(124th General Assembly)
(Substitute Senate Bill Number 110)

AN ACT

To amend sections 1701.11, 1701.16, 1701.58, and 1701.71 of the Revised Code to restrict shareholder removal of directors on a classified board of directors of issuing public corporations to removal for cause, to require in addition to existing law's requirements that an amendment to declassify such a board be with the approval of a majority of the shares held by voting disinterested shareholders, and to confirm the authority of directors to redeem options.

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

SECTION 1. That sections 1701.11, 1701.16, 1701.58, and 1701.71 of the Revised Code be amended to read as follows:

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 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;

(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.

(2) ~~The~~ Except as otherwise provided in division (A)(4) of this section, the regulations may be amended, or new regulations may be adopted, in 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~~ Except as otherwise provided in division (A)(4) of this section, if the articles or 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.

(4) Any amendment of regulations and any amended or new regulations adopted by shareholders of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code that would change or eliminate the classification of directors shall be adopted by the shareholders only at a meeting held for that purpose, by the affirmative vote of holders of shares entitling them to exercise the voting power of the corporation that is required for shareholders at a meeting under division (A)(2)(a) or (3) of this section, and also by the affirmative vote of the holders of a majority of disinterested shares voted on the proposal determined as specified in division (C)(9) of section 1704.01 of the Revised Code.

(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 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 an acquisition of the shares by shareholders, and reasonable sanctions for a violation of 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 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 that shall be operative only during an emergency. The emergency regulations may include any provisions 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 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 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 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 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 have been first elected to the office at the same time, by seniority in age.

Sec. 1701.16. (A) Unless the articles otherwise provide, a corporation by its directors may grant options to subscribe for or to purchase shares of any authorized class at the times and on the terms that are set forth in the securities, or in the contracts, warrants or instruments that evidence the options, which contracts, warrants, or instruments may be transferable or nontransferable and may be separable or inseparable from securities, upon the following conditions:

(1) If the shares are subject to preemptive rights and if the options are not granted to shareholders in satisfaction of their preemptive rights, the granting of the options must be authorized by the vote or consent of the shareholders or holders of shares of particular classes that then would be required to waive or release such preemptive rights. The vote or consent shall release the preemptive rights to the shares required to satisfy the options if and when exercised.

(2) If, at the time of granting the options, the corporation does not have authorized and unissued shares sufficient to satisfy the options if and when exercised, the granting of the options must be authorized by the vote of the shareholders or holders of shares of particular classes that then would be required to adopt an amendment to the articles for the purpose of increasing the authorized number of such shares, and the shares required to be issued upon the exercise of the options shall be provided by an amendment concurrently or thereafter adopted by the shareholders or the directors.

(B)(1) The securities, contracts, warrants, or instruments that evidence the options may contain any terms not repugnant to law for the protection of the holders of the options, including, but not limited to, the following:

(a) Restrictions upon the authorization or issuance of additional shares;

(b) Provisions for the adjustment of the option price;

(c) Provisions concerning rights in the event of reorganization, merger, consolidation, or sale of the entire assets of the corporation;

(d) Provisions for the reservation of authorized but unissued shares to satisfy the options;

(e) Restrictions upon the declaration or payment of dividends or distributions;

(f) Conditions on the exercise <u>or redemption</u> of the options, including,

subject to the limitation specified in division (B)(2) of this section, conditions that preclude the holder or holders of at least a specified number or percentage of the outstanding common shares of a corporation from exercising or redeeming the options.

(2) The express or implied authority conferred by division (B)(1) of this section or any other section of this chapter for securities, contracts, warrants, or instruments that evidence options to contain a condition on the exercise or redemption of options that precludes the holder or holders of at least a specified number or percentage of the outstanding common shares of a corporation from exercising or redeeming options shall apply only to the following:

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

(b) A corporation that has adopted a close corporation agreement pursuant to which options are granted, if the securities, contracts, warrants, or instruments that evidence the options contain a condition that precludes the holder or holders of at least a specified number or percentage of the outstanding common shares of that corporation from exercising or redeeming the options.

(C) As used in this section, "securities" includes obligations and shares of the corporation.

Sec. 1701.58. (A) The office of a director becomes vacant if ~~he~~ the director dies or resigns. A resignation shall take effect immediately or at such other time as the director may specify.

(B) The directors may remove any director and thereby create a vacancy in the board:

(1) If by order of court ~~he~~ the director has been found to be of unsound mind, or if ~~he~~ the director is adjudicated a bankrupt;

(2) If within sixty days, or within such other period of time as is prescribed in the articles or the regulations, from the date of ~~his~~ the director's election ~~he~~ the director does not qualify by accepting in writing ~~his~~ the director's election to such office or by acting at a meeting of the directors, and by acquiring the qualifications specified in the articles or the regulations; or if, for such period as is prescribed in the articles or the regulations, ~~he~~ the director ceases to hold the required qualifications.

(C) ~~If~~ Except as otherwise provided in this division, if the shareholders have a right to vote cumulatively in the election of directors, then, unless the articles or the regulations expressly provide that no director may be removed

from office or that removal of directors requires a greater vote than that specified in this division, all the directors, all the directors of a particular class, or any individual director may be removed from office, without assigning any cause, by the vote of the holders of a majority of the voting power entitling them to elect directors in place of those to be removed, except that, unless all the directors, or all the directors of a particular class, are removed, no individual director shall be removed if the votes of a sufficient number of shares are cast against ~~his~~ the director's removal 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 be sufficient to elect at least one director. In the case of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code, the shareholders may effect a removal under this division only for cause.

(D) If the shareholders do not have the right to vote cumulatively as a result of an amendment to the articles permitted by division (B)(10) of section 1701.69 of the Revised Code, then, unless the articles or the regulations expressly provide that no director may be removed from office or that removal of directors requires a greater vote than that specified in this division, all the directors, all the directors of a particular class, or any individual director may be removed from office, without assigning any cause, by the vote of the holders of a majority of the voting power entitling them to elect directors in place of those to be removed; except that in the case of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code, the shareholders may effect that removal only for cause.

(E) In case of any removal pursuant to division (C) or (D) of this section, a new director may be elected at the same meeting for the unexpired term of each director removed. Failure to elect a director to fill the unexpired term of any director removed is deemed to create a vacancy in the board.

(F) Unless the articles or the regulations otherwise provide, the remaining directors, though less than a majority of the whole authorized number of directors, may, by the vote of a majority of their number, fill any vacancy in the board for the unexpired term. Under this section, a vacancy exists if the shareholders increase the authorized number of directors but fail at the meeting at which such increase is authorized, or an adjournment of that meeting, to elect the additional directors provided for, or if the shareholders fail at any time to elect the whole authorized number of directors.

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 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 the affirmative vote of the holders of shares of any particular class that is required by the articles. Any amendment that would change or eliminate the classification of directors of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code shall be adopted by the shareholders only at a meeting expressly held for that purpose, by the affirmative votes required under this division, and also by the affirmative vote of the holders of at least a majority of disinterested shares voted on the proposal determined as specified in division (C)(9) of section 1704.01 of the Revised Code. 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, 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 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, 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, 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 reduction or elimination is consistent with section 1701.30 of the Revised Code;

(7) Changes substantially the purposes of the corporation, or provides that 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 the cancellation. In the case of a corporation formed prior to June 9, 1927, the amendment may provide for 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.

SECTION 2. That existing sections 1701.11, 1701.16, 1701.58, and 1701.71 of the Revised Code are hereby repealed.

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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.

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Director, Legislative Service Commission.

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

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Secretary of State.

File No. _____ Effective Date _____