

## **As Passed by the House**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Sub. S. B. No. 21**

**Senator Dolan**

**Cosponsors: Senators Brenner, Thomas, Hackett, Maharath, Coley, Antonio, Burke, Craig, Eklund, Gavarone, Hill, Hoagland, Huffman, M., Huffman, S., Kunze, Manning, McColley, Obhof, O'Brien, Peterson, Rulli, Schuring, Sykes, Terhar, Uecker, Williams, Wilson, Yuko Representatives Hambley, Ghanbari, Lang, Rogers, Smith, K.**

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## **A BILL**

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

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

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

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

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

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

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means an entity formed under the laws of another state. 16

(C) "State" means the United States; any state, territory,  
insular possession, or other political subdivision of the United  
States, including the District of Columbia; any foreign country  
or nation; and any province, territory, or other political  
subdivision of such foreign country or nation. 17  
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(D) "Articles" includes original articles of  
incorporation, certificates of reorganization, amended articles,  
and amendments to any of these, and, in the case of a  
corporation created before September 1, 1851, the special  
charter and any amendments to it made by special act of the  
general assembly or pursuant to general law. 22  
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(E) "Incorporator" means a person who signed the original  
articles of incorporation. 28  
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(F) "Shareholder" means a person whose name appears on the  
books of the corporation as the owner of shares of the  
corporation. Unless the articles, the regulations adopted by the  
shareholders, the regulations adopted by the directors pursuant  
to division (A)(1) of section 1701.10 of the Revised Code, or  
the contract of subscription otherwise provides, "shareholder"  
includes a subscriber to shares, whether the subscription is  
received by the incorporators or pursuant to authorization by  
the directors, and such shares shall be deemed to be outstanding  
shares. 30  
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(G) "Person" includes, without limitation, a natural  
person, a corporation, whether nonprofit or for profit, a  
partnership, a limited liability company, an unincorporated  
society or association, and two or more persons having a joint  
or common interest. 40  
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(H) The location of the "principal office" of a corporation is the place named as the principal office in its articles.	45 46 47
(I) The "express terms" of shares of a class are the statements expressed in the articles with respect to such shares.	48 49 50
(J) Shares of a class are "junior" to shares of another class when any of their dividend or distribution rights are subordinate to, or dependent or contingent upon, any right of, or dividend on, or distribution to, shares of such other class.	51 52 53 54
(K) "Treasury shares" means shares belonging to the corporation and not retired that have been either issued and thereafter acquired by the corporation or paid as a dividend or distribution in shares of the corporation on treasury shares of the same class; such shares shall be deemed to be issued, but they shall not be considered as an asset or a liability of the corporation, or as outstanding for dividend or distribution, quorum, voting, or other purposes, except, when authorized by the directors, for dividends or distributions in authorized but unissued shares of the corporation of the same class.	55 56 57 58 59 60 61 62 63 64
(L) To "retire" a share means to restore it to the status of an authorized but unissued share.	65 66
(M) "Redemption price of shares" means the amount required by the articles to be paid on redemption of shares.	67 68
(N) "Liquidation price" means the amount or portion of assets required by the articles to be distributed to the holders of shares of any class upon dissolution, liquidation, merger, or consolidation of the corporation, or upon sale of all or substantially all of its assets.	69 70 71 72 73

(O) "Insolvent" means that the corporation is unable to pay its obligations as they become due in the usual course of its affairs.	74 75 76
(P) "Parent corporation" or "parent" means a domestic or foreign corporation that owns and holds of record shares of another corporation, domestic or foreign, entitling the holder of the shares at the time to exercise a majority of the voting power in the election of the directors of the other corporation without regard to voting power that may thereafter exist upon a default, failure, or other contingency; "subsidiary corporation" or "subsidiary" means a domestic or foreign corporation of which another corporation, domestic or foreign, is the parent.	77 78 79 80 81 82 83 84 85
(Q) "Combination" means a transaction, other than a merger or consolidation, wherein either of the following applies:	86 87
(1) Voting shares of a domestic corporation are issued or transferred in consideration in whole or in part for the transfer to itself or to one or more of its subsidiaries, domestic or foreign, of all or substantially all the assets of one or more corporations, domestic or foreign, with or without good will or the assumption of liabilities;	88 89 90 91 92 93
(2) Voting shares of a foreign parent corporation are issued or transferred in consideration in whole or in part for the transfer of such assets to one or more of its domestic subsidiaries.	94 95 96 97
"Transferee corporation" in a combination means the corporation, domestic or foreign, to which the assets are transferred, and "transferor corporation" in a combination means the corporation, domestic or foreign, transferring such assets and to which, or to the shareholders of which, the voting shares	98 99 100 101 102

of the domestic or foreign corporation are issued or transferred.	103 104
(R) "Majority share acquisition" means the acquisition of shares of a corporation, domestic or foreign, entitling the holder of the shares to exercise a majority of the voting power in the election of directors of such corporation without regard to voting power that may thereafter exist upon a default, failure, or other contingency, by either of the following:	105 106 107 108 109 110
(1) A domestic corporation in consideration in whole or in part, for the issuance or transfer of its voting shares;	111 112
(2) A domestic or foreign subsidiary in consideration in whole or in part for the issuance or transfer of voting shares of its domestic parent.	113 114 115
(S) "Acquiring corporation" in a combination means the domestic corporation whose voting shares are issued or transferred by it or its subsidiary or subsidiaries to the transferor corporation or corporations or the shareholders of the transferor corporation or corporations; and "acquiring corporation" in a majority share acquisition means the domestic corporation whose voting shares are issued or transferred by it or its subsidiary in consideration for shares of a domestic or foreign corporation entitling the holder of the shares to exercise a majority of the voting power in the election of directors of such corporation.	116 117 118 119 120 121 122 123 124 125 126
(T) When used in connection with a combination or a majority share acquisition, "voting shares" means shares of a corporation, domestic or foreign, entitling the holder of the shares to vote at the time in the election of directors of such corporation without regard to voting power which may thereafter	127 128 129 130 131

