

As Passed by the Senate

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S. B. No. 205

Senator Dolan

Cosponsors: Senators Eklund, Schiavoni, Bacon, Burke, Coley, Hackett, Hoagland, Hottinger, Huffman, Kunze, LaRose, Manning, McColley, Obhof, O'Brien, Oelslager, Peterson, Thomas, Williams, Wilson, Yuko

A BILL

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

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

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

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

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

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

(C) "State" means the United States; any state, territory, 17
insular possession, or other political subdivision of the United 18
States, including the District of Columbia; any foreign country 19
or nation; and any province, territory, or other political 20
subdivision of such foreign country or nation. 21

(D) "Articles" includes original articles of 22
incorporation, certificates of reorganization, amended articles, 23
and amendments to any of these, and, in the case of a 24
corporation created before September 1, 1851, the special 25
charter and any amendments to it made by special act of the 26
general assembly or pursuant to general law. 27

(E) "Incorporator" means a person who signed the original 28
articles of incorporation. 29

(F) "Shareholder" means a person whose name appears on the 30
books of the corporation as the owner of shares of the 31
corporation. Unless the articles, the regulations adopted by the 32
shareholders, the regulations adopted by the directors pursuant 33
to division (A) (1) of section 1701.10 of the Revised Code, or 34
the contract of subscription otherwise provides, "shareholder" 35
includes a subscriber to shares, whether the subscription is 36
received by the incorporators or pursuant to authorization by 37
the directors, and such shares shall be deemed to be outstanding 38
shares. 39

(G) "Person" includes, without limitation, a natural 40
person, a corporation, whether nonprofit or for profit, a 41
partnership, a limited liability company, an unincorporated 42
society or association, and two or more persons having a joint 43
or common interest. 44

(H) The location of the "principal office" of a 45

corporation is the place named as the principal office in its 46
articles. 47

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

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

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

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

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

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

(O) "Insolvent" means that the corporation is unable to 74

pay its obligations as they become due in the usual course of 75
its affairs. 76

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

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

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

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

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

transferred. 104

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

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

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

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

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

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

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

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

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

(Y) "Issuing public corporation" means a domestic corporation with fifty or more shareholders that has its

principal place of business, its principal executive offices, 163
assets having substantial value, or a substantial percentage of 164
its assets within this state, and as to which no valid close 165
corporation agreement exists under division (H) of section 166
1701.591 of the Revised Code. 167

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

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

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

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

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

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| (2) The acquisition by any person of any shares of an | 192 |
| issuing public corporation does not constitute a control share | 193 |
| acquisition for the purpose of section 1701.831 of the Revised | 194 |
| Code if the acquisition was or is consummated in, results from, | 195 |
| or is the consequence of any of the following circumstances: | 196 |
| (a) Prior to November 19, 1982; | 197 |
| (b) Pursuant to a contract existing prior to November 19, | 198 |
| 1982; | 199 |
| (c) By bequest or inheritance, by operation of law upon | 200 |
| the death of an individual, or by any other transfer without | 201 |
| valuable consideration, including a gift, that is made in good | 202 |
| faith and not for the purpose of circumventing section 1701.831 | 203 |
| of the Revised Code; | 204 |
| (d) Pursuant to the satisfaction of a pledge or other | 205 |
| security interest created in good faith and not for the purpose | 206 |
| of circumventing section 1701.831 of the Revised Code; | 207 |
| (e) Pursuant to a merger or consolidation adopted, or a | 208 |
| combination or majority share acquisition authorized, by vote of | 209 |
| the shareholders of the issuing public corporation in compliance | 210 |
| with section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.83 of | 211 |
| the Revised Code, or pursuant to a merger adopted in compliance | 212 |
| with section 1701.802 of the Revised Code; | 213 |
| (f) The person's being entitled, immediately thereafter, | 214 |
| to exercise or direct the exercise of voting power of the | 215 |
| issuing public corporation in the election of directors within | 216 |
| the same range theretofore attained by that person either in | 217 |
| compliance with the provisions of section 1701.831 of the | 218 |
| Revised Code or as a result solely of the issuing public | 219 |
| corporation's purchase of shares issued by it; | 220 |

