveyance or transfer and without any further act, shall be vested in and become the property of the successor state association, which shall hold and enjoy them in its own right, to the same extent as they were held and enjoyed by the federal association. All liens upon the property and assets of ~~such the~~ federal association existing at the time of conversion shall be preserved unimpaired and limited in lien to the property or assets then affected ~~thereby~~ by liens. This section does not deprive any person, firm, or corporation of any substantive right existing at the time of ~~such~~ conversion against ~~such the~~ federal association, nor of the right to enforce any such right of that nature by proceedings against the property and assets transferred by operation of this division, in the event and to the extent that ~~such the~~ substantive right is not satisfied or adjusted by the successor state association in accordance with its articles.

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

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

A copy of the articles recorded in the office of the secretary of state, certified by the secretary of state under the seal of ~~his~~ the secretary of state's office and showing the day and hour of recording, shall be recorded in the

office of the county recorder of the county in which the federal association had its principal office or place of business at the time of its conversion or reorganization; and in each county in the state in which ~~such~~ the federal association owned real estate at the time of its conversion or reorganization, for which recording the recorder shall charge the same fees as for the recording of deeds. Two copies of the articles, as so recorded and certified; and showing the date and hour of ~~such~~ the recording, shall be filed with the federal home loan bank board.

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

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

(B) A special meeting of the stockholders shall be called, of which notice shall be given to each stockholder at ~~his~~ the stockholder's last known post-office address as it appears on the records of the association, whether or not ~~he~~ the stockholder is entitled to vote. At such meeting, the plan of reorganization, including any amendments of or additions to the plan proposed at ~~such~~ the meeting, shall be considered, and a vote shall be taken on the question of its adoption. The adoption of ~~such~~ the plan requires the vote, in person or by proxy, of the holders of fifty-one per cent of the stock. If the plan so provides, the board ~~may~~, within forty-five days after the day on which ~~such~~ the vote is taken, may rescind the action of the shareholders if in its judgment the consummation of the plan will be against the best interests of the association because of the number of dissenting shareholders

or the amount of stock owned by them.

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

(D) The plan shall become effective when it has been adopted by the shareholders and approved in writing by the superintendent, and the president or a vice-president, and the secretary or an assistant secretary, of the association have signed and filed in the office of the secretary of state a certificate of reorganization, with the consent of the superintendent ~~indorsed thereon~~ endorsed on the certificate, containing a copy of the plan of reorganization, and also containing the following items, unless the item in question is included in ~~such~~ the plan:

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

(2) A statement of the amount of fully paid and issued capital stock, the amount of stock credits, and the amount of authorized capital stock, both before and after ~~such~~ the reorganization.

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

No order of court shall restrain the superintendent from making an

examination of ~~such~~ the association and its affairs at any time under sections 1155.09 and 1155.10 of the Revised Code.

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 which shall set forth all of the following:

(1) The name of the corporation, which shall be in compliance with ~~the provisions of~~ 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 purpose or purposes for which the corporation is formed, which may consist of a statement that the purpose, either alone or with other specified purposes, is to engage in any lawful act or activity for which corporations may be formed under this chapter. By such statement, all lawful acts and activities of the corporation conforming to the conditions and limitations, if any, specified in the articles are within the purposes of the corporation.~~

(4) 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;

~~(5)~~(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 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;

~~(2)~~(4) Any provision that may be set forth in the regulations;

~~(3)~~(5) A provision specifying the period of existence of the corporation

if it is to be otherwise than perpetual;

~~(4)(6)~~ Subject to division (C) of this section, any additional provision permitted by this chapter.

(C) Original articles of a corporation may not set forth any provision that eliminates the rights of shareholders under this chapter to cumulate the voting power that they possess in the election of directors.

(D) 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.

(E) The legal existence of the corporation shall begin upon the filing of the articles, and, unless the articles otherwise provide, its period of existence shall be perpetual.

Sec. 1701.06. (A) The express terms of shares may include statements specifying any of the following:

(1) Dividend or distribution rights, which may be: cumulative or noncumulative; at a specified rate, amount, or proportion; with or without further participation rights; and in preference to, junior to, or on a parity in whole or in part with dividend or distribution rights of shares of any other class;

(2) Liquidation rights, preferences, and price;

(3) Redemption rights and price;

(4) Sinking fund ~~retirements~~ requirements, which may require the corporation to provide a sinking fund out of earnings or otherwise for the purchase or redemption of ~~such the~~ shares or for dividends or distributions on them;

(5) Voting rights, which may be full, limited, or denied, except as otherwise required by law;

(6) Pre-emptive rights, or the denial or limitation of them;

(7) Conversion rights;

(8) Restrictions on the issuance of shares;

(9) Rights of alteration of express terms;

(10) The division of any class of shares into series;

(11) The designation and authorized number of shares of each series;

(12) The right of the directors, subject to ~~such~~ any limitations as that may be stated, to adopt amendments to the articles ~~in respect of any unissued or treasury shares of any class and thereby to fix or change: the division of such shares into series and the designation and authorized number of shares of each series; the dividend or distribution rate; the dates of payment of dividends or distributions and the dates from which they are~~

~~cumulative; liquidation price; redemption rights and price; sinking fund requirements; conversion rights; and restrictions on the issuance of shares of any class or series~~ determining, in whole or in part, the express terms, within the limits set forth in this chapter, of any class of shares before the issuance of any shares of that class, or of one or more series within a class before the issuance of any shares of that series;

(13) Any other relative, participating, optional, or other special rights and privileges of, and qualifications or restrictions on, the rights of holders of shares of any class or series.

