

AN ACT

To amend sections 1301.05, 1301.12, 1303.02, 1304.01, 1304.02, 1305.10, 1305.13, 1308.03, 1308.04, 1308.08, 1308.09, 1308.10, 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.16, 1308.17, 1308.22, 1308.31, 1308.37, 1308.38, 1308.41, 1308.42, 1309.01, 1309.03, 1309.14, 1309.20, 1309.21, 1309.22, 1309.23, 1309.24, 1309.25, 1309.28, 1309.31, 1701.01, 1701.24, 1701.25, 1701.27, 1701.49, 1701.591, 1701.831, 1701.832, 1705.01, 1705.04, 1705.16, 1705.43, 1782.33, and 3901.51; to enact new sections 1308.01, 1308.02, 1308.05, 1308.06, 1308.07, 1308.18, 1308.19, 1308.20, 1308.21, 1308.23, 1308.24, 1308.25, 1308.26, 1308.27, 1308.32, 1308.33, 1308.39, and 1308.40 and sections 1308.51, 1308.52, 1308.53, 1308.54, 1308.55, 1308.56, 1308.57, 1308.58, 1308.59, 1308.60, 1308.61, 1309.112, and 1309.113; and to repeal sections 1308.01, 1308.02, 1308.05, 1308.06, 1308.07, 1308.18, 1308.19, 1308.20, 1308.21, 1308.23, 1308.24, 1308.25, 1308.26, 1308.27, 1308.28, 1308.32, 1308.33, 1308.34, 1308.35, 1308.36, 1308.39, 1308.40, 1308.43, and 1308.44 of the Revised Code to adopt the Revised Article 8 of the Uniform Commercial Code--Investment Securities, to adopt modifications to the General Corporation Law regarding control share acquisitions, and to make changes in certain organizational provisions of the Limited Liability Companies Law and the Limited Partnerships Law.

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

SECTION 1. That sections 1301.05, 1301.12, 1303.02, 1304.01, 1304.02, 1305.10, 1305.13, 1308.03, 1308.04, 1308.08, 1308.09, 1308.10, 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.16, 1308.17, 1308.22, 1308.31, 1308.37, 1308.38, 1308.41, 1308.42, 1309.01, 1309.03, 1309.14, 1309.20, 1309.21, 1309.22, 1309.23, 1309.24, 1309.25, 1309.28, 1309.31, 1701.01, 1701.24, 1701.25, 1701.27, 1701.49, 1701.591, 1701.831, 1701.832, 1705.01, 1705.04, 1705.16, 1705.43, 1782.33, and 3901.51 be amended and new sections 1308.01, 1308.02, 1308.05, 1308.06, 1308.07, 1308.18, 1308.19, 1308.20, 1308.21, 1308.23, 1308.24, 1308.25, 1308.26, 1308.27, 1308.32, 1308.33, 1308.39, and 1308.40 and sections 1308.51, 1308.52, 1308.53, 1308.54, 1308.55, 1308.56, 1308.57, 1308.58, 1308.59, 1308.60, 1308.61, 1309.112, and 1309.113 of the Revised Code be enacted to read as follows:

Sec. 1301.05. (A) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing such an agreement Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code apply to transactions bearing an appropriate relation to this state.

(B) Where one of the following provisions of Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

(1) Rights of creditors against sold goods, as provided in section 1302.43 of the Revised Code;

(2) Applicability of sections 1304.01 to 1304.40 of the Revised Code, as provided in section 1304.02 of the Revised Code;

(3) Fund transfers under sections 1304.51 to 1304.85 of the Revised Code, as provided in section 1304.85 of the Revised Code;

(4) Applicability of ~~sections 1308.01 to 1308.36~~ Chapter 1308. of the Revised Code, as provided in section 1308.05 of the Revised Code;

(5) Perfection provisions of section 1309.03 of the Revised Code;

(6) Applicability of sections 1310.01 to 1310.78 of the Revised Code, as provided in sections 1310.03 and 1310.04 of the Revised Code.

Sec. 1301.12. (A) Except in the cases described in division (B) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of

remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by ~~his~~ THAT PARTY'S authorized agent.

(B) Division (A) of this section does not apply to contracts for the sale of goods, section 1302.04 of the Revised Code, nor of securities, section ~~1308.30~~ 1308.07 of the Revised Code, nor to security agreements, section 1309.14 of the Revised Code.

Sec. 1303.02. (A) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by sections 1304.51 to 1304.85 of the Revised Code, or to securities governed by ~~sections 1308.01 to 1308.44~~ Chapter 1308. of the Revised Code.

(B) If there is a conflict between this chapter and either sections 1304.01 to 1304.40 or sections 1309.01 to 1309.50 of the Revised Code, the provisions of sections 1304.01 to 1304.40 or sections 1309.01 to 1309.50 of the Revised Code govern.

(C) If any provision of this chapter is inconsistent with any regulation of the board of governors of the federal reserve system or any operating circular of the federal reserve banks, the regulation or the operating circular supersedes the provision of this chapter to the extent of the inconsistency.

Sec. 1304.01. (A) As used in sections 1304.01 to 1304.40 of the Revised Code, unless the context requires otherwise:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or similar account, other than an account evidenced by a certificate of deposit.

(2) "Afternoon" means the period of day between noon and midnight.

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Clearing house" means an association of banks or other payors regularly clearing items.

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities or instructions for uncertificated securities as defined in section 1308.01 Of the Revised Code, or other certificates, statements, or similar documents are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft as defined in section 1303.03 of the Revised Code or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. "Item" does not include a payment order governed by sections 1304.51 to 1304.85 of the Revised Code, a credit slip, or a debit card slip.

(10) "Midnight deadline," with respect to a bank, is midnight on its next banking day following the banking day on which it ~~receives~~ receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(B) As used in sections 1304.01 to 1304.40 of the Revised Code:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, a savings and loan association, a credit union, or a trust company.

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) "Payor bank" means a bank that is a drawee of a draft.

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank.

(5) "Collecting bank" means a bank handling an item for collection except the payor bank.

(6) "Presenting bank" means a bank presenting an item except a payor bank.

(C) As used in sections 1304.01 to 1304.40 of the Revised Code:

(1) "Acceptance" and "certified check" have the same meanings as in section 1303.46 of the Revised Code.

(2) "Alteration" has the same meaning as in section 1303.50 of the Revised Code.

(3) "Cashier's check," "certificate of deposit," "check," "instrument," and "teller's check" have the same meanings as in section 1303.03 of the Revised Code.