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.	133 134 135 136 137 138 139 140
(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.	141 142 143 144 145 146 147 148 149 150
(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.	151 152 153 154 155 156 157
(X) "Close corporation agreement" means an agreement that satisfies the three requirements of division (A) of section 1701.591 of the Revised Code.	158 159 160

(Y) "Issuing public corporation" means a domestic	161
corporation with fifty or more shareholders that has its	162
principal place of business, its principal executive offices,	163
assets having substantial value, or a substantial percentage of	164
its assets within this state, and as to which no valid close	165
corporation agreement exists under division (H) of section	166
1701.591 of the Revised Code.	167
(Z) (1) "Control share acquisition" means the acquisition,	168
directly or indirectly, by any person of shares of an issuing	169
public corporation that, when added to all other shares of the	170
issuing public corporation in respect of which the person may	171
exercise or direct the exercise of voting power as provided in	172
this division, would entitle the person, immediately after the	173
acquisition, directly or indirectly, alone or with others, to	174
exercise or direct the exercise of the voting power of the	175
issuing public corporation in the election of directors within	176
any of the following ranges of such voting power:	177
(a) One-fifth or more but less than one-third of such	178
voting power;	179
(b) One-third or more but less than a majority of such	180
voting power;	181
(c) A majority or more of such voting power.	182
A bank, broker, nominee, trustee, or other person that	183
acquires shares in the ordinary course of business for the	184
benefit of others in good faith and not for the purpose of	185
circumventing section 1701.831 of the Revised Code shall,	186
however, be deemed to have voting power only of shares in	187
respect of which such person would be able, without further	188
instructions from others, to exercise or direct the exercise of	189

votes on a proposed control share acquisition at a meeting of 190  
shareholders called under section 1701.831 of the Revised Code. 191

(2) The acquisition by any person of any shares of an 192  
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, 198 198  
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 corporation's purchase of shares issued by it;	219 220
(g) The person's being engaged in business as an underwriter of securities who acquires the shares directly from the issuing public corporation or an affiliate or associate of the issuing public corporation through its participation in good faith in a firm commitment underwriting registered under the "Securities Act of 1933," 15 U.S.C. 77a et seq., and not for the purpose of circumventing section 1701.831 of the Revised Code.	221 222 223 224 225 226 227
The acquisition by any person of shares of an issuing public corporation in a manner described under division (Z) (2) of this section shall be deemed a control share acquisition authorized pursuant to section 1701.831 of the Revised Code within the range of voting power under division (Z) (1) (a), (b), or (c) of this section that such person is entitled to exercise after the acquisition, provided, in the case of an acquisition in a manner described under division (Z) (2) (c) or (d) of this section, the transferor of shares to such person had previously obtained any authorization of shareholders required under section 1701.831 of the Revised Code in connection with the transferor's acquisition of shares of the issuing public corporation.	228 229 230 231 232 233 234 235 236 237 238 239 240
(3) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code from any person whose control share acquisition previously had been authorized by shareholders in compliance with section 1701.831 of the Revised Code, or from any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for division	241 242 243 244 245 246 247 248

(Z) (2) or (3) of this section, does not constitute a control share acquisition for the purpose of section 1701.831 of the Revised Code unless such acquisition entitles the person making the acquisition, directly or indirectly, alone or with others, to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of voting power authorized pursuant to section 1701.831 of the Revised Code, or deemed to be so authorized under division (Z) (2) of this section.	249 250 251 252 253 254 255 256 257
(AA) "Acquiring person" means any person who has delivered an acquiring person statement to an issuing public corporation pursuant to section 1701.831 of the Revised Code.	258 259 260
(BB) "Acquiring person statement" means a written statement that complies with division (B) of section 1701.831 of the Revised Code.	261 262 263
(CC) (1) "Interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:	264 265 266 267
(a) An acquiring person;	268
(b) Any officer of the issuing public corporation elected or appointed by the directors of the issuing public corporation;	269 270
(c) Any employee of the issuing public corporation who is also a director of such corporation;	271 272
(d) Any person that acquires such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposal for, or expression of interest in, a control share acquisition of the issuing public corporation; a transaction pursuant to section 1701.76, 1701.78,	273 274 275 276 277

1701.781, 1701.79, 1701.791, 1701.83, or 1701.86 of the Revised 278  
Code that involves the issuing public corporation or its assets; 279  
or any action that would directly or indirectly result in a 280  
change in control of the issuing public corporation or its 281  
assets, and ending on the record date established by the 282  
directors pursuant to section 1701.45 and division (D) of 283  
section 1701.831 of the Revised Code, if either of the following 284  
applies: 285

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

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

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

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

(DD) "Certificated security" and "uncertificated security"	307
have the same meanings as in section 1308.01 of the Revised	308
Code.	309
(EE) "Entity" means any of the following:	310
(1) A for profit corporation existing under the laws of	311
this state or any other state;	312
(2) Any of the following organizations existing under the	313
laws of this state, the United States, or any other state:	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,	318
including a general or limited partnership;	319
(e) A limited liability company;	320
(f) A nonprofit corporation.	321
<u>(FF) "Benefit corporation" means a corporation that sets</u>	322
<u>forth in its articles of incorporation one or more beneficial</u>	323
<u>purposes among the purposes for which the corporation is formed.</u>	324
<u>(GG) "Beneficial purpose" means seeking to have a bona</u>	325
<u>fide positive effect or to reduce one or more bona fide negative</u>	326
<u>effects of an artistic, charitable, cultural, economic,</u>	327
<u>educational, environmental, literary, medical, religious,</u>	328
<u>scientific, or technological nature for the benefit of persons,</u>	329
<u>entities, communities, or interests other than shareholders in</u>	330
<u>their capacity as shareholders.</u>	331
<b>Sec. 1701.03. (A) (1)</b> A corporation may be formed under	332
this chapter for any purpose or combination of purposes for	333

which individuals lawfully may associate themselves, except 334  
that, if the Revised Code contains special provisions pertaining 335  
to the formation of any designated type of corporation other 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