(g) The person's being engaged in business as an 221
underwriter of securities who acquires the shares directly from 222
the issuing public corporation or an affiliate or associate of 223
the issuing public corporation through its participation in good 224
faith in a firm commitment underwriting registered under the 225
"Securities Act of 1933," 15 U.S.C. 77a et seq., and not for the 226
purpose of circumventing section 1701.831 of the Revised Code. 227

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

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

the acquisition, directly or indirectly, alone or with others, 252
to exercise or direct the exercise of voting power of the 253
corporation in the election of directors in excess of the range 254
of voting power authorized pursuant to section 1701.831 of the 255
Revised Code, or deemed to be so authorized under division (Z) 256
(2) of this section. 257

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

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

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

(a) An acquiring person; 268

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

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

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

change in control of the issuing public corporation or its 281
assets, and ending on the record date established by the 282
directors pursuant to section 1701.45 and division (D) of 283
section 1701.831 of the Revised Code, if either of the following 284
applies: 285

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

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

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

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

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

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| (EE) "Entity" means any of the following: | 310 |
| (1) A for profit corporation existing under the laws of this state or any other state; | 311 312 |
| (2) Any of the following organizations existing under the laws of this state, the United States, or any other state: | 313 314 |
| (a) A business trust or association; | 315 |
| (b) A real estate investment trust; | 316 |
| (c) A common law trust; | 317 |
| (d) An unincorporated business or for profit organization, including a general or limited partnership; | 318 319 |
| (e) A limited liability company; | 320 |
| (f) A nonprofit corporation. | 321 |
| <u>(FF) "Benefit corporation" means a corporation that sets forth in its articles of incorporation one or more beneficial purposes among the purposes for which the corporation is formed.</u> | 322 323 324 |
| <u>(GG) "Beneficial purpose" means seeking to have a bona fide positive effect or to reduce one or more bona fide negative effects on persons, entities, communities, or interests other than shareholders in their capacity as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.</u> | 325 326 327 328 329 330 331 |
| Sec. 1701.03. (A) <u>(1)</u> A corporation may be formed under this chapter for any purpose or combination of purposes for which individuals lawfully may associate themselves, except that, if the Revised Code contains special provisions pertaining to the formation of any designated type of corporation other | 332 333 334 335 336 |

than a professional association, as defined in section 1785.01 337
of the Revised Code, a corporation of that type shall be formed 338
in accordance with the special provisions. 339

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

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

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

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

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

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

for patients, medical and hygienic treatment of patients, and 366
instruction of nurses in the treatment of disease and in 367
hygiene, a corporation for the purpose of providing 368
architectural, landscape architectural, professional 369
engineering, or surveying services or any combination of those 370
types of services, and a corporation for the purpose of 371
providing a combination of the professional services, as defined 372
in section 1785.01 of the Revised Code, of optometrists 373
authorized under Chapter 4725. of the Revised Code, 374
chiropractors authorized under Chapter 4734. of the Revised Code 375
to practice chiropractic or acupuncture, psychologists 376
authorized under Chapter 4732. of the Revised Code, registered 377
or licensed practical nurses authorized under Chapter 4723. of 378
the Revised Code, pharmacists authorized under Chapter 4729. of 379
the Revised Code, physical therapists authorized under sections 380
4755.40 to 4755.56 of the Revised Code, occupational therapists 381
authorized under sections 4755.04 to 4755.13 of the Revised 382
Code, mechanotherapists authorized under section 4731.151 of the 383
Revised Code, doctors of medicine and surgery, osteopathic 384
medicine and surgery, or podiatric medicine and surgery 385
authorized under Chapter 4731. of the Revised Code, and licensed 386
professional clinical counselors, licensed professional 387
counselors, independent social workers, social workers, 388
independent marriage and family therapists, or marriage and 389
family therapists authorized under Chapter 4757. of the Revised 390
Code. 391

