

As Reported by the House Civil Justice Committee

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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 Representative Hambley

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

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

(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.

(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.

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

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

(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.

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

(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.

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

(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;

(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.

"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

of the domestic or foreign corporation are issued or 103
transferred. 104

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

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

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

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

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

exist upon a default, failure, or other contingency. 132

(U) "An emergency" exists when the governor, or any other 133
person lawfully exercising the power and discharging the duties 134
of the office of governor, proclaims that an attack on the 135
United States or any nuclear, atomic, or other disaster has 136
caused an emergency for corporations, and such an emergency 137
shall continue until terminated by proclamation of the governor 138
or any other person lawfully exercising the powers and 139
discharging the duties of the office of governor. 140

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

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

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

(Y) "Issuing public corporation" means a domestic 161
corporation with fifty or more shareholders that has its 162
principal place of business, its principal executive offices, 163
assets having substantial value, or a substantial percentage of 164
its assets within this state, and as to which no valid close 165
corporation agreement exists under division (H) of section 166
1701.591 of the Revised Code. 167

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

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

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

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

A bank, broker, nominee, trustee, or other person that 183
acquires shares in the ordinary course of business for the 184
benefit of others in good faith and not for the purpose of 185
circumventing section 1701.831 of the Revised Code shall, 186
however, be deemed to have voting power only of shares in 187
respect of which such person would be able, without further 188
instructions from others, to exercise or direct the exercise of 189

votes on a proposed control share acquisition at a meeting of	190
shareholders called under section 1701.831 of the Revised Code.	191
(2) The acquisition by any person of any shares of an	192
issuing public corporation does not constitute a control share	193
acquisition for the purpose of section 1701.831 of the Revised	194
Code if the acquisition was or is consummated in, results from,	195
or is the consequence of any of the following circumstances:	196
(a) Prior to November 19, 1982;	197
(b) Pursuant to a contract existing prior to November 19,	198
1982;	199
(c) By bequest or inheritance, by operation of law upon	200
the death of an individual, or by any other transfer without	201
valuable consideration, including a gift, that is made in good	202
faith and not for the purpose of circumventing section 1701.831	203
of the Revised Code;	204
(d) Pursuant to the satisfaction of a pledge or other	205
security interest created in good faith and not for the purpose	206
of circumventing section 1701.831 of the Revised Code;	207
(e) Pursuant to a merger or consolidation adopted, or a	208
combination or majority share acquisition authorized, by vote of	209
the shareholders of the issuing public corporation in compliance	210
with section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.83 of	211
the Revised Code, or pursuant to a merger adopted in compliance	212
with section 1701.802 of the Revised Code;	213
(f) The person's being entitled, immediately thereafter,	214
to exercise or direct the exercise of voting power of the	215
issuing public corporation in the election of directors within	216
the same range theretofore attained by that person either in	217
compliance with the provisions of section 1701.831 of the	218

Revised Code or as a result solely of the issuing public 219
corporation's purchase of shares issued by it; 220

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

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

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

(Z) (2) or (3) of this section, does not constitute a control 249
share acquisition for the purpose of section 1701.831 of the 250
Revised Code unless such acquisition entitles the person making 251
the acquisition, directly or indirectly, alone or with others, 252
to exercise or direct the exercise of voting power of the 253
corporation in the election of directors in excess of the range 254
of voting power authorized pursuant to section 1701.831 of the 255
Revised Code, or deemed to be so authorized under division (Z) 256
(2) of this section. 257

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

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

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

(a) An acquiring person; 268

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

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

(d) Any person that acquires such shares for valuable 273
consideration during the period beginning with the date of the 274
first public disclosure of a proposal for, or expression of 275
interest in, a control share acquisition of the issuing public 276
corporation; a transaction pursuant to section 1701.76, 1701.78, 277

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

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

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

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

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

(DD) "Certificated security" and "uncertificated security"	307
have the same meanings as in section 1308.01 of the Revised	308
Code.	309
(EE) "Entity" means any of the following:	310
(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
Sec. 1701.03. (A) <u>(1)</u> 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

(a) The corporation has issued and has outstanding shares 363
listed on a national securities exchange or regularly quoted in 364
an over-the-counter market by one or more members of a national 365
or affiliated securities association. 366