(4) "Good faith," "order," "ordinary care," "promise," and "prove" have the same meanings as in section 1303.01 of the Revised Code.

(5) "Holder in due course" has the same meaning as in section 1303.32 of the Revised Code.

(6) "Notice of dishonor" has the same meaning as in section 1303.63 of the Revised Code.

(7) "Person entitled to enforce" has the same meaning as in section 1303.31 of the Revised Code.

(8) "Presentment" has the same meaning as in section 1303.61 of the Revised Code.

(9) "Unauthorized signature" has the same meaning as in section 1303.43 of the Revised Code.

(D) The terms and principles of construction and interpretation in sections 1301.01 to 1301.14 of the Revised Code are applicable to sections 1304.01 to ~~1303.40~~ 1304.40 of the Revised Code.

Sec. 1304.02. (A) To the extent that items within sections 1304.01 to 1304.40 of the Revised Code are also within the scope of Chapter 1303. and ~~sections 1308.01 to 1308.36~~ Chapter 1308. of the Revised Code, they are subject to ~~that chapter and those sections~~ chapters. In the event of conflict, the provisions of sections 1304.01 to 1304.40 of the Revised Code govern those of Chapter 1303., but the provisions of ~~sections 1308.01 to 1308.36~~ Chapter 1308. of the Revised Code govern those of sections 1304.01 to 1304.40 of the Revised Code.

(B) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Sec. 1305.10. (A) Unless otherwise agreed, the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Chapters 1303., 1304., and 1308. of the Revised Code.

(B) Unless otherwise agreed, a negotiating, advising, confirming, collecting, or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under sections 1304.01 to 1304.40 of the Revised Code, and any such bank transferring a document warrants only the matters warranted by ~~an~~ a securities intermediary under sections 1307.01 to 1307.40 and ~~1308.01 to 1308.36~~ Chapter 1308. of the Revised Code.

Sec. 1305.13. (A) An issuer must honor a draft or demand for payment

that complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(B) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title, pursuant to section 1307.35 of the Revised Code, or of a certificated security pursuant to section ~~1308.21~~ 1308.20 of the Revised Code, or is forged or fraudulent or there is fraud in the transaction:

(1) The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course as provided in section 1303.32 of the Revised Code and in an appropriate case would make it a person to whom a document of title has been duly negotiated, as provided in section 1307.30 of the Revised Code, or a ~~bona-fide~~ protected purchaser of a certificated security, as provided in section 1308.17 of the Revised Code; and

(2) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery, or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(C) Unless otherwise agreed, an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(D) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer:

(1) Any payment made on receipt of such notice is conditional; and

(2) The issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(3) In the event of such rejection, the issuer is entitled by chargeback or otherwise to return of the payment made.

(E) In the case covered by division (D) of this section, failure to reject

documents within the time specified in division (D)(2) of this section constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

Sec. 1308.01. (A) In this chapter:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(a) A person that is registered as a "clearing agency" under the federal securities laws;

(b) A federal reserve bank; or

(c) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(a) Send a signed writing; or

(b) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of division (B)(2) or (3) of section 1308.51 Of the Revised Code, that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in section 1308.02 Of the Revised Code, means:

(a) A security;

(b) An obligation of a person or a share, participation, or other interest

in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(c) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(a) The security certificate specifies a person entitled to the security; and

(b) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(a) A clearing corporation; or

(b) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in section 1308.02 Of the Revised Code, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(a) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(b) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(c) Which:

(i) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(ii) Is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in sections 1308.51 to 1308.61 Of the Revised Code.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(B) Other definitions applying to this chapter and the sections in which they appear are:

(1) "Appropriate person," as defined in section 1308.23 Of the Revised Code.

(2) "Control," as defined in section 1308.24 Of the Revised Code.

(3) "Delivery," as defined in section 1308.27 Of the Revised Code.

(4) "Investment company security," as defined in section 1308.02 Of the Revised Code.

(5) "Issuer," as defined in section 1308.08 Of the Revised Code.

(6) "Overissue," as defined in section 1308.03 Of the Revised Code.

(7) "Protected purchaser," as defined in section 1308.17 Of the Revised Code.

(8) "Securities account," as defined in section 1308.51 Of the Revised Code.

(C) In addition, Chapter 1301. Of the Revised Code contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(D) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Sec. 1308.02. (A) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(B) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate

company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(C) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(D) A writing that is a security certificate is governed by this chapter and not by Chapter 1303. Of the Revised Code, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by Chapter 1303. Of the Revised Code is a financial asset if it is held in a securities account.

(E) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(F) A commodity contract, as defined in section 1309.112 Of the Revised Code, is not a security or a financial asset.

Sec. 1308.03. (A) ~~The~~ Except as otherwise provided in divisions (A)(1) and (2) of this section, the provisions of sections 1308.01 to 1308.44 of the Revised Code this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; ~~but if,~~

(1) ~~An~~ If an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security ~~for him~~ and ~~either to deliver a it if certificated security or to register the its transfer of an if~~ uncertificated security to him, against surrender of any ~~certificated security he~~ certificate the person holds; or,

(2) ~~A~~ If a security is not so available for purchase, ~~the~~ A person entitled to issue or validation may recover from the issuer the price ~~he~~ the person or the last purchaser for value paid for it with interest from the date of ~~his~~ the person's demand.

(B) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

Sec. 1308.04. ~~(A) Certificated securities governed by sections 1308.01 to 1308.44 of the Revised Code, are negotiable instruments.~~

~~(B) Statements as provided in section 1308.44 of the Revised Code, notices, or the like, sent by the issuer of uncertificated securities and~~

~~instructions as provided in section 1308.23 of the Revised Code are neither negotiable instruments nor certificated securities.~~

~~(C) In any the following rules apply in an action on a certificated security against the issuer:~~

~~(1)(A) Unless specifically denied in the pleadings, each signature on a certificated security, certificate or in a necessary indorsement, or an initial transaction statement, or on an instruction, is admitted;~~

~~(2)(B) If the effectiveness of a signature is put in issue, the burden of establishing its effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;~~

~~(3)(C) If signatures on a certificated security certificate are admitted or established, production of the security certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;~~

~~(4)(D) If signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and~~

~~(5) After it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he the plaintiff or some person under whom he the plaintiff claims is a person against whom the defense or defect is ineffective, as provided in section 1308.44 of the Revised Code cannot be asserted.~~

Sec. 1308.05. (A) The local law of the issuer's jurisdiction, as specified in division (D) of this section, governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(B) The local law of the securities intermediary's jurisdiction, as specified in division (E) of this section, governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse

claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(C) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(D) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in divisions (A)(2) to (5) of this section.