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

services, as defined in section 1785.01 of the Revised Code, in 397
this state or to regulate the practice of any profession that is 398
within the jurisdiction of the agency, board, commission, 399
department, office, or other entity, notwithstanding that an 400
individual is a director, officer, employee, or other agent of a 401
corporation formed under this chapter and is rendering 402
professional services or engaging in the practice of a 403
profession through a corporation formed under this chapter or 404
that the organization is a corporation formed under this 405
chapter. 406

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

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

the Revised Code, and licensed professional clinical counselors, 428
licensed professional counselors, independent social workers, 429
social workers, independent marriage and family therapists, or 430
marriage and family therapists authorized under Chapter 4757. of 431
the Revised Code shall control the professional clinical 432
judgment exercised within accepted and prevailing standards of 433
practice of a licensed, certificated, or otherwise legally 434
authorized optometrist, chiropractor, chiropractor practicing 435
acupuncture through the state chiropractic board, psychologist, 436
nurse, pharmacist, physical therapist, occupational therapist, 437
mechanotherapist, doctor of medicine and surgery, osteopathic 438
medicine and surgery, or podiatric medicine and surgery, 439
licensed professional clinical counselor, licensed professional 440
counselor, independent social worker, social worker, independent 441
marriage and family therapist, or marriage and family therapist 442
in rendering care, treatment, or professional advice to an 443
individual patient. 444

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

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

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| forth all of the following: | 459 |
| (1) The name of the corporation, which shall be in | 460 |
| compliance with division (A) of section 1701.05 of the Revised | 461 |
| Code; | 462 |
| (2) The place in this state where the principal office of | 463 |
| the corporation is to be located; | 464 |
| (3) The authorized number and the par value per share of | 465 |
| shares with par value, and the authorized number of shares | 466 |
| without par value, except that the articles of a banking, safe | 467 |
| deposit, trust, or insurance corporation shall not authorize | 468 |
| shares without par value; the express terms, if any, of the | 469 |
| shares; and, if the shares are classified, the designation of | 470 |
| each class, the authorized number and par value per share, if | 471 |
| any, of the shares of each class, and the express terms of the | 472 |
| shares of each class; | 473 |
| (4) If the corporation is to have an initial stated | 474 |
| capital, the amount of that stated capital. | 475 |
| (B) The articles also may set forth any of the following: | 476 |
| (1) The names of the individuals who are to serve as | 477 |
| initial directors; | 478 |
| (2) The purpose or purposes for which the corporation is | 479 |
| formed, but in the absence of a statement of the purpose or | 480 |
| purposes or except as expressly set forth in such statement, the | 481 |
| purpose for which any corporation is formed is to engage in any | 482 |
| lawful act or activity for which a corporation may be formed | 483 |
| under this chapter, and all lawful acts and activities of the | 484 |
| corporation are within the purposes of the corporation; | 485 |
| (3) <u>Any priority or other method for balancing the</u> | 486 |