(5) A corporation that meets both of the following shall 360  
not amend its articles of incorporation to include a beneficial 361  
purpose: 362

<u>(a) The corporation has issued and has outstanding shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.</u>	363
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<u>(b) The initial articles of the corporation did not include a beneficial purpose.</u>	367
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 (B) On and after July 1, 1994, a corporation may be formed under this chapter for the purpose of carrying on the practice of any profession, including, but not limited to, a corporation for the purpose of providing public accounting or certified public accounting services, a corporation for the erection, owning, and conducting of a sanitarium for receiving and caring for patients, medical and hygienic treatment of patients, and instruction of nurses in the treatment of disease and in hygiene, a corporation for the purpose of providing architectural, landscape architectural, professional engineering, or surveying services or any combination of those types of services, and a corporation for the purpose of providing a combination of the professional services, as defined in section 1785.01 of the Revised Code, of optometrists authorized under Chapter 4725. of the Revised Code, chiropractors authorized under Chapter 4734. of the Revised Code to practice chiropractic or acupuncture, psychologists authorized under Chapter 4732. of the Revised Code, registered or licensed practical nurses authorized under Chapter 4723. of the Revised Code, pharmacists authorized under Chapter 4729. of the Revised Code, physical therapists authorized under sections 4755.40 to 4755.56 of the Revised Code, occupational therapists authorized under sections 4755.04 to 4755.13 of the Revised Code, mechanotherapists authorized under section 4731.151 of the Revised Code, doctors of medicine and surgery, osteopathic	369
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medicine and surgery, or podiatric medicine and surgery authorized under Chapter 4731. of the Revised Code, and licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, or marriage and family therapists authorized under Chapter 4757. of the Revised Code.	394 395 396 397 398 399 400
This chapter does not restrict, limit, or otherwise affect the authority or responsibilities of any agency, board, commission, department, office, or other entity to license, register, and otherwise regulate the professional conduct of individuals or organizations of any kind rendering professional services, as defined in section 1785.01 of the Revised Code, in this state or to regulate the practice of any profession that is within the jurisdiction of the agency, board, commission, department, office, or other entity, notwithstanding that an individual is a director, officer, employee, or other agent of a corporation formed under this chapter and is rendering professional services or engaging in the practice of a profession through a corporation formed under this chapter or that the organization is a corporation formed under this chapter.	401 402 403 404 405 406 407 408 409 410 411 412 413 414 415
(C) Nothing in division (A) or (B) of this section precludes the organization of a professional association in accordance with this chapter and Chapter 1785. of the Revised Code or the formation of a limited liability company under Chapter 1705. of the Revised Code with respect to a business, as defined in section 1705.01 of the Revised Code.	416 417 418 419 420 421
(D) No corporation formed for the purpose of providing a combination of the professional services, as defined in section	422 423

1785.01 of the Revised Code, of optometrists authorized under	424
Chapter 4725. of the Revised Code, chiropractors authorized	425
under Chapter 4734. of the Revised Code to practice chiropractic	426
or acupuncture, psychologists authorized under Chapter 4732. of	427
the Revised Code, registered or licensed practical nurses	428
authorized under Chapter 4723. of the Revised Code, pharmacists	429
authorized under Chapter 4729. of the Revised Code, physical	430
therapists authorized under sections 4755.40 to 4755.56 of the	431
Revised Code, occupational therapists authorized under sections	432
4755.04 to 4755.13 of the Revised Code, mechanotherapists	433
authorized under section 4731.151 of the Revised Code, doctors	434
of medicine and surgery, osteopathic medicine and surgery, or	435
podiatric medicine and surgery authorized under Chapter 4731. of	436
the Revised Code, and licensed professional clinical counselors,	437
licensed professional counselors, independent social workers,	438
social workers, independent marriage and family therapists, or	439
marriage and family therapists authorized under Chapter 4757. of	440
the Revised Code shall control the professional clinical	441
judgment exercised within accepted and prevailing standards of	442
practice of a licensed, certificated, or otherwise legally	443
authorized optometrist, chiropractor, chiropractor practicing	444
acupuncture through the state chiropractic board, psychologist,	445
nurse, pharmacist, physical therapist, occupational therapist,	446
mechanotherapist, doctor of medicine and surgery, osteopathic	447
medicine and surgery, or podiatric medicine and surgery,	448
licensed professional clinical counselor, licensed professional	449
counselor, independent social worker, social worker, independent	450
marriage and family therapist, or marriage and family therapist	451
in rendering care, treatment, or professional advice to an	452
individual patient.	453
 This division does not prevent a hospital, as defined in	454

section 3727.01 of the Revised Code, insurer, as defined in 455  
section 3999.36 of the Revised Code, or intermediary 456  
organization, as defined in section 1751.01 of the Revised Code, 457  
from entering into a contract with a corporation described in 458  
this division that includes a provision requiring utilization 459  
review, quality assurance, peer review, or other performance or 460  
quality standards. Those activities shall not be construed as 461  
controlling the professional clinical judgment of an individual 462  
practitioner listed in this division. 463

**Sec. 1701.04.** (A) Any person, singly or jointly with 464  
others, and without regard to residence, domicile, or state of 465  
incorporation, may form a corporation by signing and filing with 466  
the secretary of state articles of incorporation that shall set 467  
forth all of the following: 468