~~(B) The express terms of shares of different series of any particular class shall be identical, except that there may be variations in respect of: the dividend or distribution rate; the dates of payment of dividends or distributions and the dates from which they are cumulative; redemption rights and price; liquidation price; sinking fund requirements; conversion rights; and restrictions on the issuance of shares of the same series or of any other class or series~~ Each series of a class shall be given a distinguishing designation. All shares of a series shall have express terms identical with those of other shares of the same series. Any of the express terms of any class or series of shares may be made dependent upon facts ascertainable outside the articles or any amendment to those articles, provided that the manner in which the facts operate upon the express terms is set forth in the articles or any amendment to those articles.

Sec. 1701.09. (A) After the articles have been filed, the incorporators or a majority of them may receive subscriptions for shares at such time and place as that they ~~may~~ determine.

(B) Unless the articles fix the consideration for which subscriptions are to be received, all of the following apply:

(1) If subscriptions are to be received for shares without par value, the incorporators shall fix the consideration for which they will receive subscriptions for such shares.

(2) If subscriptions are to be received for shares with par value, the consideration for the shares shall be the par value or ~~such~~ the greater consideration as that the incorporators fix.

(3) If any subscriptions are to be payable otherwise than in money, the incorporators may determine the fair value to the corporation of the consideration for ~~such~~ the shares.

(C) No subscriptions for shares shall be received by the incorporators if the articles name the initial directors or after the meeting of the shareholders or incorporators at which the initial election of directors occurs.

(D) The failure of incorporators of a corporation formed or attempted to

be formed under the laws of this state then in effect to file in the office of the secretary of state a certificate of ~~subscription~~ SUBSCRIPTION required by ~~such~~ those laws to be filed does not make the existence of ~~said~~ the corporation or any of its acts subject to question.

Sec. 1701.10. (A) After incorporation, all of the following apply:

(1) If the initial directors are named in the articles, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by receiving subscriptions, appointing officers, adopting regulations, and carrying on any other business brought before the meeting.

(2) If the initial directors are not named in the articles, the incorporator or incorporators either shall receive subscriptions as provided in division (A) of section 1701.09 of the Revised Code or shall hold an organizational meeting at the call of a majority of the incorporators to elect directors who shall complete the organization of the corporation as provided in division (A)(1) of this section. If subscriptions for shares are received by the incorporators, the incorporators, or a majority of them, shall give not less than seven days' written notice to the shareholders, unless written notice is waived by the shareholders, to meet at a specified time and place for the purposes of adopting regulations, electing directors, and transacting any other business. The shareholders shall meet for those purposes at the time and place specified.

(3) Notwithstanding divisions (A)(1) and (2) of this section, if regulations have not been adopted within ninety days after the formation of the corporation, regulations may be adopted only by the shareholders in either of the following ways:

(a) At a meeting of shareholders called for that purpose by the directors or, if no directors have been named in the articles or elected, at a meeting of shareholders called for that purpose by at least a majority of the incorporators. The directors or incorporators shall give not less than seven days' written notice to the shareholders, unless written notice is waived by the shareholders, to meet at a specified time and place for the purposes of adopting regulations and transacting any other business;

(b) Without a meeting, by the written consent of the holders of shares entitling them to exercise two-thirds of the voting power on the proposal.

(4) In no event may the directors take any action to adopt or amend regulations after the shareholders have adopted regulations.

(B) Action required or permitted by this chapter to be taken by the incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing

the action taken and signed by each incorporator.

(C) An organizational meeting may be held in or out of this state.

Sec. 1701.11. (A)(1) Regulations for the government of a corporation, the conduct of its affairs, and the management of its property, consistent with law and the articles, may be adopted by in any of the following ways:

(a) Within ninety days after the corporation is formed, by the directors in accordance with section 1701.10 of the Revised Code;

(b) By the shareholders at a meeting held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal; ~~or may be adopted without;~~

(c) Without a meeting, by the written consent of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal; ~~and the.~~

(2) The regulations may be amended, or new regulations may be adopted, in like manner and by like vote or consent, or, if either of the following ways:

(a) By the shareholders at a meeting held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal;

(b) Without a meeting, by the written consent of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal.

(3) If the articles or the regulations that have been adopted so provide or permit, regulations may be adopted or amended or new regulations may be adopted by the affirmative vote or written consent of the holders of shares entitling them to exercise a greater or lesser proportion but not less than a majority of the voting power of the corporation.

(B) Without limiting the generality of the authority described in division (A) of this section, the regulations may include provisions with respect to all of the following:

(1) The time and place for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of shareholders;

(2) The taking of a record of shareholders or the temporary closing of books against transfers of shares;

(3) The number, classification, manner of fixing or changing the number, qualifications, term of office, and compensation or manner of fixing compensation, of directors;

(4) The time and place for holding, the manner of and authority for

calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of the directors;

(5) The appointment of an executive and other committees of the directors, and their authority;

(6) The titles, qualifications, duties, term of office, compensation or manner of fixing compensation, and the removal, of officers;

(7) The terms on which new certificates for shares may be issued in the place of lost, stolen, or destroyed certificates;

(8) The manner in which and conditions upon which a certificated security, and the conditions upon which an uncertificated security, and the shares represented by a certificated or uncertificated security, may be transferred, restrictions on the right to transfer the shares, and reservations of liens on the shares;

(9)(a) Restrictions on the transfer and the right to transfer shares of either of the following:

(i) An issuing public corporation to any person in a control share acquisition;

(ii) A corporation with fifty or more shareholders to any person in an acquisition that would be a control share acquisition if the corporation were an issuing public corporation.