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| <u>purposes for which the corporation is formed;</u> | 487 |
| <u>(4)</u> Any lawful provision for the purpose of defining, | 488 |
| limiting, or regulating the exercise of the authority of the | 489 |
| corporation, the incorporators, the directors, the officers, the | 490 |
| shareholders, or the holders of any class of shares; | 491 |
| (4) <u>(5)</u> Any provision that may be set forth in the | 492 |
| regulations; | 493 |
| (5) <u>(6)</u> A provision specifying the period of existence of | 494 |
| the corporation if it is to be otherwise than perpetual; | 495 |
| (6) <u>(7)</u> A provision eliminating the right of every | 496 |
| shareholder to vote cumulatively in the election of directors; | 497 |
| (7) <u>(8)</u> Any additional provision permitted by this | 498 |
| chapter. | 499 |
| (C) A written appointment of a statutory agent for the | 500 |
| purposes set forth in section 1701.07 of the Revised Code shall | 501 |
| be filed with the articles, unless the corporation belongs to | 502 |
| one of the classes mentioned in division (O) of that section. | 503 |
| (D) The legal existence of the corporation begins upon the | 504 |
| filing of the articles or on a later date specified in the | 505 |
| articles that is not more than ninety days after filing, and, | 506 |
| unless the articles otherwise provide, its period of existence | 507 |
| shall be perpetual. | 508 |
| Sec. 1701.05. (A) Except as provided in this section, and | 509 |
| in sections 1701.75, 1701.78, and 1701.82 of the Revised Code, | 510 |
| which sections relate to the reorganization, merger, and | 511 |
| consolidation of corporations, the corporate name of a domestic | 512 |
| corporation shall comply with all of the following: | 513 |
| (1) It shall end with or include the word or abbreviation | 514 |

"company," "co.," "corporation," "corp.," "incorporated," or 515
"inc." 516

(2) It shall not include the word "benefit" or "b-" in its 517
name as a prefix to "company," "co.," "corporation," "corp.," 518
"incorporated," or "inc.," unless the corporation is a benefit 519
corporation or had a name which included such combination of 520
words prior to the effective date of this bill. 521

(3) It shall be distinguishable upon the records in the 522
office of the secretary of state from all of the following: 523

(a) The name of any other corporation, whether nonprofit 524
or for profit and whether that of a domestic or of a foreign 525
corporation authorized to do business in this state; 526

(b) The name of any limited liability company registered 527
in the office of the secretary of state pursuant to Chapter 528
1705. of the Revised Code, whether domestic or foreign; 529

(c) The name of any limited liability partnership 530
registered in the office of the secretary of state pursuant to 531
Chapter 1775. or 1776. of the Revised Code, whether domestic or 532
foreign; 533

(d) The name of any limited partnership registered in the 534
office of the secretary of state pursuant to Chapter 1782. of 535
the Revised Code, whether domestic or foreign; 536

(e) Any trade name the exclusive right to which is at the 537
time in question registered in the office of the secretary of 538
state pursuant to Chapter 1329. of the Revised Code. 539

~~(3)~~(4) It shall not contain any language that indicates 540
or implies that the corporation is connected with a government 541
agency of this state, another state, or the United States. 542

(B) The secretary of state shall determine for purposes of 543
this section whether a name is "distinguishable" from another 544
name upon the secretary of state's records. Without excluding 545
other names that may not constitute distinguishable names in 546
this state, a name is not considered distinguishable from 547
another name for purposes of this section solely because it 548
differs from the other name in only one or more of the following 549
manners: 550

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

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

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

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

(D) In case of judicial sale or judicial transfer, by sale 570
or transfer of good will or otherwise, of the right to use the 571

name of a corporation, whether nonprofit or for profit, and 572
whether that of a domestic corporation or of a foreign 573
corporation authorized to exercise its corporate privileges in 574
this state or to do business in this state, the secretary of 575
state, at the instance of the purchaser or transferee of such 576
right, shall accept for filing articles of a corporation with a 577
name the same as or similar to the name of such other 578
corporation, if there also is filed in the office of the 579
secretary of state a certified copy of the decree or order of 580
court confirming or otherwise evidencing the purchase or 581
transfer. 582

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

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

written statements or reports, consisting of: 603

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

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

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

(B) The financial statements shall have appended to them 632

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

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

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

(2) The earlier of the following:

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

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

(D) If the meeting described in division (A) of this section is to be held solely by means of communications

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

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

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

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

(1) One or more directors, officers, or employees of the corporation who the director reasonably believes are reliable

and competent in the matters prepared or presented; 692

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

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

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

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

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

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

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

(2) A director shall not be considered to be acting in 720
good faith if the director has knowledge concerning the matter 721
in question that would cause reliance on information, opinions, 722
reports, or statements that are prepared or presented by the 723
persons described in divisions (C) (1) to (3) of this section to 724
be unwarranted. 725