(1) The name of the corporation, which shall be in 469  
compliance with division (A) of section 1701.05 of the Revised 470  
Code; 471

(2) The place in this state where the principal office of 472  
the corporation is to be located; 473

(3) The authorized number and the par value per share of 474  
shares with par value, and the authorized number of shares 475  
without par value, except that the articles of a banking, safe 476  
deposit, trust, or insurance corporation shall not authorize 477  
shares without par value; the express terms, if any, of the 478  
shares; and, if the shares are classified, the designation of 479  
each class, the authorized number and par value per share, if 480  
any, of the shares of each class, and the express terms of the 481  
shares of each class; 482

(4) If the corporation is to have an initial stated 483

capital, the amount of that stated capital.	484
(B) The articles also may set forth any of the following:	485
(1) The names of the individuals who are to serve as initial directors;	486 487
(2) The purpose or purposes for which the corporation is formed, but in the absence of a statement of the purpose or purposes or except as expressly set forth in such statement, the purpose for which any corporation is formed is to engage in any lawful act or activity for which a corporation may be formed under this chapter, and all lawful acts and activities of the corporation are within the purposes of the corporation;	488 489 490 491 492 493 494
(3) <u>Any priority or other method for balancing the purposes for which the corporation is formed;</u>	495 496
(4) Any lawful provision for the purpose of defining, limiting, or regulating the exercise of the authority of the corporation, the incorporators, the directors, the officers, the shareholders, or the holders of any class of shares;	497 498 499 500
(4)—(5) Any provision that may be set forth in the regulations;	501 502
(5)—(6) A provision specifying the period of existence of the corporation if it is to be otherwise than perpetual;	503 504
(6)—(7) A provision eliminating the right of every shareholder to vote cumulatively in the election of directors;	505 506
(7)—(8) Any additional provision permitted by this chapter.	507 508
(C) A written appointment of a statutory agent for the purposes set forth in section 1701.07 of the Revised Code shall	509 510

be filed with the articles, unless the corporation belongs to 511  
one of the classes mentioned in division (O) of that section. 512

(D) The legal existence of the corporation begins upon the 513  
filing of the articles or on a later date specified in the 514  
articles that is not more than ninety days after filing, and, 515  
unless the articles otherwise provide, its period of existence 516  
shall be perpetual. 517

**Sec. 1701.05.** (A) Except as provided in this section, and 518  
in sections 1701.75, 1701.78, and 1701.82 of the Revised Code, 519  
which sections relate to the reorganization, merger, and 520  
consolidation of corporations, the corporate name of a domestic 521  
corporation shall comply with all of the following: 522

(1) It shall end with or include the word or abbreviation 523  
"company," "co.," "corporation," "corp.," "incorporated," or 524  
"inc." 525

(2) It shall not include the word "benefit" or "b- in its 526  
name as a prefix to "company," "co.," "corporation," "corp," 527  
"incorporated," or "inc.," unless the corporation is a benefit 528  
corporation or had a name that included such combination of 529  
words prior to the effective date of this amendment. 530

(3) It shall be distinguishable upon the records in the 531  
office of the secretary of state from all of the following: 532

(a) The name of any other corporation, whether nonprofit 533  
or for profit and whether that of a domestic or of a foreign 534  
corporation authorized to do business in this state; 535

(b) The name of any limited liability company registered 536  
in the office of the secretary of state pursuant to Chapter 537  
1705. of the Revised Code, whether domestic or foreign; 538

(c) The name of any limited liability partnership	539
registered in the office of the secretary of state pursuant to	540
Chapter 1775. or 1776. of the Revised Code, whether domestic or	541
foreign;	542
(d) The name of any limited partnership registered in the	543
office of the secretary of state pursuant to Chapter 1782. of	544
the Revised Code, whether domestic or foreign;	545
(e) Any trade name the exclusive right to which is at the	546
time in question registered in the office of the secretary of	547
state pursuant to Chapter 1329. of the Revised Code.	548
<del>(3)</del> — <u>(4)</u> It shall not contain any language that indicates	549
or implies that the corporation is connected with a government	550
agency of this state, another state, or the United States.	551
(B) The secretary of state shall determine for purposes of	552
this section whether a name is "distinguishable" from another	553
name upon the secretary of state's records. Without excluding	554
other names that may not constitute distinguishable names in	555
this state, a name is not considered distinguishable from	556
another name for purposes of this section solely because it	557
differs from the other name in only one or more of the following	558
manners:	559
(1) The use of the word "corporation," "company,"	560
"incorporated," "limited," or any abbreviation of any of those	561
words;	562
(2) The use of any article, conjunction, contraction,	563
abbreviation, or punctuation;	564
(3) The use of a different tense or number of the same	565
word.	566

(C) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from the name of any other corporation, limited liability company, limited liability partnership, or limited partnership, or from a registered trade name, if there also is filed in the office of the secretary of state, on a form prescribed by the secretary of state, the consent of the other entity or, in the case of a registered trade name, the person in whose name is registered the exclusive right to use the name, which consent is evidenced in a writing signed by any authorized officer or any authorized representative of the other entity or person. 567  
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(D) In case of judicial sale or judicial transfer, by sale or transfer of good will or otherwise, of the right to use the name of a corporation, whether nonprofit or for profit, and whether that of a domestic corporation or of a foreign corporation authorized to exercise its corporate privileges in this state or to do business in this state, the secretary of state, at the instance of the purchaser or transferee of such right, shall accept for filing articles of a corporation with a name the same as or similar to the name of such other corporation, if there also is filed in the office of the secretary of state a certified copy of the decree or order of court confirming or otherwise evidencing the purchase or transfer. 579  
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(E) Any person who wishes to reserve a name for a proposed new corporation, or any corporation intending to change its name, may submit to the secretary of state a written application, on a form prescribed by the secretary of state, for the exclusive right to use a specified name as the name of a corporation. If the secretary of state finds that, under this 592  
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section, the specified name is available for such use, the 598  
secretary of state shall file the application and, from the date 599  
of the filing, the applicant shall have the exclusive right for 600  
one hundred eighty days to use the specified name as the name of 601  
a corporation, counting the date of such filing as the first of 602  
one hundred eighty days. The right so obtained may be 603  
transferred by the applicant or other holder thereof by the 604  
filing in the office of the secretary of state of a written 605  
transfer, on a form prescribed by the secretary of state, 606  
stating the name and address of the transferee. 607