(b) The restrictions on the transfer and the right to transfer shares described in division (B)(9)(a)(i) and (ii) of this section may include requirements and procedures for consent to ~~such~~ an acquisition of the shares by directors based on a determination by the directors of the best interests of the corporation and its shareholders, consent to ~~such~~ an acquisition of the shares by shareholders, and reasonable sanctions for a violation of ~~such those~~ requirements, including the right of the corporation to refuse to transfer, to redeem, or to deny voting or other shareholder rights appurtenant to shares acquired in ~~such~~ an acquisition of the shares.

(10) Defining, limiting, or regulating the exercise of the authority of the corporation, the directors, the officers, or all the shareholders.

(C) The shareholders of a corporation may adopt and may authorize the directors to adopt, either before or during an emergency, as that term is defined in division (U) of section 1701.01 of the Revised Code, emergency regulations ~~which that~~ shall be operative only during an emergency. The emergency regulations may include ~~such any~~ provisions ~~as that~~ are authorized to be included in regulations by divisions (A) and (B) of this section. In addition, unless expressly prohibited by the articles or the regulations, the emergency regulations may make any provision, notwithstanding any different provisions in ~~sections 1701.01 to 1701.98 of~~

~~the Revised Code~~ this chapter and notwithstanding any different provisions in the articles or the regulations that are not expressly stated to be operative during an emergency, that may be practical or necessary with respect to the following:

(1) The time and place for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of the directors;

(2) The creation and appointment of an executive and other committees of the directors and the delegation of authority to the committees by the board;

(3) The creation, existence, and filling of vacancies, including temporary vacancies, in the office of director;

(4) The selection, by appointment, election, or otherwise, of officers and other persons to serve as directors for a meeting of the board in the absence from the meeting of one or more of the directors;

(5) The creation, existence, and filling of vacancies, including temporary vacancies, in any office;

(6) The order of rank and the succession to the duties and authority of officers.

(D) If the regulations are amended or new regulations are adopted, without a meeting of the shareholders, the secretary of the corporation shall mail a copy of the amendment or the new regulations to each shareholder who would have been entitled to vote on the adoption of the amendment or the new regulations and did not participate in the adoption of the amendment or the new regulations.

(E) No person dealing with the corporation shall be charged with constructive notice of the regulations.

(F) Unless expressly prohibited by the articles or the regulations or unless otherwise provided by the emergency regulations, the following special rules shall be applicable during an emergency notwithstanding any different provision elsewhere in ~~sections 1701.01 to 1701.98 of the Revised Code~~ this chapter:

(1) Meetings of the directors may be called by any officer or director.

(2) Notice of the time and place of each meeting of the directors shall be given to such of the directors as it may be feasible to reach at the time and by ~~such~~ the means of communication, written or oral, personal or mass, as may be practicable at the time.

(3) The director or directors present at any meeting of the directors that has been duly called and notice of which has been duly given shall constitute a quorum for the meeting, and, in the absence of one or more of

the directors, the director or directors present may appoint one or more of the officers of the corporation directors for the meeting.

(4) If none of the directors attends a meeting of the directors that has been duly called and notice of which has been duly given, the officers of the corporation who are present, not exceeding three, in order of rank, shall be directors for the meeting, shall constitute a quorum for the meeting, and may appoint one or more of the other officers of the corporation directors for the meeting.

(5) If the chief executive officer dies, is missing, or for any other reason is temporarily or permanently incapable of discharging the duties of ~~his~~ the office, the next ranking officer who is available shall assume the duties and authority of the office of the deceased, missing, or incapacitated chief executive officer until such time as the directors shall otherwise order.

(6) The offices of secretary and treasurer shall be deemed to be of equal rank, and, within the same office and as between the offices of secretary and treasurer, rank shall be determined by priority in time of the first election to the office or, if two or more persons ~~shall~~ have been first elected to the office at the same time, by seniority in age.

Sec. 1701.15. (A) ~~Unless otherwise provided in the shareholders of a corporation do not have a pre-emptive right to acquire the corporation's unissued shares except to the extent the articles so provide. If the articles, provide that the holders of the shares of any class, other than shares which that are limited as to dividend or distribution rate and liquidation price, shall have pre-emptive rights, those holders, upon the offering or sale for cash of shares of the same class, shall have the right, during a reasonable time and on reasonable terms fixed by the directors, to purchase such the shares in proportion to their respective holdings of shares of such class, at a price fixed as provided in sections 1701.01 to 1701.98 of the Revised Code this chapter, unless the shares offered or sold are in any of the following categories:~~

- (1) Treasury shares;
- (2) Issued as a share dividend or distribution;
- (3) Issued or agreed to be issued for considerations other than money;
- (4) Issued or agreed to be issued upon exercise of options granted and authorized in accordance with section 1701.16 of the Revised Code;
- (5) Issued or agreed to be issued upon conversion of convertible shares authorized in the articles, or upon exercise of conversion rights conferred and authorized in accordance with section 1701.22 of the Revised Code;
- (6) Offered to shareholders in satisfaction of their pre-emptive rights and not purchased by such shareholders, and thereupon issued or agreed to

be issued for a consideration not less than that at which ~~such~~ the shares were so offered to such shareholders, less reasonable expenses, compensation, or discount paid or allowed for the sale, underwriting, or purchase of ~~such~~ the shares, unless by the affirmative vote or written order of the holders of two-thirds of the shares otherwise entitled to ~~such~~ the pre-emptive rights, the pre-emptive rights are restored as to any of ~~such~~ the shares not ~~theretofore~~ previously issued or agreed to be issued;

(7) Released from pre-emptive rights by the affirmative vote or written consent of the holders of two-thirds of the shares entitled to ~~such~~ the pre-emptive rights. Any such vote or consent shall be entered in the records of the corporation and shall be binding on all shareholders and their transferees for the time specified in ~~such~~ the vote or consent up to but not exceeding one year, and shall protect all persons who within ~~such~~ that time acquire the shares or options on or conversion or other rights with respect to the shares so released;

(8) Released from pre-emptive rights by the affirmative vote or written consent of the holders of a majority of the shares entitled to ~~such~~ the pre-emptive rights, for offering and sale, or the grant of options with respect thereto, to any or all employees of the corporation or of subsidiary corporations or to a trustee on their behalf, under a plan adopted or to be adopted by the directors for that purpose.