(b) The initial articles of the corporation did not 367
include a beneficial purpose. 368

(B) On and after July 1, 1994, a corporation may be formed 369
under this chapter for the purpose of carrying on the practice 370
of any profession, including, but not limited to, a corporation 371
for the purpose of providing public accounting or certified 372
public accounting services, a corporation for the erection, 373
owning, and conducting of a sanitarium for receiving and caring 374
for patients, medical and hygienic treatment of patients, and 375
instruction of nurses in the treatment of disease and in 376
hygiene, a corporation for the purpose of providing 377
architectural, landscape architectural, professional 378
engineering, or surveying services or any combination of those 379
types of services, and a corporation for the purpose of 380
providing a combination of the professional services, as defined 381
in section 1785.01 of the Revised Code, of optometrists 382
authorized under Chapter 4725. of the Revised Code, 383
chiropractors authorized under Chapter 4734. of the Revised Code 384
to practice chiropractic or acupuncture, psychologists 385
authorized under Chapter 4732. of the Revised Code, registered 386
or licensed practical nurses authorized under Chapter 4723. of 387
the Revised Code, pharmacists authorized under Chapter 4729. of 388
the Revised Code, physical therapists authorized under sections 389
4755.40 to 4755.56 of the Revised Code, occupational therapists 390
authorized under sections 4755.04 to 4755.13 of the Revised 391
Code, mechanotherapists authorized under section 4731.151 of the 392
Revised Code, doctors of medicine and surgery, osteopathic 393

medicine and surgery, or podiatric medicine and surgery 394
authorized under Chapter 4731. of the Revised Code, and licensed 395
professional clinical counselors, licensed professional 396
counselors, independent social workers, social workers, 397
independent marriage and family therapists, or marriage and 398
family therapists authorized under Chapter 4757. of the Revised 399
Code. 400

This chapter does not restrict, limit, or otherwise affect 401
the authority or responsibilities of any agency, board, 402
commission, department, office, or other entity to license, 403
register, and otherwise regulate the professional conduct of 404
individuals or organizations of any kind rendering professional 405
services, as defined in section 1785.01 of the Revised Code, in 406
this state or to regulate the practice of any profession that is 407
within the jurisdiction of the agency, board, commission, 408
department, office, or other entity, notwithstanding that an 409
individual is a director, officer, employee, or other agent of a 410
corporation formed under this chapter and is rendering 411
professional services or engaging in the practice of a 412
profession through a corporation formed under this chapter or 413
that the organization is a corporation formed under this 414
chapter. 415

(C) Nothing in division (A) or (B) of this section 416
precludes the organization of a professional association in 417
accordance with this chapter and Chapter 1785. of the Revised 418
Code or the formation of a limited liability company under 419
Chapter 1705. of the Revised Code with respect to a business, as 420
defined in section 1705.01 of the Revised Code. 421

(D) No corporation formed for the purpose of providing a 422
combination of the professional services, as defined in section 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
<u>(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;</u>	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 registered in the office of the secretary of state pursuant to Chapter 1775. or 1776. of the Revised Code, whether domestic or foreign;	539 540 541 542
(d) The name of any limited partnership registered in the office of the secretary of state pursuant to Chapter 1782. of the Revised Code, whether domestic or foreign;	543 544 545
(e) Any trade name the exclusive right to which is at the time in question registered in the office of the secretary of state pursuant to Chapter 1329. of the Revised Code.	546 547 548
(3) <u>(4)</u> It shall not contain any language that indicates or implies that the corporation is connected with a government agency of this state, another state, or the United States.	549 550 551
(B) The secretary of state shall determine for purposes of this section whether a name is "distinguishable" from another name upon the secretary of state's records. Without excluding other names that may not constitute distinguishable names in this state, a name is not considered distinguishable from another name for purposes of this section solely because it differs from the other name in only one or more of the following manners:	552 553 554 555 556 557 558 559
(1) The use of the word "corporation," "company," "incorporated," "limited," or any abbreviation of any of those words;	560 561 562
(2) The use of any article, conjunction, contraction, abbreviation, or punctuation;	563 564
(3) The use of a different tense or number of the same word.	565 566