(E) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in division (E)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in division (E)(1) or (2) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in division (E)(1) or (2) of this section and an account statement does not identify an office serving the entitlement holder's account as provided in division (E)(3) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(E) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

Sec. 1308.06. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

Sec. 1308.07. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

Sec. 1308.08. (A) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(1) Places or authorizes the placing of ~~his~~ its name on a ~~certificated~~ security certificate, otherwise than as authenticating trustee, registrar, transfer agent, or the like, to evidence ~~that it represents~~ a share, participation, or other interest in ~~his~~ its property or in an enterprise, or to evidence ~~his~~ its duty to perform an obligation represented by the ~~certificated~~ security certificate;

(2) Creates shares, participations, or other interests in ~~his~~ its property or in an enterprise, or undertakes obligations, ~~which shares, participations, interests, or obligations that~~ are uncertificated securities;

(3) Directly or indirectly creates fractional interests in ~~his~~ its rights or property, ~~which if the~~ fractional interests are represented by ~~certificated securities~~ security certificates; or

(4) Becomes responsible for, or in place of, any other person described as an issuer in this section.

(B) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of ~~his~~ its guaranty, whether or not ~~his~~ its obligation is noted on a ~~certificated~~ security or on statements of uncertificated securities sent pursuant to section 1308.44 of the Revised Code certificate.

(C) With respect to registration of transfer, ~~pledge, or release as provided in sections 1308.37 to 1308.44 of the Revised Code~~, "issuer" means a person on whose behalf transfer books are maintained.

Sec. 1308.09. (A) Even against a purchaser for value and without notice, the terms of a certificated security include:

~~(1) If the security is certificated, those terms stated on the security;~~

~~(2) If the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and~~

~~(3) Those certificate and terms made part of the security by reference;~~

on the ~~certificated security or in the initial transaction statement~~, certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent ~~that~~ the terms referred to do not conflict with the terms stated on the ~~certificated security or contained in the statement~~ certificate. A reference under division (A)(3) of this section does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even ~~though~~ if the ~~certificated security or statement~~ certificate expressly states that a person accepting it admits notice.

The terms of an uncertificated security include those stated in any instrument, indenture, or document, or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(B)(4) The following rules apply if an issuer asserts that a security is not valid:

(1) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security one issued by a government or governmental subdivision, agency, or unit instrumentality, even though issued with a defect going to its validity, is valid with respect to the in the hands of a purchaser if he is for value and without notice of the particular defect unless the defect involves a violation of A constitutional provisions, in which provision. In that case, the security is valid with respect to in the hands of a subsequent purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) The provisions of division (B)(1) of this section apply to an issuer that is a government or governmental subdivision, agency, or unit instrumentality only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(C) Except as otherwise provided in the case of certain unauthorized signatures on issue under section 1308.12 of the Revised Code, lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(D) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(E) Nothing in this This section shall be construed to does not affect the

right of a party to cancel a contract for a security "when, as and if issued" or a "when distributed" ~~contract to cancel the contract~~ in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(F) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

Sec. 1308.10. ~~(A)~~ After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if the act or event:

~~(1) The act or event is one requiring~~ (A) Requires the payment of money, the delivery of A certificated ~~securities~~ security, the registration of transfer of an uncertificated ~~securities~~ security, or any of ~~these them~~ on presentation or surrender of the ~~certificated~~ security certificate, the ~~funds~~ money or ~~securities are~~ security is available on the date set for payment or exchange, and ~~he~~ the purchaser takes the security more than one year after that date; ~~and or~~

~~(2) The act or event is~~ (B) Is not covered by division (A)~~(1)~~ of this section and ~~he~~ the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

~~(B) A call that has been revoked is not within division (A) of this section.~~

Sec. 1308.11. ~~(A)~~ A restriction on transfer of a security imposed by the issuer, even ~~though~~ if otherwise lawful, is ineffective against ~~any~~ A person without actual knowledge of it unless:

~~(A)(1)~~ The security is certificated and the restriction is noted conspicuously ~~thereon~~ on the security certificate; or

~~(B)(2)~~ The security is uncertificated and ~~a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee~~ has been notified of the restriction.

(B) A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted

conspicuously on the security certificate.

Sec. 1308.12. An unauthorized signature placed on a ~~certificated~~ security ~~prior to certificate before~~ or in the course of issue ~~or placed on an initial transaction statement~~ is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security ~~or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent~~, if the purchaser is without notice of the lack of authority and if the signing has been done by:

(A) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security; ~~certificate or~~ similar securities security certificates, or ~~of initial transaction statements or~~ the immediate preparation for signing of any of them; or

(B) An employee of the issuer, or of any of the ~~foregoing~~ persons listed in division (A) of this section, entrusted with responsible handling of the security ~~or initial transaction statement~~ certificate.

Sec. 1308.13. (A) If a ~~certificated~~ security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even ~~though~~ if the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(B) A complete ~~certificated~~ security certificate that has been improperly altered, even ~~though~~ if fraudulently, remains enforceable, but only according to its original terms.

~~(C) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:~~

~~(1) Any person may complete it by filling in the blanks as authorized; and~~

~~(2) Even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.~~

~~(D) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.~~

Sec. 1308.14. (A) ~~Prior to~~ Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or

indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

~~(B) Subject to the provisions of divisions (C), (D), and (F) of this section, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.~~

~~(C) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.~~

~~(D) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:~~

~~(1) Register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner, who may be the registered pledgee, and does not specify a pledgee;~~

~~(2) Register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or~~

~~(3) Register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.~~

~~(E) Continuity of perfection of a security interest is not broken by registration of transfer under division (D)(2) of this section or by registration of release and pledge under division (D)(3) of this section, if the security interest is assigned.~~

~~(F) If an uncertificated security is subject to a registered pledge:~~

~~(1) Any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;~~

~~(2) Any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and~~

~~(3) Any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.~~

~~(G) Nothing in sections 1308.01 to 1308.44 of the Revised Code shall be construed to this chapter does not affect the liability of the registered owner of a security for calls, assessments, or the like.~~

Sec. 1308.15. (A) A person ~~placing his signature upon~~ signing a

~~certificated security or an initial transaction statement~~ certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security ~~or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent~~, if the purchaser is without notice of the particular defect, that:

(1) ~~The certificated security or initial transaction certificate~~ is genuine;

(2) ~~His~~ The person's own participation in the issue ~~or registration~~ of the ~~transfer, pledge, or release of the security~~ is within ~~his~~ the person's capacity and within the scope of the authority received by ~~him~~ the person from the issuer; and

(3) ~~He~~ The person has reasonable grounds to believe the certificated security is in the form and within the amount the issuer is authorized to issue.