(B) No action shall be brought upon any cause of action arising under division (A) of this section at any time after two years from the day on which a written notice or other communication is given or mailed to each shareholder having ~~such a~~ the cause of action informing the shareholder of the transaction giving rise ~~thereto to the cause of action~~, and no action shall in any event be brought upon any ~~such~~ cause of action of that nature at any time after four years from the day on which ~~such~~ the cause of action arose, or from the effective date of this provision, whichever is the later.

(C) The provisions of division (A) of this section as they existed prior to the effective date of this amendment, shall continue to apply to any corporation incorporated prior to the effective date of this amendment, until the shareholders of the corporation adopt an amendment to its articles expressly providing that the provisions of division (A) of this section that take effect on the effective date of this amendment apply to the corporation or amended articles of incorporation.

Sec. 1701.18. (A) Except as provided in the case of change of shares, share dividends or distributions, reorganization, merger, consolidation, combination, or conversion of shares or obligations into shares, the following apply:

(1) Payment for shares shall be made with money or other property of any description, or any interest ~~therein~~ in property, actually transferred to the corporation, or labor or services actually rendered to the corporation.

(2) In the case of shares with par value, other than treasury shares, ~~said~~ the consideration shall be not less than the par value of the shares, provided that ~~such~~ the shares may be sold and paid for at such a discount from the par value of the shares as that would amount to or not exceed reasonable compensation for the sale, underwriting, or purchase of ~~such~~ the shares, and, regardless of ~~such~~ the discount ~~such~~ the shares shall be deemed to be fully paid.

(3) In the case of treasury shares with par value, the consideration may be less than the par value of the shares.

(B) Promissory notes, drafts, or other obligations of a subscriber or purchaser do not constitute payment for shares.

(C) An agreement by a person to perform services as the consideration for shares does not, of itself, constitute ~~such~~ the person a shareholder ~~or~~ and does not, of itself, constitute payment for such shares prior to the performance of ~~such~~ the services.

(D) Except in the case of convertible shares or obligations, shares with par value shall not be issued or disposed of upon change of shares, share dividends or distributions, reorganization, merger, consolidation, exchange of shares for other shares or securities, or otherwise, if as a result ~~thereof~~ the aggregate liabilities of the corporation plus its stated capital would exceed its aggregate assets or any ~~such~~ existing excess would be increased.

(E) When shares have been issued as provided in ~~sections 1701.01 to 1701.98 of the Revised Code~~ this chapter, in the case of change of shares, share dividends or distributions, reorganization, merger, consolidation, or conversion of shares or obligations into shares, or when shares have been paid for in conformity with this section, such shares shall be deemed fully paid and nonassessable.

(F) Every person who subscribes for or purchases shares of a corporation is liable to the corporation to pay or deliver to the corporation the consideration agreed upon, and, except as provided in division (A) of this section, if ~~such~~ the shares are with par value, ~~such~~ the person is obligated to pay to the corporation ~~therefor~~ for the shares in money or other property or services the full par value of the shares. The person is not liable to the corporation or its creditors in any other amount.

(G) Every holder, whether the original or a transferee, of shares not paid for as provided in this section, who has acquired them with actual knowledge of that fact, is personally liable to the corporation for the amount

unpaid on the shares, and ~~his~~ the holder's liability shall continue notwithstanding any transfer of ~~such the~~ shares, until ~~such the~~ shares are paid in full; but no holder who has acquired ~~such the~~ shares without actual knowledge of the fact that the shares are not paid for is under any liability in respect of the shares.

(H) No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

(I) No person who in fact, whether disclosed on the records of the corporation or otherwise, holds shares as executor, administrator, guardian, trustee, trustee of a voting trust, receiver, or in any other fiduciary capacity is personally liable as a shareholder, but the estate or property in the hands of such fiduciary is liable or the real or beneficial owner is liable under this section as equity may require. This section does not relieve a fiduciary from liability for a breach of trust.

(J) Except as set forth in any provision in Title LVII of the Revised Code, Neither a shareholder of a corporation nor a subscriber to its shares is personally liable for any debts, obligations, or liabilities of the corporation in the absence of a written, enforceable agreement that is signed by the shareholder or subscriber and that specifically undertakes liability for such debts, obligations, or liabilities.

Sec. 1701.24. (A) The shares of a corporation are personal property.

(B) Each holder of shares is entitled to one or more certificates, signed by the chairperson of the board or the president or a vice-president and by the secretary, an assistant secretary, the treasurer, or an assistant treasurer of the corporation, which shall certify the number and class of shares held by the holder in ~~such the~~ corporation, but no certificate for shares shall be executed or delivered until such shares are fully paid. When ~~such a the~~ certificate is countersigned by an incorporated transfer agent or registrar, the signature of any of ~~such those~~ officers of the corporation may be facsimile, engraved, stamped, or printed. Although any officer of the corporation whose manual or facsimile signature is affixed to ~~such a the~~ certificate ceases to be such officer before the certificate is delivered, ~~such the~~ certificate nevertheless shall be effective in all respects when delivered.