(C) A corporation may apply to the secretary of state for 567
authorization to use a name that is not distinguishable upon the 568
secretary of state's records from the name of any other 569
corporation, limited liability company, limited liability 570
partnership, or limited partnership, or from a registered trade 571
name, if there also is filed in the office of the secretary of 572
state, on a form prescribed by the secretary of state, the 573
consent of the other entity or, in the case of a registered 574
trade name, the person in whose name is registered the exclusive 575
right to use the name, which consent is evidenced in a writing 576
signed by any authorized officer or any authorized 577
representative of the other entity or person. 578

(D) In case of judicial sale or judicial transfer, by sale 579
or transfer of good will or otherwise, of the right to use the 580
name of a corporation, whether nonprofit or for profit, and 581
whether that of a domestic corporation or of a foreign 582
corporation authorized to exercise its corporate privileges in 583
this state or to do business in this state, the secretary of 584
state, at the instance of the purchaser or transferee of such 585
right, shall accept for filing articles of a corporation with a 586
name the same as or similar to the name of such other 587
corporation, if there also is filed in the office of the 588
secretary of state a certified copy of the decree or order of 589
court confirming or otherwise evidencing the purchase or 590
transfer. 591

(E) Any person who wishes to reserve a name for a proposed 592
new corporation, or any corporation intending to change its 593
name, may submit to the secretary of state a written 594
application, on a form prescribed by the secretary of state, for 595
the exclusive right to use a specified name as the name of a 596
corporation. If the secretary of state finds that, under this 597

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 687
director, including the duties as a member of any committee of 688
the directors upon which the director may serve, in good faith, 689
in a manner the director reasonably believes to be in or not 690
opposed to the best interests of the corporation, and with the 691
care that an ordinarily prudent person in a like position would 692
use under similar circumstances. A director serving on a 693
committee of directors is acting as a director. 694

(C) In performing a director's duties, a director is 695
entitled to rely on information, opinions, reports, or 696
statements, including financial statements and other financial 697
data, that are prepared or presented by any of the following: 698

(1) One or more directors, officers, or employees of the 699
corporation who the director reasonably believes are reliable 700
and competent in the matters prepared or presented; 701

(2) Counsel, public accountants, or other persons as to 702
matters that the director reasonably believes are within the 703
person's professional or expert competence; 704

(3) A committee of the directors upon which the director 705
does not serve, duly established in accordance with a provision 706
of the articles or the regulations, as to matters within its 707
designated authority, which committee the director reasonably 708
believes to merit confidence. 709

(D) For purposes of division (B) of this section, the 710
following apply: 711

(1) A director shall not be found to have violated the 712
director's duties under division (B) of this section unless it 713
is proved by clear and convincing evidence that the director has 714
not acted in good faith, in a manner the director reasonably 715

believes to be in or not opposed to the best interests of the 716
corporation, or with the care that an ordinarily prudent person 717
in a like position would use under similar circumstances, in any 718
action brought against a director, including actions involving 719
or affecting any of the following: 720

(a) A change or potential change in control of the 721
corporation, including a determination to resist a change or 722
potential change in control made pursuant to division (F) (7) of 723
section 1701.13 of the Revised Code; 724

(b) A termination or potential termination of the 725
director's service to the corporation as a director; 726

(c) The director's service in any other position or 727
relationship with the corporation. 728

(2) A director shall not be considered to be acting in 729
good faith if the director has knowledge concerning the matter 730
in question that would cause reliance on information, opinions, 731
reports, or statements that are prepared or presented by the 732
persons described in divisions (C) (1) to (3) of this section to 733
be unwarranted. 734

(3) A director's duties under division (B) of this section 735
are not owed by a director of a benefit corporation to a person 736
who is a beneficiary of a beneficial purpose of the benefit 737
corporation based solely on the status of that person as a 738
beneficiary. 739

(4) Nothing contained in this division limits relief 740
available under section 1701.60 of the Revised Code. 741

(E) A director shall be liable in damages for any action 742
that the director takes or fails to take as a director only if 743
it is proved by clear and convincing evidence in a court of 744

competent jurisdiction that the director's action or failure to 745
act involved an act or omission undertaken with deliberate 746
intent to cause injury to the corporation or undertaken with 747
reckless disregard for the best interests of the corporation. 748
Nothing contained in this division affects the liability of 749
directors under section 1701.95 of the Revised Code or limits 750
relief available under section 1701.60 of the Revised Code. This 751
division does not apply if, and only to the extent that, at the 752
time of a director's act or omission that is the subject of 753
complaint, the articles or the regulations of the corporation 754
state by specific reference to this division that the provisions 755
of this division do not apply to the corporation. 756