(B) Unless otherwise agreed, a person ~~by so placing his signature signing under division (A) of this section~~ does not assume responsibility for the validity of the security in other respects.

Sec. 1308.16. (A) ~~Upon transfer~~ Except as otherwise provided in divisions (B) and (C) of this section, upon delivery of a certificated or uncertificated security to a purchaser as provided in section 1308.28 of the Revised Code, the purchaser acquires the all rights in the security which his that the transferor had or had actual authority power to convey unless the purchaser's rights are limited by division (D) of section 1308.17 of the Revised Code transfer.

(B) A ~~transferee purchaser~~ of a limited interest acquires rights only to the extent of the interest ~~transferred purchased. The creation or release of a security interest in a security is the transfer of a limited interest in that security.~~

(C) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

Sec. 1308.17. (A) A ~~bona fide protected purchaser~~ "is means a purchaser ~~for value in good faith and without~~ of a certificated or uncertificated security, or of an interest therein, who:

(1) Gives value;

(2) Does not have notice of any adverse claim;

~~(1) Who takes delivery to the security; and~~

(3) Obtains control of a the certificated or uncertificated security ~~in bearer form or in registered form, issued or indorsed to him or in blank;~~

~~(2) To whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or~~

~~(3) To whom a security is transferred under the provisions of division (A)(3), (4)(a), or (7) of section 1308.28 of the Revised Code.~~

~~(B) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.~~

~~(C) A bona fide purchaser in addition to acquiring the rights of a purchaser, as provided in section 1308.16 of the Revised Code, a protected purchaser also acquires his its interest in the security free of any adverse claim.~~

~~(D) Notwithstanding division (A) of section 1308.16 of the Revised Code, the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.~~

Sec. 1308.18. (A) A person acquires a security or an interest therein, under this chapter, if:

(1) The person is a purchaser to whom a security is delivered pursuant to section 1308.27 Of the Revised Code; or

(2) The person acquires a security entitlement to the security pursuant to section 1308.51 Of the Revised Code.

(B) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(C) A person who acquires a security entitlement to a security or other financial asset has the rights specified in sections 1308.51 to 1308.61 Of the Revised Code, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 1308.53 Of the Revised Code.

(D) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to division (A) or (B) of this section.

Sec. 1308.19. (A) A person has notice of an adverse claim if:

(1) The person knows of the adverse claim;

(2) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) The person has a duty, imposed by statute or rule, to investigate

whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(B) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(C) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) One year after a date set for presentment or surrender for redemption or exchange; or

(2) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(D) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(E) Filing of a financing statement under Chapter 1309. Of the Revised Code is not notice of an adverse claim to a financial asset.

Sec. 1308.20. (A) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) The certificate is genuine and has not been materially altered;

(2) The transferor or indorser does not know of any fact that might impair the validity of the security;

(3) There is no adverse claim to the security;

(4) The transfer does not violate any restriction on transfer;

(5) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) The transfer is otherwise effective and rightful.

(B) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) The security is valid;

(3) There is no adverse claim to the security; and

(4) At the time the instruction is presented to the issuer:

(a) The purchaser will be entitled to the registration of transfer;

(b) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(c) The transfer will not violate any restriction on transfer; and

(d) The requested transfer will otherwise be effective and rightful.

(C) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) The uncertificated security is valid;

(2) There is no adverse claim to the security;

(3) The transfer does not violate any restriction on transfer; and

(4) The transfer is otherwise effective and rightful.

(D) A person who indorses a security certificate warrants to the issuer that:

(1) There is no adverse claim to the security; and

(2) The indorsement is effective.

(E) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) The instruction is effective; and

(2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(F) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(G) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person

to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(H) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under division (G) of this section.

(I) Except as otherwise provided in division (G) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in divisions (A) to (F) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in division (A) or (B) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

Sec. 1308.21. (A) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(B) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in division (A) or (B) of section 1308.20 Of the Revised Code.

(C) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in division (A) or (B) of section 1308.20 Of the Revised Code.

Sec. 1308.22. (A) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special

indorsement.

(B) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(C) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(D) If a ~~certificated~~ security certificate in registered form has been delivered to a purchaser without a necessary indorsement ~~he, the purchaser~~ may become a ~~bona-fide~~ protected purchaser only as ~~of the time when~~ the indorsement is supplied; ~~but, However,~~ against ~~the A~~ transferor, ~~the A~~ transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(E) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(F) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in section 1308.20 Of the Revised Code and not an obligation that the security will be honored by the issuer.

Sec. 1308.23. (A) "Appropriate person" means:

(1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) With respect to an instruction, the registered owner of an uncertificated security;

(3) With respect to an entitlement order, the entitlement holder;

(4) If the person designated in division (A)(1), (2), or (3) of this section is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) If the person designated in division (A)(1), (2), or (3) of this section lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(B) An indorsement, instruction, or entitlement order is effective if:

(1) It is made by the appropriate person;

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who

has control under division (C)(2) or (D)(2) of section 1308.24 Of the Revised Code; or

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(C) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(D) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(E) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Sec. 1308.24. (A) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(B) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(C) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(D) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(E) If an interest in a security entitlement is granted by the entitlement

holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(F) A purchaser who has satisfied the requirements of division (C)(2) or (D)(2) of this section has control even if the registered owner in the case of division (C)(2) of this section or the entitlement holder in the case of division (D)(2) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(G) An issuer or a securities intermediary may not enter into an agreement of the kind described in division (C)(2) or (D)(2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Sec. 1308.25. (A) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(B) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 1308.20 Of the Revised Code and not an obligation that the security will be honored by the issuer.

Sec. 1308.26. (A) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

- (1) The signature was genuine;
- (2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
- (3) The signer had legal capacity to sign.

(B) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- (1) The signature was genuine;
- (2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
- (3) The signer had legal capacity to sign.

(C) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under division (B) of this section and also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(D) A guarantor under divisions (A) and (B) of this section or a special guarantor under division (C) of this section does not otherwise warrant the rightfulness of the transfer.