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

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

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

(F) For purposes of this section, a director, in 748
determining what the director reasonably believes to be in the 749

best interests of the corporation, shall consider the interests 750
of the corporation's shareholders and any beneficial purposes 751
and related provisions set forth in the corporation's articles. 752
The director shall consider any priority among purposes provided 753
in the corporation's articles and shall consider any other 754
method for balancing the purposes of the corporation that is set 755
forth in the corporation's articles. In addition, the director 756
may, in the director's discretion, ~~may~~ consider any of the 757
following: 758

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

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

(3) Community and societal considerations; 762

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

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

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

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

holders of a majority of the outstanding shares of the 779
corporation receiving a greater consideration for their shares 780
than other shareholders. 781

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

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

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

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

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

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

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

(2) The right of one or more shareholders to dissolve the 806

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|---|--|
| corporation at will or on the occurrence of a specified event or contingency; | 807 808 |
| (3) The obligation to vote the shares of a person as specified, or voting requirements, including the requirement of the affirmative vote or approval of all shareholders or of all directors, which voting requirements need not appear in the articles unless the close corporation agreement is set forth in the articles; | 809 810 811 812 813 814 |
| (4) The designation of the persons who shall be the officers or directors of the corporation; | 815 816 |
| (5) The authority of any individual who holds more than one office of the corporation to execute, acknowledge, or certify in more than one capacity any instrument required to be executed, acknowledged, or certified by the holders of two or more offices; | 817 818 819 820 821 |
| (6) The terms and conditions of employment of an officer or employee of the corporation without regard to the period of employment; | 822 823 824 |
| (7) The declaration and payment of dividends or distributions or the division of profits; | 825 826 |
| (8) Elimination of the board of directors, restrictions upon the exercise by directors of their authority, or delegation to one or more shareholders or other persons of all or part of the authority of the directors; | 827 828 829 830 |
| (9) Conferring on any shareholder or agent of a shareholder the absolute right, without the necessity of stating any purpose, to examine and copy during usual business hours any of the corporation's records or documents to which reference is made in section 1701.37 of the Revised Code; | 831 832 833 834 835 |

(10) Prohibition of or limitation upon the issuance or 836
sale by the corporation of any of its shares, including treasury 837
shares, without the affirmative vote or approval of the holders 838
of all or a proportion of the outstanding shares or unless other 839
specified terms and conditions are met; 840

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

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

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

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

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

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

Any certificate that is required to be filed with the 865
secretary of state with respect to the authorization or taking 866
of any action pursuant to a close corporation agreement that 867
would not be permitted under this chapter in the absence of 868
division (C) of this section shall recite the existence of a 869
close corporation agreement that authorizes the action. 870

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

(2) A close corporation agreement that was in existence on 894
December 31, 1993, and that did not specify on that date and 895

that has not specified since that date the proportion of shares 896
required to amend or terminate the close corporation agreement 897
may be amended or terminated by the affirmative vote or written 898
consent of the holders, then parties to the close corporation 899
agreement, of four-fifths of the outstanding shares of each 900
class. 901

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

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

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

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

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

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

(1) The shareholders, for the purposes of any statute or 920
rule of law relating to corporations, are deemed to be the 921
directors and to have all of the liabilities, immunities, 922
defenses, and indemnifications of directors with respect to any 923
action or inaction of the corporation, except that any 924

shareholder who is not permitted by the articles, the 925
regulations, or the close corporation agreement to vote on or 926
assent to an action or assent to an inaction shall not be liable 927
as a director with respect to the action or inaction. 928

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

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

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

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

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

(c) Shares of the corporation have been included in a 954
registration statement that has become effective pursuant to the 955
"Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and 956
the corporation is required to file periodic reports and 957
information pursuant to section 15(d) of the "Securities 958
Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended. 959