(F) For purposes of this section, a director, in 757
determining what the director reasonably believes to be in the 758
best interests of the corporation, shall consider the interests 759
of the corporation's shareholders and any beneficial purposes 760
and related provisions set forth in the corporation's articles. 761
The director shall consider any priority among purposes provided 762
in the corporation's articles and shall consider any other 763
method for balancing the purposes of the corporation that is set 764
forth in the corporation's articles. In addition, the director 765
may, in the director's discretion, may consider any of the 766
following: 767

(1) The interests of the corporation's employees, 768
suppliers, creditors, and customers; 769

(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 772
corporation and its shareholders, including the possibility that 773

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	831
or employee of the corporation without regard to the period of	832
employment;	833
(7) The declaration and payment of dividends or	834
distributions or the division of profits;	835
(8) Elimination of the board of directors, restrictions	836
upon the exercise by directors of their authority, or delegation	837
to one or more shareholders or other persons of all or part of	838
the authority of the directors;	839
(9) Conferring on any shareholder or agent of a	840
shareholder the absolute right, without the necessity of stating	841
any purpose, to examine and copy during usual business hours any	842
of the corporation's records or documents to which reference is	843
made in section 1701.37 of the Revised Code;	844
(10) Prohibition of or limitation upon the issuance or	845
sale by the corporation of any of its shares, including treasury	846
shares, without the affirmative vote or approval of the holders	847
of all or a proportion of the outstanding shares or unless other	848
specified terms and conditions are met;	849
(11) Arbitration of issues on which the shareholders are	850
deadlocked in voting power or on which the directors or other	851
parties managing the corporation are deadlocked;	852
(12) Dispensing with the annual meeting of shareholders	853
unless a shareholder, by written notice to the president or	854
secretary either by personal delivery or by mail within thirty	855
days after the end of the most recent fiscal year of the	856
corporation, requests that the meeting be held.	857
(D) Except as may be necessary to give effect to divisions	858
(C) (3), (5), (8), (9), and (12) and division (I) of this	859

section, any provision of a close corporation agreement that 860
does either of the following shall be invalid: 861

(1) Eliminates the filing with the secretary of state of 862
any document required under this chapter or changes the required 863
form or content of the document; 864

(2) Waives or alters the effect of any of the provisions 865
of section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31, 866
1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591, 867
1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of 868
section 1701.64 of the Revised Code. 869

Unless otherwise provided in the close corporation 870
agreement, the invalidity of a provision pursuant to this 871
division does not affect the validity of the remainder of the 872
agreement. 873

Any certificate that is required to be filed with the 874
secretary of state with respect to the authorization or taking 875
of any action pursuant to a close corporation agreement that 876
would not be permitted under this chapter in the absence of 877
division (C) of this section shall recite the existence of a 878
close corporation agreement that authorizes the action. 879

(E) (1) Except as provided in division (E) (2) of this 880
section, a close corporation agreement may be amended or 881
terminated by the affirmative vote or written consent of the 882
holders, then parties to the close corporation agreement, of all 883
of the outstanding shares of each class or, as may be provided 884
by the close corporation agreement, of the holders, then parties 885
to the close corporation agreement, of a proportion of not less 886
than four-fifths of the outstanding shares of each class. If a 887
close corporation agreement is amended or terminated by the 888

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 919
that would be inappropriate or unlawful under provisions of this 920
chapter other than those set forth in division (D) (2) of this 921
section or under other applicable law; 922

(3) The agreement interferes with the authority or 923
discretion of the directors; 924

(4) The agreement has not been filed with the minutes as 925
required by division (B) of this section. 926

(G) If a close corporation agreement provides that there 927
shall be no board of directors, both of the following apply: 928

(1) The shareholders, for the purposes of any statute or 929
rule of law relating to corporations, are deemed to be the 930
directors and to have all of the liabilities, immunities, 931
defenses, and indemnifications of directors with respect to any 932
action or inaction of the corporation, except that any 933
shareholder who is not permitted by the articles, the 934
regulations, or the close corporation agreement to vote on or 935
assent to an action or assent to an inaction shall not be liable 936
as a director with respect to the action or inaction. 937