**Sec. 1701.38.** (A) At the annual meeting of shareholders, 608  
or the meeting held in lieu of it, every corporation, except a 609  
banking corporation, shall lay before the shareholders financial 610  
statements, which may be consolidated, and, as applicable, 611  
written statements or reports, consisting of: 612

(1) A balance sheet containing a summary of the assets, 613  
liabilities, stated capital, if any, and surplus (showing 614  
separately any capital surplus arising from unrealized 615  
appreciation of assets, other capital surplus, and earned 616  
surplus) as of the end of the corporation's most recent fiscal 617  
year, except that, if consolidated financial statements are laid 618  
before the shareholders, the consolidated balance sheet shall 619  
show separately or disclose by a note the amount of consolidated 620  
surplus that does not constitute under the Revised Code earned 621  
surplus of the corporation or any of its subsidiaries and that 622  
is not classified as stated capital or capital surplus on the 623  
consolidated balance sheet; 624

(2) A statement of profit and loss and surplus, including 625  
a summary of profits, dividends or distributions paid, and other 626  
changes in the surplus accounts, for the period commencing with 627

the date marking the end of the period for which the last 628  
preceding statement of profit and loss required under this 629  
section was made and ending with the date of the balance sheet 630  
or, in the case of the first statement of profit and loss, for 631  
the period commencing with the date of incorporation of the 632  
corporation and ending with the date of the balance sheet; 633

(3) If the corporation is a benefit corporation, any 634  
written statement or report required by the articles, 635  
regulations, or a written agreement of the benefit corporation 636  
concerning the beneficial purposes of the benefit corporation 637  
and the activities of the benefit corporation toward those 638  
beneficial purposes and related provisions set forth in the 639  
corporation's articles. 640

(B) The financial statements shall have appended to them 641  
an opinion signed by the president or a vice-president or the 642  
treasurer or an assistant treasurer of the corporation or by a 643  
public accountant or firm of public accountants to the effect 644  
that the financial statement presents fairly the financial 645  
position of the corporation and the results of its operations in 646  
conformity with generally accepted accounting principles applied 647  
on a basis consistent with that of the preceding period, or to 648  
the effect that the financial statements have been prepared on 649  
the basis of accounting practices and principles that are 650  
reasonable in the circumstances. 651

(C) Upon request of any shareholder made in writing or by 652  
any other means of communication authorized by the corporation 653  
prior to the date of the meeting described in division (A) of 654  
this section, the corporation shall send a copy of the any 655  
financial statements, written statements, and reports, as 656  
applicable, laid or to be laid before the shareholders at the 657

meeting to the shareholder by mail, overnight delivery service, 658  
or any other means of communication authorized by the 659  
shareholder to whom the copy is sent on or before the later of 660  
the following: 661

(1) The fifth day after the receipt of the written 662  
request; 663

(2) The earlier of the following: 664

(a) The fifth day before the date of the meeting; 665

(b) The fifth day after the expiration of four months from 666  
the date of the balance sheet described in division (A)(1) of 667  
this section. 668

(D) If the meeting described in division (A) of this 669  
section is to be held solely by means of communications 670  
equipment, the corporation shall make the financial statements, 671  
written statements, and reports described in that division, as 672  
applicable, open to the examination of any shareholder or 673  
proxyholder during the whole time of the meeting on a reasonably 674  
accessible electronic network. The directors may adopt 675  
guidelines and procedures to permit the corporation to verify 676  
that any person accessing the financial statements, written 677  
statements, or reports is a shareholder or proxyholder. 678

**Sec. 1701.59.** (A) Except where the law, the articles, or 679  
the regulations require action to be authorized or taken by 680  
shareholders, all of the authority of a corporation shall be 681  
exercised by or under the direction of its directors. For their 682  
own government, the directors may adopt bylaws that are not 683  
inconsistent with the articles or the regulations. The selection 684  
of a time frame for the achievement of corporate goals shall be 685  
the responsibility of the directors. 686

- (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. 687  
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- (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: 695  
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- (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; 699  
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- (2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; 702  
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- (3) A committee of the directors upon which the director does not serve, duly established in accordance with a provision of the articles or the regulations, as to matters within its designated authority, which committee the director reasonably believes to merit confidence. 705  
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- (D) For purposes of division (B) of this section, the following apply: 710  
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- (1) A director shall not be found to have violated the director's duties under division (B) of this section unless it is proved by clear and convincing evidence that the director has not acted in good faith, in a manner the director reasonably 712  
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believes to be in or not opposed to the best interests of the  
corporation, or with the care that an ordinarily prudent person  
in a like position would use under similar circumstances, in any  
action brought against a director, including actions involving  
or affecting any of the following:

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

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

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

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

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

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

(E) A director shall be liable in damages for any action  
that the director takes or fails to take as a director only if  
it is proved by clear and convincing evidence in a court of

competent jurisdiction that the director's action or failure to  
act involved an act or omission undertaken with deliberate  
intent to cause injury to the corporation or undertaken with  
reckless disregard for the best interests of the corporation. 745  
Nothing contained in this division affects the liability of  
directors under section 1701.95 of the Revised Code or limits  
relief available under section 1701.60 of the Revised Code. This  
division does not apply if, and only to the extent that, at the  
time of a director's act or omission that is the subject of  
complaint, the articles or the regulations of the corporation  
state by specific reference to this division that the provisions  
of this division do not apply to the corporation. 746  
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(F) For purposes of this section, a director, in  
determining what the director reasonably believes to be in the  
best interests of the corporation, shall consider the interests  
of the corporation's shareholders and any beneficial purposes  
and related provisions set forth in the corporation's articles. 757  
The director shall consider any priority among purposes provided  
in the corporation's articles and shall consider any other  
method for balancing the purposes of the corporation that is set  
forth in the corporation's articles. In addition, the director  
may, in the director's discretion, may consider any of the  
following: 758  
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- (1) The interests of the corporation's employees,  
suppliers, creditors, and customers; 768  
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- (2) The economy of the state and nation; 770
- (3) Community and societal considerations; 771
- (4) The long-term as well as short-term interests of the  
corporation and its shareholders, including the possibility that 772  
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these interests or any beneficial purpose set forth in the 774  
corporation's articles may be best served by the continued 775  
independence of the corporation. 776

(G) Nothing contained in division (D) or (E) of this 777  
section affects the duties of either of the following: 778

(1) A director who acts in any capacity other than the 779  
director's capacity as a director; 780

(2) A director of a corporation that does not have issued 781  
and outstanding shares that are listed on a national securities 782  
exchange or are regularly quoted in an over-the-counter market 783  
by one or more members of a national or affiliated securities 784  
association, who votes for or assents to any action taken by the 785  
directors of the corporation that, in connection with a change 786  
in control of the corporation, directly results in the holder or 787  
holders of a majority of the outstanding shares of the 788  
corporation receiving a greater consideration for their shares 789  
than other shareholders. 790

**Sec. 1701.591.** (A) In order to qualify as a close 791  
corporation agreement under this section, the agreement shall 792  
meet the following requirements: 793

(1) Every person who is a shareholder of the corporation 794  
at the time of the agreement's adoption, whether or not entitled 795  
to vote, shall have assented to the agreement in writing; 796

(2) The agreement shall be set forth in the articles, the 797  
regulations, or another written instrument; 798

(3) The agreement shall include a statement that it is to 799  
be governed by this section. 800

(B) A close corporation agreement that is not set forth in 801

the articles or the regulations shall be entered in the record 802  
of minutes of the proceedings of the shareholders of the 803  
corporation and shall be subject to the provisions of division 804  
(C) of section 1701.92 of the Revised Code. 805

(C) Irrespective of any other provisions of this chapter, 806  
but subject to division (D) (2) of this section, a close 807  
corporation agreement may contain provisions, which shall be 808  
binding on the corporation and all of its shareholders, 809  
regulating any aspect of the internal affairs of the corporation 810  
or the relations of the shareholders among themselves, including 811  
the following: 812

(1) Regulation of the management of the business and 813  
affairs of the corporation; 814

(2) The right of one or more shareholders to dissolve the 815  
corporation at will or on the occurrence of a specified event or 816  
contingency; 817

(3) The obligation to vote the shares of a person as 818  
specified, or voting requirements, including the requirement of 819  
the affirmative vote or approval of all shareholders or of all 820  
directors, which voting requirements need not appear in the 821  
articles unless the close corporation agreement is set forth in 822  
the articles; 823

(4) The designation of the persons who shall be the 824  
officers or directors of the corporation; 825

(5) The authority of any individual who holds more than 826  
one office of the corporation to execute, acknowledge, or 827  
certify in more than one capacity any instrument required to be 828  
executed, acknowledged, or certified by the holders of two or 829  
more offices; 830

(6) The terms and conditions of employment of an officer or employee of the corporation without regard to the period of employment;	831 832 833
(7) The declaration and payment of dividends or distributions or the division of profits;	834 835
(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;	836 837 838 839
(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;	840 841 842 843 844
(10) Prohibition of or limitation upon the issuance or sale by the corporation of any of its shares, including treasury shares, without the affirmative vote or approval of the holders of all or a proportion of the outstanding shares or unless other specified terms and conditions are met;	845 846 847 848 849
(11) Arbitration of issues on which the shareholders are deadlocked in voting power or on which the directors or other parties managing the corporation are deadlocked;	850 851 852
(12) Dispensing with the annual meeting of shareholders unless a shareholder, by written notice to the president or secretary either by personal delivery or by mail within thirty days after the end of the most recent fiscal year of the corporation, requests that the meeting be held.	853 854 855 856 857
(D) Except as may be necessary to give effect to divisions (C) (3), (5), (8), (9), and (12) and division (I) of this	858 859

section, any provision of a close corporation agreement that  
does either of the following shall be invalid: 860  
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(1) Eliminates the filing with the secretary of state of  
any document required under this chapter or changes the required  
form or content of the document; 862  
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(2) Waives or alters the effect of any of the provisions  
of section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31,  
1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591,  
1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of  
section 1701.64 of the Revised Code. 865  
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Unless otherwise provided in the close corporation  
agreement, the invalidity of a provision pursuant to this  
division does not affect the validity of the remainder of the  
agreement. 870  
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Any certificate that is required to be filed with the  
secretary of state with respect to the authorization or taking  
of any action pursuant to a close corporation agreement that  
would not be permitted under this chapter in the absence of  
division (C) of this section shall recite the existence of a  
close corporation agreement that authorizes the action. 874  
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(E) (1) Except as provided in division (E) (2) of this  
section, a close corporation agreement may be amended or  
terminated by the affirmative vote or written consent of the  
holders, then parties to the close corporation agreement, of all  
of the outstanding shares of each class or, as may be provided  
by the close corporation agreement, of the holders, then parties  
to the close corporation agreement, of a proportion of not less  
than four-fifths of the outstanding shares of each class. If a  
close corporation agreement is amended or terminated by the 880  
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written consent of the holders of fewer than all of the shares, 889  
the secretary of the corporation shall mail a copy of the 890  
amendment or a notice of the termination to each shareholder who 891  
did not so consent. If a close corporation agreement set forth 892  
in the articles is amended, the amendment shall not be effective 893  
unless it is filed as an amendment to the articles pursuant to 894  
section 1701.73 of the Revised Code. No corporation with respect 895  
to which a close corporation agreement is in effect shall cause 896  
to occur any of the actions described in division (I)(1)(a), 897  
(b), or (c) of this section unless the action has been 898  
authorized by the affirmative vote or written consent of the 899  
holders, then parties to the close corporation agreement, of 900  
that proportion of shares of each class that is required to 901  
terminate the close corporation agreement. 902