(C) A corporation is not obligated to but may issue fractional shares. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. In the case of uncertificated securities, the corporation may proceed as provided in divisions (C)(1) and (2) of this section. In the case of certificated securities, the corporation may execute and deliver a certificate for or including a

ction of a share; or, in lieu thereof, may do any of the following:

(1) Pay to the person otherwise entitled to become a holder of a fraction of a share an amount in cash specified as the value ~~thereof~~ of the fraction of a share in the articles, a resolution of the directors, or other agreement or instrument pursuant to which such fraction of a share otherwise would ~~otherwise~~ be issued, or, if not so specified, then the amount determined for ~~such~~ that purpose by the directors of the issuing corporation, or the amount realized upon sale of ~~such~~ the fraction of a share;

(2) Provide reasonable means to afford to ~~such~~ the person the opportunity, on specified terms and conditions, to purchase or sell fractional interests in shares, to the exclusion of all rights ~~he~~ the person otherwise might ~~otherwise~~ have;

(3) Execute and deliver registered or bearer scrip over the manual or facsimile signature of an officer of the corporation or of its agent for that purpose, exchangeable as ~~therein~~ provided in the scrip for full shares, but such scrip shall not entitle the holder to any rights as a shareholder except as ~~therein~~ provided in the scrip. The scrip may provide that it shall become void unless the rights of the holders are exercised within a specified period and may contain any other provisions that the corporation deems advisable. Whenever any such scrip ceases to be exchangeable for full shares, the shares that otherwise would ~~otherwise~~ have been issuable as ~~therein~~ provided in the scrip shall be deemed to be treasury shares unless the scrip contains other provision for their disposition.

(D) A joint estate with the incidents of a joint estate as at common law, including the right of survivorship, may be created in shares by registering the same in the case of uncertificated securities, or by executing and delivering a certificate ~~therefor~~ in the case of certificated securities to two or more persons with the words "as joint tenants" or "as joint tenants with right of survivorship and not as tenants in common" following their names. Upon receipt by the corporation of proof satisfactory to it of the death of one or more ~~of such~~ joint tenants, it may register the transfer to, or execute and deliver a new certificate to, the survivor or survivors.

(E) Whenever a corporation has determined that any outstanding certificates for shares should be canceled and exchanged for other certificates, the corporation may order and require the holders of the outstanding certificates to surrender them for ~~such~~ that purpose within a reasonable time to be fixed by the corporation. ~~Such~~ The order may provide that, until compliance ~~therewith~~ with the order, any or all rights as a shareholder of the holder of any certificate so required to be surrendered shall be suspended with respect to the shares represented ~~thereby~~ by the

certificate. Not less than ten days before ~~any such~~ the order is to become effective, the corporation shall give notice ~~thereof~~ of the order by mail to each shareholder affected ~~thereby~~ by the order at ~~his~~ the shareholder's address as it appears on the records of the corporation.

(F) Unless otherwise provided by the articles or regulations, the directors may provide by resolution that some or all of any or all classes and series of shares of a corporation shall be uncertificated shares, provided that ~~such the~~ resolution shall not apply to shares represented by a certificate until ~~such the~~ certificate is surrendered to the corporation and that ~~such the~~ resolution shall not apply to a certificated security issued in exchange for an uncertificated security. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner ~~thereof~~ of the shares a written notice containing the information required to be set forth or stated on certificates pursuant to division (A) of section 1701.25 of the Revised Code. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

Sec. 1701.33. The directors may declare dividends and distributions on outstanding shares of the corporation, subject to the following provisions:

(A) A dividend or distribution may be paid in cash, property, or shares of the corporation. The dividend or distribution shall not exceed the combination of the surplus of the corporation and the difference between the following:

(1) The reduction in surplus that results from the immediate recognition of the transition obligation under statement of financial accounting standards no. 106 (SFAS no. 106), issued by the financial accounting standards board;

(2) The aggregate amount of the transition obligation that would have been recognized as of the date of the declaration of a dividend or distribution if the corporation had elected to amortize its recognition of the transition obligation under statement of financial accounting standards no. 106.

(B) A dividend or distribution may be paid in treasury shares or in authorized but unissued shares. If paid in shares with par value, there shall be transferred from any surplus, however created, to stated capital, ~~such the~~ amount, if any, ~~as that~~ is necessary in order that the stated capital represented by the outstanding shares with par value, after giving effect to ~~such the~~ dividend or distribution, will be equal to the aggregate par value of ~~such the~~ shares, or, if the directors so determine, a greater amount shall be so transferred. If paid in shares without par value, there shall be transferred

from any surplus, however created, to stated capital, only ~~such~~ the amount, if any, ~~as that~~ the directors determine.

(C) No dividend or distribution shall be paid to the holders of shares of any class in violation of the rights of the holders of shares of any other class, or when the corporation is insolvent or there is reasonable ground to believe that by such payment it would be rendered insolvent;.

(D) No dividend or distribution on shares of any class shall be paid in shares of another class if any of the authorized shares of ~~such~~ the latter class are already outstanding, unless either the articles so provide or ~~such~~ the payment is authorized by the affirmative vote of the holders of at least two-thirds of the shares of the class in which payment is to be made;.

(E) If the articles of a corporation engaged in whole or in part in the exploitation of mines, timber, oil wells, gas wells, quarries, or other natural resources so provide, the corporation may compute its surplus for the purpose of paying dividends and distributions without making any deduction or allowance for the depletion of such assets incidental to the exploitation and sale of them;.

(F) When any portion of a dividend or distribution is paid out of capital surplus, the corporation, at the time of paying the ~~same~~ dividend or distribution, shall notify the shareholders receiving the ~~same~~ dividend or distribution as to the kind of surplus out of which the dividend or distribution is paid.

(G) When a dividend or distribution is to be paid in authorized but unissued shares of the corporation, the directors may provide that ~~such~~ the dividend or distribution shall also be paid on treasury shares of the same class.