(2) Except to the extent that the voting rights of the 938
shares of a class are increased, limited, or denied by the 939
articles, the regulations, or the close corporation agreement, 940
each outstanding share regardless of class shall entitle its 941
holder to one vote on each matter, including any matter normally 942
voted on by directors, that is properly submitted to the 943
shareholders for their vote, consent, waiver, release, or other 944
action. 945

(H) The existence of a close corporation agreement shall 946
be noted conspicuously on the face or the back of every 947

certificate for shares of the corporation and a purchaser or 948
transferee of shares represented by a certificate on which such 949
a notation so appears shall be conclusively considered to have 950
taken delivery with notice of the close corporation agreement. 951
Any transferee of shares by gift, bequest, or inheritance and 952
any purchaser or transferee of shares with knowledge or notice 953
of a close corporation agreement is bound by the agreement and 954
shall be considered to be a party to the agreement. 955

(I) (1) A close corporation agreement becomes invalid under 956
any of the following circumstances: 957

(a) Shares of the corporation are listed on a national 958
securities exchange. 959

(b) Shares of the corporation are registered under section 960
12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 961
U.S.C. 781, as amended. 962

(c) Shares of the corporation have been included in a 963
registration statement that has become effective pursuant to the 964
"Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and 965
the corporation is required to file periodic reports and 966
information pursuant to section 15(d) of the "Securities 967
Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended. 968

(d) Shares of the corporation are transferred or issued to 969
a person who takes delivery of the certificate for the shares 970
other than by gift, bequest, or inheritance and without 971
knowledge or notice of the close corporation agreement; that 972
person delivers to the corporation a written rejection of the 973
close corporation agreement within ninety days after the date on 974
which that person first received notice of the existence of the 975
close corporation agreement or within three years of the date of 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 1006
person accepts an offer by the corporation to purchase the 1007
shares, the corporation shall pay to that person the full amount 1008
paid for the shares within seven days after that person delivers 1009
to the corporation the certificate for the shares and proof of 1010
payment of the amount paid for the shares. If the amount paid 1011
for the shares included property other than cash, the 1012
corporation, at its option, may return the property to that 1013
person or may pay to that person cash in an amount equal to the 1014
fair market value of the property on the date of transfer or 1015
issuance of the shares, as determined in good faith by the 1016
corporation. A shareholder who transfers shares to a person who 1017
takes delivery of the certificate for the shares other than by 1018
gift, bequest, or inheritance and without knowledge or notice of 1019
the close corporation agreement is liable to the corporation, 1020
upon the corporation's written demand made upon the shareholder 1021
within ninety days after the date on which the corporation made 1022
payment for the shares, for the full amount that the corporation 1023
paid for the shares. Upon receiving payment in that amount from 1024
the shareholder, the corporation shall transfer the shares to 1025
the shareholder. 1026

(4) In the event of the invalidity of a close corporation 1027
agreement and unless otherwise provided in the close corporation 1028
agreement, any provision contained in the close corporation 1029
agreement that would not be invalid under any other section of 1030
this chapter or under other applicable law remains valid and 1031
binding on the parties to the close corporation agreement. 1032

Any officer of the corporation who learns of the 1033
occurrence of any event causing the invalidity of the close 1034
corporation agreement shall immediately give written notice of 1035
the invalidity to all of the shareholders. 1036

If a close corporation agreement set forth in the articles 1037
of the corporation is terminated or becomes invalid, the 1038
officers of the corporation shall promptly sign and file the 1039
certificate of amendment prescribed by section 1701.73 of the 1040
Revised Code, setting forth the reason for the termination or 1041
invalidity and deleting the close corporation agreement from the 1042
articles. If the officers fail to execute and file the 1043
certificate within thirty days after the occurrence of the event 1044
giving rise to the termination or invalidity, the certificate 1045
may be signed and filed by any shareholder and shall set forth a 1046
statement that the person signing the certificate is a 1047
shareholder and is filing the certificate because of the failure 1048
of the officers to do so. 1049