(2) A close corporation agreement that was in existence on 903  
December 31, 1993, and that did not specify on that date and 904  
that has not specified since that date the proportion of shares 905  
required to amend or terminate the close corporation agreement 906  
may be amended or terminated by the affirmative vote or written 907  
consent of the holders, then parties to the close corporation 908  
agreement, of four-fifths of the outstanding shares of each 909  
class. 910

(F) No close corporation agreement is invalid among the 911  
parties or in respect of the corporation on any of the following 912  
grounds: 913

(1) The agreement is an attempt to treat the corporation 914  
as if it were a partnership or to arrange the relationship of 915  
the parties in a manner that would be appropriate only among 916  
partners; 917

(2) The agreement provides for the conduct of the affairs 918

of a corporation or relations among shareholders in any manner  
that would be inappropriate or unlawful under provisions of this  
chapter other than those set forth in division (D) (2) of this  
section or under other applicable law; 919  
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(3) The agreement interferes with the authority or  
discretion of the directors; 923  
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(4) The agreement has not been filed with the minutes as  
required by division (B) of this section. 925  
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(G) If a close corporation agreement provides that there  
shall be no board of directors, both of the following apply: 927  
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(1) The shareholders, for the purposes of any statute or  
rule of law relating to corporations, are deemed to be the  
directors and to have all of the liabilities, immunities,  
defenses, and indemnifications of directors with respect to any  
action or inaction of the corporation, except that any  
shareholder who is not permitted by the articles, the  
regulations, or the close corporation agreement to vote on or  
assent to an action or assent to an inaction shall not be liable  
as a director with respect to the action or inaction. 929  
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(2) Except to the extent that the voting rights of the  
shares of a class are increased, limited, or denied by the  
articles, the regulations, or the close corporation agreement,  
each outstanding share regardless of class shall entitle its  
holder to one vote on each matter, including any matter normally  
voted on by directors, that is properly submitted to the  
shareholders for their vote, consent, waiver, release, or other  
action. 938  
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(H) The existence of a close corporation agreement shall  
be noted conspicuously on the face or the back of every 946  
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certificate for shares of the corporation and a purchaser or transferee of shares represented by a certificate on which such a notation so appears shall be conclusively considered to have taken delivery with notice of the close corporation agreement.	948 949 950 951
Any transferee of shares by gift, bequest, or inheritance and any purchaser or transferee of shares with knowledge or notice of a close corporation agreement is bound by the agreement and shall be considered to be a party to the agreement.	952 953 954 955
(I) (1) A close corporation agreement becomes invalid under any of the following circumstances:	956 957
(a) Shares of the corporation are listed on a national securities exchange.	958 959
(b) Shares of the corporation are registered under section 12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 78l, as amended.	960 961 962
(c) Shares of the corporation have been included in a registration statement that has become effective pursuant to the "Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and the corporation is required to file periodic reports and information pursuant to section 15(d) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended.	963 964 965 966 967 968
(d) Shares of the corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement; that person delivers to the corporation a written rejection of the close corporation agreement within ninety days after the date on which that person first received notice of the existence of the close corporation agreement or within three years of the date of	969 970 971 972 973 974 975 976

transfer or issuance, whichever is earlier; and the corporation 977  
does not offer in writing, within thirty days after the date on 978  
which the corporation received the written rejection, to 979  
purchase the shares from that person for the full amount paid 980  
for the shares, or, having made an offer to purchase the shares 981  
for that amount, the corporation, upon that person's acceptance 982  
of the offer, does not purchase the shares in accordance with 983  
division (I) (3) of this section. 984

(2) A close corporation agreement does not become invalid 985  
and the person to whom the shares are transferred or issued is 986  
not entitled to any payment from the corporation pursuant to 987  
division (I) (3) of this section if both of the following apply: 988

(a) Shares of the corporation are transferred or issued to 989  
a person who takes delivery of the certificate for the shares 990  
other than by gift, bequest, or inheritance and without 991  
knowledge or notice of the close corporation agreement; 992

(b) That person does either of the following: 993

(i) Fails to deliver a written rejection of the close 994  
corporation agreement to the corporation within ninety days 995  
after the date on which that person first received notice of the 996  
existence of the close corporation agreement or within three 997  
years of the date of transfer or issuance, whichever is earlier; 998

(ii) Fails, within thirty days after the date on which 999  
that person receives a written offer by the corporation to 1000  
purchase the shares from that person for the full amount paid 1001  
for the shares, to accept the offer. 1002

(3) If shares of a corporation are transferred or issued 1003  
to a person who takes delivery of the certificate for the shares 1004  
other than by gift, bequest, or inheritance and without 1005

knowledge or notice of the close corporation agreement and that person accepts an offer by the corporation to purchase the shares, the corporation shall pay to that person the full amount paid for the shares within seven days after that person delivers to the corporation the certificate for the shares and proof of payment of the amount paid for the shares. If the amount paid for the shares included property other than cash, the corporation, at its option, may return the property to that person or may pay to that person cash in an amount equal to the fair market value of the property on the date of transfer or issuance of the shares, as determined in good faith by the corporation. A shareholder who transfers shares to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement is liable to the corporation, upon the corporation's written demand made upon the shareholder within ninety days after the date on which the corporation made payment for the shares, for the full amount that the corporation paid for the shares. Upon receiving payment in that amount from the shareholder, the corporation shall transfer the shares to the shareholder.