(E) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under division (A) of this section and also warrants the rightfulness of the transfer in all respects.

(F) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under division (C) of this section and also warrants the rightfulness of the transfer in all respects.

(G) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(H) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

Sec. 1308.27. (A) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(B) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

Sec. 1308.31. Unless otherwise agreed, the transferor of a ~~certificated~~ security ~~or the transferor, pledgor, or pledgee of an uncertificated security~~ on due demand ~~must~~ shall supply ~~his~~ the purchaser with ~~any~~ proof of ~~his~~ authority to transfer, ~~pledge, or release~~ or with any other requisite necessary to obtain registration of the ~~transfer, pledge, or release of the security,~~ but if the transfer, ~~pledge, or release~~ is not for value, a transferor, ~~pledgor, or pledgee~~ need not ~~do so~~ comply unless the purchaser ~~furnishes~~ pays the necessary expenses. ~~Failure~~ If the transferor fails within a reasonable time to comply with a the demand ~~made gives,~~ the purchaser ~~the right to~~ may reject or rescind the transfer, ~~pledge, or release.~~

Sec. 1308.32. (A) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in division (D) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(B) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in division (D) of this section.

(C) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in division (D) of this section.

(D) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(E) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in

satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

Sec. 1308.33. (A) A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

(B) A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

Sec. 1308.37. (A) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, ~~pledge, or release of an uncertificated security,~~ the issuer shall register the transfer, ~~pledge, or release~~ as requested if:

(1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) The security ~~is indorsed~~ indorsement or the instruction was ~~originated~~ is made by the appropriate person or persons, ~~as provided in section 1308.23 of the Revised Code~~ by an agent who has actual authority to act on behalf of the appropriate person;

~~(2)(3)~~ (3) Reasonable assurance is given that ~~those indorsements~~ the indorsement or ~~instructions~~ instruction is genuine and effective authorized, as provided in section 1308.38 of the Revised Code;

~~(3)~~ (3) The issuer has no duty as to adverse claims or has discharged the duty as provided in section 1308.39 of the Revised Code;

(4) Any applicable law relating to the collection of taxes has been

complied with;

(5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 1308.11 Of the Revised Code;

(6) A demand that the issuer not register transfer has not become effective under section 1308.39 Of the Revised Code, or the issuer has complied with division (B) of that section but no legal process or indemnity bond is obtained as provided in division (D) of that section; and

~~(5)(7) The transfer, pledge, or release is in fact rightful or is to a bona fide protected purchaser;~~

(B) If an issuer is under a duty to register a transfer, ~~pledge, or release~~ of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or ~~his~~ the person's principal for loss resulting from ~~any~~ unreasonable delay in registration or from failure or refusal to register the transfer, ~~pledge, or release~~.

Sec. 1308.38. (A) ~~The~~ An issuer may require the following assurance that each necessary indorsement ~~of a certificated security~~ or each instruction, ~~as provided in section 1308.23 of the Revised Code,~~ is genuine and effective authorized:

(1) In all cases, a guarantee guaranty of the signature, ~~as provided in division (A) or (B) of section 1308.27 of the Revised Code,~~ of the person ~~indorsing a certificated security~~ making an indorsement or originating an instruction including, in the case of an instruction, ~~a warranty of the taxpayer identification number or, in the absence thereof, other~~ reasonable assurance of identity; ~~and~~

(2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to division (A)(4) or (5) of section 1308.23 Of the Revised Code, appropriate evidence of appointment, or incumbency;

(4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) If the indorsement is made or the instruction is originated by a person not covered by ~~any of the foregoing~~ another provision of division (A) of this section, assurance appropriate to the case corresponding as nearly as may be to ~~the foregoing~~ such provisions.

(B) ~~A~~ An issuer may elect to require reasonable assurance beyond that specified in this section.

(C) In this section:

(1) "guarantee Guaranty of the signature" ~~in division (A) of this section~~ means a guarantee guaranty signed by or on behalf of a person reasonably

believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

~~(C)(2)~~ "Appropriate evidence of appointment or incumbency" ~~in division (A) of this section~~ means:

~~(1)(a)~~ In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer, ~~pledge, or release~~; or

~~(2)(b)~~ In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence ~~reasonably deemed by the issuer to be~~ reasonably considered appropriate. ~~The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to division (C)(2) of this section except to the extent that the contents relate directly to the appointment or incumbency.~~

~~(D) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in division (C)(2) of this section, both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.~~

Sec. 1308.39. (A) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(B) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to the person who initiated the demand at the address provided in the demand and the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) The certificated security has been presented for registration of

transfer or the instruction for registration of transfer of the uncertificated security has been received;

(2) A demand that the issuer not register transfer had previously been received; and

(3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(C) The period described in division (B)(3) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(D) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(E) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

Sec. 1308.40. (A) Except as otherwise provided in section 1308.41 Of the Revised Code, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) Pursuant to an ineffective indorsement or instruction;

(2) After a demand that the issuer not register transfer became effective under division (A) of section 1308.39 Of the Revised Code and the issuer did not comply with division (B) of that section;

(3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process;
or

(4) By an issuer acting in collusion with the wrongdoer.

(B) An issuer that is liable for wrongful registration of transfer under

division (A) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 1308.03 Of the Revised Code.

(C) Except as otherwise provided in division (A) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

Sec. 1308.41. (A) If a ~~certificated~~ security certificate has been lost, apparently destroyed, or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after ~~he~~ the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner ~~is precluded from asserting~~ may not assert against the issuer ~~any~~ a claim for registering the transfer under section 1308.40 of the Revised Code or any claim to a new security under this section.

(B) If the owner of a certificated security, whether in registered or bearer form, claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new ~~certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security certificate~~ certificate if the owner:

(1) So requests before the issuer has notice that the security has been acquired by a ~~bona fide~~ protected purchaser;

(2) Files with the issuer ~~any~~ a sufficient indemnity bond; ~~the issuer reasonably requires~~; and

(3) Satisfies ~~any~~ other reasonable requirements imposed by the issuer.