(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 1067
agreement authorized by division (C) (12) of this section, the 1068
annual financial statements and any written statements or 1069
reports required by section 1701.38 of the Revised Code shall be 1070
delivered to each shareholder on or before the last date upon 1071
which the annual meeting otherwise could have been held. 1072

(N) The amendments to this section that are effective 1073
April 4, 1985, are remedial in nature and apply to all close 1074
corporation agreements created on or after November 17, 1981. 1075
The amendments to this section that are effective December 31, 1076
1993, are remedial in nature and, except as those amendments 1077
otherwise provide, apply to all close corporation agreements 1078
created on or after November 17, 1981. 1079

Sec. 1701.94. (A) Every corporation that fails to: 1080

(1) Keep the books of account, minutes of proceedings, or 1081
records of shareholders as required by section 1701.37 of the 1082
Revised Code; 1083

(2) Comply with division (C) of section 1701.11 of the 1084
Revised Code with respect to mailing a copy of an amendment to, 1085
or copy of new, regulations; 1086

(3) Perform the obligation imposed on it by division (C) 1087
of section 1701.25 of the Revised Code; 1088

(4) Send to any shareholder making written request 1089
therefor, within the period provided for in division (C) of 1090
section 1701.38 of the Revised Code, a copy of ~~the any~~ financial 1091
statement, written statement, or report, as applicable, referred 1092
to in that section; 1093

(5) Lay before the shareholders or make available in the 1094
manner provided for in division (D) of section 1701.38 of the 1095

Revised Code at a proper meeting of shareholders, upon request 1096
of any shareholder at such meeting, such financial statement, 1097
written statement, or report, as applicable; 1098

(6) Produce at a meeting of shareholders, upon request of 1099
any shareholder at such meeting, the list or lists of 1100
shareholders required by section 1701.37 of the Revised Code; 1101
shall be subject to a forfeiture of one hundred dollars and in 1102
cases under paragraphs (1), (2), (3), and (4) to a further 1103
forfeiture of ten dollars for every day that such failure 1104
continues, beginning, in cases under paragraphs (1) or (2), with 1105
the fifth day after written request by a shareholder that the 1106
corporation comply with said respective paragraphs, and in cases 1107
under paragraphs (3) and (4) beginning with the day following 1108
the day on which the corporation becomes delinquent in complying 1109
with said paragraph, which amount shall be paid to every 1110
shareholder making such request. The right of a shareholder to 1111
enforce any such forfeiture is in addition to all other 1112
remedies. 1113

(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

Sec. 1701.96. (A) A benefit corporation owes no duty to a 1130
person who is a beneficiary of a beneficial purpose of the 1131
benefit corporation based solely on the status of that person as 1132
a beneficiary. 1133

(B) A benefit corporation is not liable in monetary 1134
damages for any failure to seek, achieve, or comply with any 1135
beneficial purpose of the benefit corporation set forth in the 1136
articles of the corporation. 1137

(C) An action to require a benefit corporation to comply 1138
with a beneficial purpose set forth in its articles may be 1139
brought only by the benefit corporation or in a derivative 1140
action on behalf of the benefit corporation by any of the 1141
following: 1142

(1) A director of the corporation; 1143

(2) Persons who, in the aggregate, hold twenty-five per 1144
cent of all shares outstanding and entitled to vote at a meeting 1145
of the shareholders, unless the articles, the regulations 1146
adopted by the shareholders, or the regulations adopted by the 1147
directors pursuant to division (A)(1) of section 1701.10 of the 1148
Revised Code prescribe a smaller proportion; 1149

(3) If the benefit corporation has issued and has 1150
outstanding shares listed on a national securities exchange or 1151
regularly quoted in an over-the-counter market by one or more 1152
members of a national or affiliated securities association, 1153
persons who, in the aggregate, hold shares of at least two 1154

million dollars in market value; 1155

(4) Any other person that the articles or regulations 1156
authorize to bring such an action. 1157

(D) The provisions of divisions (B) and (C) of this 1158
section do not alter the obligation of a benefit corporation to 1159
comply with all laws otherwise applicable to a domestic 1160
corporation or contracts by which the benefit corporation is 1161
bound, and divisions (B) and (C) of this section shall not limit 1162
or restrict the imposition of any remedy available under such 1163
otherwise applicable laws or contracts. 1164

Section 2. 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