(H) The effect of a dividend or distribution is measured as of the date the dividend or distribution is authorized if the payment occurs one hundred twenty days or less after the date of authorization or as of the date the payment is made if it occurs more than one hundred twenty days after the date of authorization. If a corporation pays a dividend or distribution by delivering an obligation or other evidence of indebtedness, the date of the delivery is the date upon which the effect of the dividend or distribution is measured.

(I) A corporation's indebtedness to a shareholder incurred by reason of a dividend or distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

Sec. 1701.45. (A) For any lawful purpose, including, without limitation, the determination of the shareholders who are entitled ~~to~~: (1) to receive

notice of or to vote at a meeting of shareholders; (2) to receive payment of any dividend or distribution; (3) to receive or exercise rights of purchase of or subscription for, or exchange or conversion of, shares or other securities, subject to contract rights with respect ~~thereto~~ to the shares or securities; or (4) to participate in the execution of written consents, waivers, or releases; the directors may fix a record date which shall not be a date earlier than the date on which the record date is fixed and, in the cases provided for in clauses (1), (2) and (3) above, shall not be more than sixty days, unless the articles or the regulations specify a shorter or a longer period for ~~such~~ that purpose, preceding the date of the meeting of the shareholders, or the date fixed for the payment of any dividend or distribution, or the date fixed for the receipt or the exercise of rights, as the case may be.

(B) If a meeting of the shareholders is called by persons entitled to call the ~~same~~, meeting or action is taken by shareholders without a meeting, and if the directors fail or refuse, within ~~such~~ the time as ~~that~~ the persons calling ~~such~~ the meeting or initiating ~~such~~ other action may request, to fix a record date for the purpose of clause (1) or (4) of division (A) of this section, then the persons calling ~~such~~ the meeting or initiating ~~such~~ other action may fix a record date for ~~such~~ purpose either of those purposes, subject to the limitations set forth in division (A) of this section.

(C) The record date for the purpose of clause (1) of division (A) of this section shall continue to be the record date for all adjournments of such meeting, unless the directors or the persons who ~~shall have~~ fixed the original record date ~~shall~~, subject to the limitations set forth in division (A) of this section, fix another record date, and in case a new record date is so fixed, notice ~~thereof~~ of the record date and of the date to which the meeting ~~shall have~~ has been adjourned shall be given to shareholders of record as of ~~said~~ that date in accordance with the same requirements as those applying to a meeting newly called.

(D) The directors may close the share transfer books against transfers of shares during the whole or any part of the period provided for in division (A) ~~above of this section~~, including the date of the meeting of the shareholders and the period ending with the date, if any, to which the meeting is adjourned.

(E) If no record date is fixed ~~therefor~~, the record date for determining the shareholders who are entitled to receive notice of, or who are entitled to vote at, a meeting of shareholders, shall be the date next preceding the day on which notice is given, or the date next preceding the day on which the meeting is held, as the case may be.

(F) The record date for a change of shares shall be the time when the

certificate of amendment or of amended articles effecting ~~such~~ the change is filed in the office of the secretary of state.

(G) If the directors do not fix a record date for determining shareholders entitled to payment of any dividend or distribution, the record date is the date that the directors authorize the dividend or distribution.

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 ~~his~~ the director's duties as a director, including ~~his~~ the duties as a member of any committee of the directors upon which ~~he~~ the director may serve, in good faith, in a manner ~~he~~ 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. In performing ~~his~~ 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 ~~he~~ 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.

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

(1) A director shall not be found to have violated ~~his~~ 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 ~~he~~ 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 ~~his~~ the director's service to the corporation as a director;

(c) ~~His~~ 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 ~~he~~ 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 (B)(1) to (3) of this section to be unwarranted.

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

(D) A director shall be liable in damages for any action ~~he~~ 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 ~~his~~ 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.

(E) For purposes of this section, a director, in determining what ~~he~~ the director reasonably believes to be in the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in ~~his~~ 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 may be best served by the continued independence of the corporation.

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

(1) A director who acts in any capacity other than ~~his~~ 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. 1701.63. (A) The regulations may provide for the creation by the directors of an executive committee or any other committee of the directors, to consist of one or more directors, and may authorize the delegation to any such committee of any of the authority of the directors, however conferred, other than the authority of filling vacancies among the directors or in any committee of the directors.

(B) The directors may appoint one or more directors as alternate members of any ~~such~~ committee described in division (A) of this section, who may take the place of any absent member or members at any meeting of the particular committee.

(C) Each ~~such~~ committee described in division (A) of this section shall serve at the pleasure of the directors, shall act only in the intervals between meetings of the directors, and shall be subject to the control and direction of the directors.

(D) Unless otherwise provided in the regulations or ordered by the directors, any ~~such~~ committee described in division (A) of this section may act by a majority of its members at a meeting or by a writing or writings signed by all of its members.

(E) Unless participation by members of any ~~such~~ committee described in division (A) of this section at a meeting by means of communications equipment is prohibited by the articles, the regulations, or an order of the directors, meetings of the particular committee may be held through any communications equipment if all persons participating can hear each other. Participation in a meeting pursuant to this division constitutes presence at the meeting.

(F) An act or authorization of an act by any ~~such~~ committee described in division (A) of this section within the authority delegated to it shall be as effective for all purposes as the act or authorization of the directors.

Sec. 1701.70. (A) If ~~an initial stated capital is not set forth~~ directors are not named in the articles, ~~then before the corporation begins business, or if~~

~~an initial stated capital is set forth in the articles, then before subscriptions to shares have been received in the amount of that initial stated capital and before the incorporators have elected directors,~~ the incorporators may adopt an amendment to the articles by a writing signed by them. If initial directors are named in the articles, or if the incorporators have elected directors and have not received subscriptions, then before subscriptions to shares have been received, the directors may adopt an amendment to the articles.