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

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

If a close corporation agreement set forth in the articles  
of the corporation is terminated or becomes invalid, the 1037  
officers of the corporation shall promptly sign and file the 1038  
certificate of amendment prescribed by section 1701.73 of the 1039  
Revised Code, setting forth the reason for the termination or 1040  
invalidity and deleting the close corporation agreement from the 1041  
articles. If the officers fail to execute and file the 1042  
certificate within thirty days after the occurrence of the event 1043  
giving rise to the termination or invalidity, the certificate 1044  
may be signed and filed by any shareholder and shall set forth a 1045  
statement that the person signing the certificate is a 1046  
shareholder and is filing the certificate because of the failure 1047  
of the officers to do so. 1048  
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(J) A close corporation agreement, in the sound discretion 1050  
of a court exercising its equity powers, is enforceable by 1051  
injunction, specific performance, or other relief that the court 1052  
may determine to be fair and appropriate. 1053

(K) This section shall not be construed as prohibiting any 1054  
other lawful agreement among two or more shareholders. 1055

(L) No corporation with respect to which a close 1056  
corporation agreement is in effect, shall issue shares in 1057  
uncertificated form, and any provision of the articles or 1058  
regulations or any resolution of the directors of such a 1059  
corporation, providing for the issuance of shares in 1060  
uncertificated form, shall be ineffective during any period in 1061  
which a close corporation agreement is in effect. The adoption 1062  
of a close corporation agreement shall act as a transfer 1063  
instruction to the corporation to replace uncertificated 1064  
securities with appropriate certificated securities. 1065

(M) If the annual meeting of the shareholders is dispensed 1066

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

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

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

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

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

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

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

(5) Lay before the shareholders or make available in the  
manner provided for in division (D) of section 1701.38 of the

Revised Code at a proper meeting of shareholders, upon request  
of any shareholder at such meeting, such financial statement,  
written statement, or report, as applicable; 1098

(6) Produce at a meeting of shareholders, upon request of  
any shareholder at such meeting, the list or lists of 1099  
shareholders required by section 1701.37 of the Revised Code; 1100  
shall be subject to a forfeiture of one hundred dollars and in 1101  
cases under paragraphs (1), (2), (3), and (4) to a further 1102  
forfeiture of ten dollars for every day that such failure 1103  
continues, beginning, in cases under paragraphs (1) or (2), with 1104  
the fifth day after written request by a shareholder that the 1105  
corporation comply with said respective paragraphs, and in cases 1106  
under paragraphs (3) and (4) beginning with the day following 1107  
the day on which the corporation becomes delinquent in complying 1108  
with said paragraph, which amount shall be paid to every 1109  
shareholder making such request. The right of a shareholder to 1110  
enforce any such forfeiture is in addition to all other 1111  
remedies. 1112

(B) If any officer charged with one of the duties 1114  
specified in division (A) of this section fails to perform such 1115  
duty after written request by any shareholder, the officer shall 1116  
be subject to a forfeiture of one hundred dollars, and to the 1117  
further forfeiture of ten dollars for every day that such 1118  
default continues, beginning in cases under paragraphs (1), (2), 1119  
(3), and (4) of division (A) on the same respective days as are 1120  
provided for in division (A), which amount shall be paid to each 1121  
shareholder making such request. The right of each shareholder 1122  
to enforce any such forfeiture is in addition to all other 1123  
remedies. 1124

(C) The court in which an action is brought to enforce any 1125

forfeiture under this section may reduce, remit, or suspend such	1126
forfeiture on such terms as it deems reasonable when it appears	1127
that the failure was excusable or that the imposition of the	1128
full forfeiture would be unreasonable or unjust.	1129
<u><b>Sec. 1701.96. (A) A benefit corporation owes no duty to a person who is a beneficiary of a beneficial purpose of the benefit corporation based solely on the status of that person as a beneficiary.</b></u>	1130
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<u>(B) A benefit corporation is not liable in monetary damages for any failure to seek, achieve, or comply with any beneficial purpose of the benefit corporation set forth in the articles of the corporation.</u>	1134
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<u>(C) An action to require a benefit corporation to comply with a beneficial purpose set forth in its articles may be brought only by the benefit corporation or in a derivative action on behalf of the benefit corporation by any of the following:</u>	1138
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<u>(1) A director of the corporation;</u>	1143
<u>(2) Persons who, in the aggregate, hold twenty-five percent 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;</u>	1144
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<u>(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</u>	1150
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<u>million dollars in market value;</u>	1155
<u>(4) Any other person that the articles or regulations</u>	1156
<u>authorize to bring such an action.</u>	1157
<u>(D) The provisions of divisions (B) and (C) of this</u>	1158
<u>section do not alter the obligation of a benefit corporation to</u>	1159
<u>comply with all laws otherwise applicable to a domestic</u>	1160
<u>corporation or contracts by which the benefit corporation is</u>	1161
<u>bound, and divisions (B) and (C) of this section shall not limit</u>	1162
<u>or restrict the imposition of any remedy available under such</u>	1163
<u>otherwise applicable laws or contracts.</u>	1164
<b>Section 2.</b> That existing sections 1701.01, 1701.03,	1165
1701.04, 1701.05, 1701.38, 1701.59, 1701.591, and 1701.94 of the	1166
Revised Code are hereby repealed.	1167