(C) If, after the issue of a new ~~certificated or uncertificated~~ security certificate, a ~~bona fide~~ protected purchaser of the original security presents it for registration of transfer, the issuer shall register the transfer unless registration an overissue would result ~~in overissue, in which event. In that case,~~ the issuer's liability is governed by section 1308.03 of the Revised Code. In addition to any rights on the indemnity bond, the issuer may recover the new ~~certificated security certificate~~ from the person to whom it was issued or any person taking under ~~him~~ that person, except a ~~bona fide protected~~ purchaser ~~or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.~~

Sec. 1308.42. ~~(A) If a~~ A person ~~aets~~ acting as authenticating trustee,

transfer agent, registrar, or other agent for an issuer in the registration of ~~transfers a transfer~~ of its ~~certificated~~ securities ~~or in the registration of transfers, pledges, and releases of its uncertificated securities~~, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered securities:

~~(1) He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and~~

~~(2) With regard to the particular functions he performs, he~~ Security certificates, has the same obligation to the holder or owner of a certificated or uncertificated security ~~or to the owner or pledgee of an uncertificated security and has the same rights and privileges with regard to the particular functions performed~~ as the issuer has in regard to those functions.

~~(B) Notice to an authenticating trustee, transfer agent, registrar or other agent is notice to the issuer with respect to the functions performed by the agent.~~

Sec. 1308.51. (A) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(B) Except as otherwise provided in divisions (D) and (E) of this section, a person acquires a security entitlement if a securities intermediary:

(1) Indicates by book entry that a financial asset has been credited to the person's securities account;

(2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(C) If a condition of division (B) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(D) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(E) Issuance of a security is not establishment of a security entitlement.

Sec. 1308.52. An action based on an adverse claim to a financial asset,

whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 1308.51 Of the Revised Code for value and without notice of the adverse claim.

Sec. 1308.53. (A) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 1308.61 Of the Revised Code.

(B) An entitlement holder's property interest with respect to a particular financial asset under division (A) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(C) An entitlement holder's property interest with respect to a particular financial asset under division (A) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 1308.55 to 1308.58 Of the Revised Code.

(D) An entitlement holder's property interest with respect to a particular financial asset under division (A) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) Insolvency proceedings have been initiated by or against the securities intermediary;

(2) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) The securities intermediary violated its obligations under section 1308.54 Of the Revised Code by transferring the financial asset or interest therein to the purchaser; and

(4) The purchaser is not protected under division (E) of this section. The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(E) An action based on the entitlement holder's property interest with

respect to a particular financial asset under division (A) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 1308.54 Of the Revised Code.

Sec. 1308.54. (A) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(B) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to division (A) of this section.

(C) A securities intermediary satisfies the duty in division (A) of this section if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(D) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Sec. 1308.55. (A) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(B) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Sec. 1308.56. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(A) The securities intermediary acts with respect to the duty as agreed

upon by the entitlement holder and the securities intermediary; or

(B) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Sec. 1308.57. (A) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(B) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

Sec. 1308.58. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(A) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(B) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Sec. 1308.59. (A) If the substance of a duty imposed upon a securities intermediary by sections 1308.54 to 1308.58 Of the Revised Code is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(B) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an

itlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(C) The obligation of a securities intermediary to perform the duties imposed by sections 1308.54 to 1308.58 Of the Revised Code is subject to:

(1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(D) Sections 1308.54 to 1308.58 Of the Revised Code do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

Sec. 1308.60. (A) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(B) If an adverse claim could not have been asserted against an entitlement holder under section 1308.52 Of the Revised Code, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(C) In a case not covered by the priority rules in Chapter 1309. Of the Revised Code, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Sec. 1308.61. (A) Except as otherwise provided in divisions (B) and (C) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(B) A claim of a creditor of a securities intermediary who has a security

interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(C) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Sec. 1309.01. (A) As used in sections 1309.01 to 1309.50 of the Revised Code, unless the context otherwise requires:

(1) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.

(2) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(3) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(4) "Debtor" means the person who owes payment or other performance of the obligations secured, whether or not ~~he~~ the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of sections 1309.01 to 1309.50 of the Revised Code dealing with the collateral, the obligor in any provision dealing with the obligation and may include both where the context so requires.

(5) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(6) "Document" means document of title as defined in division (O) of section 1301.01 of the Revised Code, and a receipt of the kind described in division (B) of section 1307.06 of the Revised Code.

(7) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(8) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures under section 1309.32 of the

Revised Code, but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. "Goods" also include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(9) "Instrument" means a negotiable instrument as defined in section 1303.03 of the Revised Code, ~~or a certificated security as defined in section 1308.01 of the Revised Code~~, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. "Instrument" does not include investment property.

(10) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(11) An advance is made "pursuant to commitment" if the secured party has bound ~~himself~~ itself to make it, whether or not a subsequent event of default or other event not within ~~his~~ the secured party's control has relieved or may relieve ~~him~~ the secured party from ~~his~~ the secured party's obligation.

(12) "Security agreement" means an agreement which creates or provides for a security interest.

(13) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(14) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business, the electric or electronic communications business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas, or water, or the provision of sewer service.

(15) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(16) "General ~~intangible~~ intangibles" means any personal property, including things in action, other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

(B) Other definitions applying to sections 1309.01 to 1309.50 of the Revised Code are:

- (1) "Attach," as defined in section 1309.14 of the Revised Code;
- (2) "Construction mortgage," as defined in section 1309.32 of the Revised Code;
- (3) "Consumer goods," as defined in section 1309.07 of the Revised Code;
- (4) "Equipment," as defined in section 1309.07 of the Revised Code;
- (5) "Farm products," as defined in section 1309.07 of the Revised Code;
- (6) "Fixture," as defined in section 1309.32 of the Revised Code;
- (7) "Fixture filing," as defined in section 1309.32 of the Revised Code;
- (8) "Inventory," as defined in section 1309.07 of the Revised Code;
- (9) "Lien creditor," as defined in section 1309.20 of the Revised Code;
- (10) "Proceeds," as defined in section 1309.25 of the Revised Code;
- (11) "Purchase money security interest," as defined in section 1309.05 of the Revised Code;
- (12) "Commodity contract," "commodity customer," "commodity intermediary," "control," and "investment property," as defined in section 1309.112 Of the Revised Code;

(13) "United States," as defined in section 1309.03 of the Revised Code.

(C) As used in sections 1309.01 to 1309.50 of the Revised Code, "check" and "note" have the meaning set forth in section 1303.03 of the Revised Code; "contract for sale" and "sale" have the meaning set forth in section 1302.01 of the Revised Code; and "holder in due course" has the meaning set forth in section 1303.31 of the Revised Code.

(D) The terms and principles of construction and interpretation set forth in sections 1301.01 to 1301.14 of the Revised Code are applicable to sections 1309.01 to 1309.50 of the Revised Code.