(B) The directors may adopt an amendment to the articles in the following cases:

(1) When and to the extent authorized by the articles, the directors may adopt an amendment ~~in respect of any unissued or treasury shares of any class;~~ determining, in whole or in part, the express terms, within the limits set forth in this chapter, of any class of shares before the issuance of any shares of that class, or of one or more series within a class before the issuance of shares of that series.

(2) When the corporation ~~shall have~~ has issued shares or obligations convertible into shares of the corporation; or ~~shall have~~ has granted options to purchase any shares, and ~~such the~~ conversion or option rights are set forth in the articles or have been approved by the same vote of shareholders as, at the time of ~~such the~~ approval, would have been required to amend the articles to authorize the shares required for ~~such that~~ purpose, and the corporation does not have sufficient authorized but unissued shares to satisfy ~~such those~~ conversion or option rights, the directors may adopt an amendment to authorize ~~such the~~ shares;.

(3) Whenever shares of any class have been redeemed, or have been surrendered to or acquired by the corporation upon conversion, exchange, purchase, or otherwise, the directors may adopt an amendment to reduce the authorized number of shares of ~~such the~~ class by the number so redeemed, surrendered, or acquired; and when all of the authorized shares of a class have been redeemed; or surrendered to or acquired by the corporation, the directors may adopt an amendment to eliminate from the articles all references to the shares of ~~such the~~ class and to make ~~such~~ other appropriate changes as that are required by ~~such the~~ elimination;.

(4) When articles have been amended and any change of issued or unissued shares provided for in the amendment or amended articles ~~shall have~~ has become effective, the directors may adopt an amendment to eliminate from the articles all references to the change of shares and to make ~~such any~~ other appropriate changes as that are required by ~~such the~~ elimination; however, ~~such~~ an amendment to articles that is so adopted by the directors shall contain a statement with respect to the authorized number

and the par value, if any, of the shares of each class.

(5) After a merger or consolidation, in which the surviving or new corporation is a domestic corporation, ~~shall have become~~ becomes effective, the directors may adopt an amendment:

(a) To eliminate from the articles any statement or provision pertaining exclusively to the merger or consolidation, or that was required to be set forth in the agreement of merger or consolidation and that would not be required in original articles or amendments to articles filed at the time the statement or provision was adopted;

(b) To make ~~such~~ any other appropriate changes required by that elimination.

An amendment to articles adopted by the directors under division (B)(5) of this section need not contain or continue any statement with respect to the amount of stated capital.

(C) If a vote on the adoption of an amendment is required by division (B)(4) of section 1701.71 of the Revised Code, any amendment to the articles adopted pursuant to division (B) of this section that creates a class or series of shares the express terms of which provide for the convertibility of the shares into shares of another class shall also require the approval of the holders, voting as a class, of any issued and outstanding shares into which the shares may be converted.

Sec. 1701.71. (A)(1) Except as otherwise provided in this division or division (A)(2) of this section, the shareholders, at a meeting held for ~~such~~ that purpose, may adopt an amendment, including any amendment that could be adopted by the directors, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal or, if the articles provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of such voting power, and by ~~such~~ the affirmative vote of the holders of shares of any particular class ~~as that~~ is required by the articles. If, at the time an amendment to eliminate cumulative voting rights permitted by division (B)(10) of section 1701.69 of the Revised Code is acted upon by the shareholders, a corporation 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, that amendment shall not be adopted if the votes of a sufficient number of shares are cast against the amendment that, if cumulatively voted at an election of all the directors, or all the directors of a particular class, as the case may be, would at the time the amendment is acted upon by the shareholders be sufficient to elect at least one director.

(2) Whenever under division (B) of this section the holders of shares of any particular class are entitled to vote as a class on the adoption of an amendment, ~~such~~ the amendment, in order to be adopted, must receive the affirmative vote of the holders of at least two-thirds of the shares of that class or, if the articles provide or permit, a greater or lesser proportion, but not less than a majority, of the shares of ~~such~~ that class. If the proposed amendment would authorize any particular corporate action that, under any applicable provision of law or under the existing articles, could be authorized only by or pursuant to a specified vote of shareholders, ~~such~~ the amendment, in order to be adopted, must receive the affirmative vote so specified.

(B) Regardless of limitations or restrictions in the articles on the voting rights of the shares of any class, the holders of shares of a particular class, and in the cases specified in divisions (B)(6), (7), and (8) of this section the holders of shares of every class, shall be entitled to vote as a class on the adoption of an amendment that does any of the following:

(1) Increases or decreases the par value of the issued shares of the particular class;

(2) Changes issued shares of the particular class, whether with or without par value, into a lesser number of shares of the same class or into the same or a different number of shares of any other class, with or without par value, ~~heretofore~~ previously or then authorized;

(3) Changes the express terms, or adds express terms, of the shares of the particular class in any manner substantially prejudicial to the holders of the shares;

(4) Changes the express terms of issued shares of any class senior to the particular class in any manner substantially prejudicial to the holders of shares of the particular class;

(5) Authorizes shares of another class that are convertible into, or authorizes the conversion of shares of another class into, shares of the particular class, or authorizes the directors to fix or alter conversion rights of shares of another class that are convertible into shares of the particular class; provided, however, both of the following apply:

(a) The failure to obtain the shareholders' approval only prevents the conversion of the shares until the shareholders' approval is obtained and does not otherwise affect the authorization or any other express terms of the shares;

(b) The articles may provide that no vote of the holders of common shares, as a class, is required in connection with the authorization of shares of any class that are convertible into common shares.