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

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

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

| | |
|---|--|
| (b) That person does either of the following: | 984 |
| (i) Fails to deliver a written rejection of the close corporation agreement to the corporation within ninety days after the date on which that person first received notice of the existence of the close corporation agreement or within three years of the date of transfer or issuance, whichever is earlier; | 985 986 987 988 989 |
| (ii) Fails, within thirty days after the date on which that person receives a written offer by the corporation to purchase the shares from that person for the full amount paid for the shares, to accept the offer. | 990 991 992 993 |
| (3) If shares of a corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement and that person accepts an offer by the corporation to purchase the shares, the corporation shall pay to that person the full amount paid for the shares within seven days after that person delivers to the corporation the certificate for the shares and proof of payment of the amount paid for the shares. If the amount paid for the shares included property other than cash, the corporation, at its option, may return the property to that person or may pay to that person cash in an amount equal to the fair market value of the property on the date of transfer or issuance of the shares, as determined in good faith by the corporation. A shareholder who transfers shares to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement is liable to the corporation, upon the corporation's written demand made upon the shareholder within ninety days after the date on which the corporation made | 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 |

payment for the shares, for the full amount that the corporation 1014
paid for the shares. Upon receiving payment in that amount from 1015
the shareholder, the corporation shall transfer the shares to 1016
the shareholder. 1017

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

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

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

(J) A close corporation agreement, in the sound discretion 1041
of a court exercising its equity powers, is enforceable by 1042
injunction, specific performance, or other relief that the court 1043

may determine to be fair and appropriate. 1044

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

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

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

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

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

(1) Keep the books of account, minutes of proceedings, or 1072

records of shareholders as required by section 1701.37 of the Revised Code; 1073
1074

(2) Comply with division (C) of section 1701.11 of the Revised Code with respect to mailing a copy of an amendment to, or copy of new, regulations; 1075
1076
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(3) Perform the obligation imposed on it by division (C) of section 1701.25 of the Revised Code; 1078
1079

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

(5) Lay before the shareholders or make available in the manner provided for in division (D) of section 1701.38 of the Revised Code at a proper meeting of shareholders, upon request of any shareholder at such meeting, such financial statement, written statement, or report, as applicable; 1085
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(6) Produce at a meeting of shareholders, upon request of any shareholder at such meeting, the list or lists of shareholders required by section 1701.37 of the Revised Code; shall be subject to a forfeiture of one hundred dollars and in cases under paragraphs (1), (2), (3), and (4) to a further forfeiture of ten dollars for every day that such failure continues, beginning, in cases under paragraphs (1) or (2), with the fifth day after written request by a shareholder that the corporation comply with said respective paragraphs, and in cases under paragraphs (3) and (4) beginning with the day following the day on which the corporation becomes delinquent in complying with said paragraph, which amount shall be paid to every 1090
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shareholder making such request. The right of a shareholder to 1102
enforce any such forfeiture is in addition to all other 1103
remedies. 1104

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

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

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

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

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

(2) Persons who, in the aggregate, hold twenty-five per cent of all shares outstanding and entitled to vote at a meeting of the shareholders, unless the articles, the regulations adopted by the shareholders, or the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code prescribe a smaller proportion; 1138
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(3) If the benefit corporation has issued and has outstanding shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, persons who, in the aggregate, hold shares of at least two million dollars in market value; 1144
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(4) Any other person that the articles or regulations authorize to bring such an action. 1150
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(D) The provisions of divisions (B) and (C) of this section do not alter the obligation of a benefit corporation to comply with all laws otherwise applicable to a domestic corporation or contracts by which the benefit corporation is bound, and divisions (B) and (C) of this section shall not limit or restrict the imposition of any remedy available under such otherwise applicable laws or contracts. 1152
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Section 2. That existing sections 1701.01, 1701.03, 1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 1701.94 of the 1159
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Revised Code are hereby repealed.

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