Sec. 1309.03. (A) Documents, instruments, and ordinary goods:

(1) This division applies to documents and instruments and to goods other than those covered by a certificate of title described in division (B) of this section, mobile goods described in division (C) of this section, and minerals described in division (E) of this section.

(2) Except as otherwise provided in this division, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(3) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security

interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(4) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by sections 1309.20 to 1309.37 of the Revised Code to perfect the security interest:

(a) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(b) If the action is taken before the expiration of the period specified in division (A)(4)(a) of this section, the security interest continues perfected thereafter;

(c) For the purpose of priority over a buyer of consumer goods, division (B) of section 1309.26 of the Revised Code, the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in divisions (A)(4)(a) and (b) of this section.

(B) Certificate of title.

(1) This division applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(2) Except as otherwise provided in this division, perfection and the effect of perfection or nonperfection of the security interest are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(3) Except with respect to the rights of a buyer described in division (B)(4) of this section a security interest, perfected in another jurisdiction

otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in division (A)(4) of this section.

(4) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that ~~he~~ the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(C) Accounts, general intangibles, and mobile goods.

(1) This division applies to accounts, other than an account described in division (E) of this section on minerals, and general intangibles, other than uncertificated securities, and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in division (B) of this section.

(2) The law, including the conflict of laws rules, of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(3) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this division, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(4) A debtor shall be deemed located at ~~his~~ the debtor's place of business if ~~he~~ the debtor has one, at ~~his~~ the debtor's chief executive office if ~~he~~ the debtor has more than one place of business; otherwise at ~~his~~ the debtor's residence. If, however, the debtor is a foreign air carrier under the "Federal Aviation

Act of 1958," as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(5) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(D) Chattel Paper.

The rules stated for goods in division (A) of this section apply to a possessory security interest in chattel paper. The rule stated for accounts in division (C) of this section applies to a nonpossessory security in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(E) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law, including the conflict of laws rules, of the jurisdiction wherein the wellhead or minehead is located.

~~(F) Uncertificated securities~~ Investment property.

~~The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.~~

(1) This division applies to investment property.

(2) Except as otherwise provided in division (F)(6) of this section, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(3) Except as otherwise provided in division (F)(6) of this section, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in division (D) of section 1308.05 Of the Revised Code.

(4) Except as otherwise provided in division (F)(6) of this section, perfection of a security interest, the effect of perfection or nonperfection,

and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in division (E) of section 1308.05 Of the Revised Code.

(5) Except as otherwise provided in division (F)(6) of this section, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this division:

(a) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(b) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in division (F)(5)(a) of this section, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(c) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in division (F)(5)(a) OR (b) of this section, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(d) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in division (F)(5)(a) OR (b) of this section and an account statement does not identify an office serving the commodity customer's account as provided in division (F)(5)(c) of this section, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(6) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

Sec. 1309.112. (A) In this chapter:

(1) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(2) "Commodity contract" means a commodity futures contract, an

option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(a) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(b) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(3) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(4) "Commodity intermediary" means:

(a) A person who is registered as a futures commission merchant under the federal commodities laws; or

(b) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(5) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in section 1308.24 Of the Revised Code. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(6) "Investment property" means:

(a) A security, whether certificated or uncertificated;

(b) A security entitlement;

(c) A securities account;

(d) A commodity contract; or

(e) A commodity account.

(B) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity

account.

(C) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(D) Perfection of a security interest in investment property is governed by the following rules:

(1) A security interest in investment property may be perfected by control.

(2) Except as otherwise provided in divisions (D)(3) and (4) of this section, a security interest in investment property may be perfected by filing.

(3) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(4) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(E) Priority between conflicting security interests in the same investment property is governed by the following rules:

(1) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(2) Except as otherwise provided in divisions (E)(3) and (4) of this section, conflicting security interests of secured parties each of whom has control rank equally.

(3) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(4) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(5) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(6) In all other cases, priority between conflicting security interests in investment property is governed by divisions (E), (F), and (G) of section 1309.31 Of the Revised Code. Division (D) of section 1309.31 Of the Revised Code does not apply to investment property.

(E) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

Sec. 1309.113. (A) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(B) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

Sec. 1309.14. (A) Subject to the provisions of section 1304.20 of the Revised Code on the security interest of a collecting bank, ~~section 1308.36~~ sections 1309.112 and 1309.113 of the Revised Code on security interests in ~~securities~~ investment property, and section 1309.11 of the Revised Code on

a security interest arising under sections 1302.01 to 1302.98 of the Revised Code, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(1) The collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(2) Value has been given; and

(3) The debtor has rights in the collateral.

(B) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in division (A) of this section have taken place unless explicit agreement postpones the time of attaching.

(C) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by section 1309.25 of the Revised Code.

(D) A transaction although subject to sections 1309.01 to 1309.50 of the Revised Code, is also subject to sections 1317.01 to 1317.99 and 1321.01 to 1321.33 of the Revised Code, and divisions (A), (B), and (C) of section 1321.99 of the Revised Code and in the event of conflict between the provisions of sections 1309.01 to 1309.50, and 1317.01 to 1317.99, 1321.01 to 1321.33 of the Revised Code, and divisions (A), (B), and (C) of section 1321.99 of the Revised Code, the provisions of sections 1317.01 to 1317.99, 1321.01 to 1321.33 of the Revised Code, and divisions (A), (B), and (C) of section 1321.99 of the Revised Code shall prevail. Failure to comply with such provisions has only the effect provided therein.

Sec. 1309.20. (A) Except as otherwise provided in division (B) of this section, an unperfected security interest is subordinate to the rights of:

(1) Persons entitled to priority under section 1309.31 of the Revised Code;

(2) A person who becomes a lien creditor before the security interest is perfected;

(3) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that ~~he~~ the person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(4) In the case of accounts ~~and~~, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that ~~he~~ the person gives value without knowledge of the security interest and before it is perfected.