(6) Provides, in the case of an amendment described in division (B)(1) or (2) of this section, that the stated capital of the corporation shall be reduced or eliminated as a result of the amendment, or provides, in the case of an amendment described in division (B)(5) of this section, that the stated capital of the corporation shall be reduced or eliminated upon the exercise of such conversion rights, provided that any ~~such~~ reduction or elimination is consistent with section 1701.30 of the Revised Code;

(7) Changes substantially the purposes of the corporation, or provides that ~~hereafter~~ an a subsequent amendment to the articles may be adopted that changes substantially the purposes of the corporation;

(8) Changes a corporation into a nonprofit corporation.

(C) An amendment that changes a corporation into a nonprofit corporation shall contain a statement of purposes proper in the case of a nonprofit corporation; and a statement that, after the effective date of the amendment, the corporation shall be subject to the provisions of the Revised Code relating to nonprofit corporations. In the case of a corporation formed on or after June 9, 1927, the amendment also shall provide for the cancellation of all outstanding shares and the terms and considerations, if any, for ~~such~~ the cancellation. In the case of a corporation formed prior to June 9, 1927, the amendment may provide for ~~such~~ the cancellation of outstanding shares, but if it does not so provide, the amendment shall contain a provision forbidding the payment of dividends or distributions on any shares after the effective date of the amendment.

Sec. 1701.95. (A)(1) In addition to any other liabilities imposed by law upon directors of a corporation and except as provided in division (B) of this section, directors shall be jointly and severally liable to the corporation as provided in division (A)(2) of this section if they vote for or assent to any of the following:

(a) The payment of a dividend or distribution, the making of a distribution of assets to shareholders, or the purchase or redemption of the corporation's own shares, contrary to law or the articles;

(b) A distribution of assets to shareholders during the winding up of the affairs of the corporation, on dissolution or otherwise, without the payment of all known obligations of the corporation or without making adequate provision for their payment;

(c) The making of a loan, other than in the usual course of business, to an officer, director, or shareholder of the corporation, other than in either of the following cases:

(i) In the case of a savings and loan association or of a corporation engaged in banking or in the making of loans generally;

(ii) At the time of the making of the loan, a majority of the disinterested directors of the corporation voted for the loan and, taking into account the terms and provisions of the loan and other relevant factors, determined that the making of the loan could reasonably be expected to benefit the corporation.

(2)(a) In cases under division (A)(1)(a) of this section, directors shall be jointly and severally liable up to the amount of the dividend, distribution, or other payment, in excess of the amount that could have been paid or distributed without violation of law or the articles but not in excess of the amount that would inure to the benefit of the creditors of the corporation if it was insolvent at the time of the payment or distribution or there was reasonable ground to believe that by that action it would be rendered insolvent, plus the amount that was paid or distributed to holders of shares of any class in violation of the rights of holders of shares of any other class.

(b) In cases under division (A)(1)(b) of this section, directors shall be jointly and severally liable to the extent that the obligations of the corporation that are not otherwise barred by statute are not paid or for the payment of which adequate provision has not been made.

(c) In cases under division (A)(1)(c) of this section, directors shall be jointly and severally liable for the amount of the loan with interest on it at the rate specified in division (A) of section 1343.03 of the Revised Code until the amount has been paid.

(B)(1) A director is not liable under division (A)(1)(a) or (b) of this section if, in determining the amount available for any dividend, purchase, redemption, or distribution to shareholders, the director in good faith relied on a financial statement of the corporation prepared by an officer or employee of the corporation in charge of its accounts or certified by a public accountant or firm of public accountants, the director in good faith considered the assets to be of their book value, or the director followed what the director believed to be sound accounting and business practice.

(2) A director is not liable under division (A)(1)(c) of this section for making any loan to, or guaranteeing any loan to or other obligation of, an employee stock ownership plan, as defined in section 4975(e)(7) of the Internal Revenue Code.

(C) A director who is present at a meeting of the directors or a committee of the directors at which action on any matter is authorized or taken and who has not voted for or against the action shall be presumed to have voted for the action unless that director's written dissent from the action is filed, either during the meeting or within a reasonable time after the adjournment of the meeting, with the person acting as secretary of the

meeting or with the secretary of the corporation.

(D) A shareholder who knowingly receives any dividend, distribution, or payment made contrary to law or the articles shall be liable to the corporation for the amount received by that shareholder that is in excess of the amount that could have been paid or distributed without violation of law or the articles.

(E) A director against whom a claim is asserted under or pursuant to this section and who is held liable on the claim shall be entitled to contribution, on equitable principles, from other directors who also are liable. In addition, any director against whom a claim is asserted under or pursuant to this section or who is held liable shall have a right of contribution from the shareholders who knowingly received any dividend, distribution, or payment made contrary to law or the articles, and those shareholders as among themselves also shall be entitled to contribution in proportion to the amounts received by them respectively.

(F) No action shall be brought by or on behalf of a corporation upon a cause of action arising under division (A)(1)(a) or ~~(2)(b)~~ of this section after two years from the day on which the violation occurs.

(G) Nothing contained in this section shall preclude a creditor whose claim is unpaid from exercising the rights that that creditor otherwise would have by law to enforce that creditor's claim against assets of the corporation paid or distributed to shareholders.

(H) The failure of a corporation to observe corporate formalities relating to meetings of directors or shareholders in connection with the management of the corporation's affairs shall not be considered a factor tending to establish that the shareholders have personal liability for corporate obligations.

SECTION 2. That existing sections 1151.38, 1151.61, 1701.04, 1701.06, 1701.09, 1701.11, 1701.15, 1701.18, 1701.24, 1701.33, 1701.45, 1701.59, 1701.63, 1701.70, 1701.71, and 1701.95 and section 1701.10 of the Revised Code are hereby repealed.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

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 _____