(B) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral ~~he~~ the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(C) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(D) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before ~~he~~ the person becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Sec. 1309.21. (A) A financing statement must be filed to perfect all security interests except the following:

(1) A security interest in collateral in possession of the secured party under section 1309.24 of the Revised Code;

(2) A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 1309.23 of the Revised Code or in proceeds for a ten-day period under section 1309.25 of the Revised Code;

(3) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(4) A purchase money security interest in consumer goods; but fixture filing is required for a priority over conflicting interests in fixtures to the extent provided in section 1309.32 of the Revised Code;

(5) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(6) A security interest of a collecting bank as provided in section 1304.20 of the Revised Code, ~~or in securities as provided in section 1308.36 of the Revised Code~~, or arising under sections 1302.01 to 1302.98 of the Revised Code, or covered in division (C) of this section;

(7) An assignment for the benefit of all the creditors of the transferor,

and subsequent transfers by the assignee thereunder;

(8) A security interest in investment property which is perfected without filing under section 1309.112 or 1309.113 Of the Revised Code.

(B) If a secured party assigns a perfected security interest, no filing under sections 1309.01 to 1309.50 of the Revised Code is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(C) The filing of a financing statement otherwise required by sections 1309.01 to 1309.50 of the Revised Code is not necessary or effective to perfect a security interest in property subject to:

(1) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in sections 1309.01 to 1309.50 of the Revised Code for filing of the security interest; or

(2) The following statutes of this state: sections 1548.20, 1701.66, 4505.13 except to the extent provided in division (A) of such section, and 4969.05 of the Revised Code; or

(3) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection, division (B) of section 1309.03 of the Revised Code.

(D) Compliance with a statute or treaty described in division (C) of this section is equivalent to the filing of a financing statement under sections 1309.01 to 1309.50 of the Revised Code, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 1309.03 of the Revised Code on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to sections 1309.01 to 1309.50 of the Revised Code.

Sec. 1309.22. (A) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken, as provided in sections 1309.112, 1309.21, 1309.23, 1309.24, and 1309.25 of the Revised Code. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(B) If a security interest is originally perfected in any way permitted under sections 1309.01 to 1309.50, ~~inclusive~~, of the Revised Code, and is subsequently perfected in some other way under sections 1309.01 to 1309.50, ~~inclusive~~, of the Revised Code, without an intermediate period when it was unperfected, the security interest shall be deemed to be

perfected continuously for the purposes of such sections.

(C) A security interest by whatever name designated by any law in effect prior to July 1, 1962, which was perfected prior to such date and in connection with which any statement, instrument, document, or notice was filed, refiled, or recorded pursuant to such law, shall, if such law required a further filing, refiling, or recording to continue the perfection of such security interest, continue to be perfected without any further filing, refiling, or recording of any statement, instrument, document, or notice until the date provided by such law or July 1, 1964, whichever date is later and will thereupon lapse, unless a continuation statement has been filed after July 1, 1962, and prior to the lapse of such statement, instrument, document, or notice pursuant to this section. Section 1309.38 of the Revised Code determines the proper place to file such continuation statement and succeeding continuation statements and, except as otherwise provided in this section, division (C) of section 1309.40 of the Revised Code applies to and governs the period of effectiveness and the requirements respecting such continuation statements.

Sec. 1309.23. (A) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than ~~certificated securities or~~ instruments which constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in divisions (D) and (E) of this section and divisions (B) and (C) of section 1309.25 of the Revised Code on proceeds.

(B) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(C) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(D) A security interest in instruments, ~~other than~~ certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(E) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, ~~other than~~ a certificated security, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable

document therefor:

(1) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, trans-shipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to division (C) of section 1309.31 of the Revised Code; or

(2) Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(F) After the twenty-one day period set forth in divisions (D) and (E) of this section, perfection depends upon compliance with applicable provisions of sections 1309.01 to 1309.50 of the Revised Code.

Sec. 1309.24. A security interest in letters of credit and advices of credit, as provided in division (B)(1) of section 1305.15 of the Revised Code, goods, instruments, ~~other than certificated securities~~, negotiable documents, money, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in sections 1309.01 to 1309.50 of the Revised Code. The security interest may be otherwise perfected as provided in sections 1309.01 to 1309.50 of the Revised Code, before or after the period of possession by the secured party.

Sec. 1309.25. (A) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. ~~Moneys~~ Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "non-cash proceeds."

(B) Except where sections 1309.01 to 1309.50 of the Revised Code otherwise provide, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(C) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(1) ~~a~~ A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of the collateral in the financing statement indicates the types of property constituting the proceeds; or

(2) ~~a~~ A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~

(3) ~~the~~ The original collateral was investment property and the proceeds are identifiable cash proceeds; or

(4) The security interest in the proceeds is perfected before the expiration of the ten day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in sections 1309.01 to 1309.50 of the Revised Code for original collateral of the same type.

(D) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(1) ~~in~~ In identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(2) ~~in~~ In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(3) ~~in~~ In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(4) ~~in~~ In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this division is:

(a) ~~subject~~ subject to any right of set-off; and

(b) ~~limited~~ limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings, less the sum of (i) the payments to the secured party on account of cash proceeds received by the debtor; and (ii) the cash proceeds received by the debtor during such period to which the secured party is entitled under divisions (D)(1) to (3) of this section.

(E) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(1) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(2) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under division (E)(1) of this section to the extent that the transferee of the chattel paper was entitled to priority under section 1309.27 of the Revised Code.

(3) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under division (E)(1) of this section.

(4) A security interest of an unpaid transferee asserted under division (E)(2) or (3) of this section must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Sec. 1309.28. Nothing in sections 1309.01 to 1309.50 of the Revised Code, ~~limit~~ limits the rights of a holder in due course of a negotiable instrument, as defined in section 1303.32 of the Revised Code, or a holder to whom a negotiable document of title has been duly negotiated under section 1307.29 of the Revised Code, or a ~~bona fide~~ protected purchaser of a security under section 1308.17 of the Revised Code, and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under sections 1309.01 to 1309.50 of the Revised Code, does not constitute notice of the security interest to such holders or purchasers.

Sec. 1309.31. (A) The rules of priority stated in sections 1309.20 to 1309.27 of the Revised Code and in the following sections shall govern where applicable: section 1304.20 of the Revised Code with respect to the security interests of collecting banks in items being collected, accompanying documents, and proceeds; section 1309.03 of the Revised Code on security interests related to other jurisdictions; section 1309.111 of the Revised Code on consignments; section 1309.112 Of the Revised Code on security interests in investment property.

(B) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(C) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(1) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(2) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(a) Before the date of the filing made by the purchase money secured party; or

(b) Before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession pursuant to division (E) of section 1309.23 of the Revised Code; and

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(D) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(E) In all cases not governed by other rules stated in this section, including cases of purchase money security interests which do not qualify for the special priorities set forth in divisions (C) and (D) of this section, priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(1) Conflicting security interests rank according to priority in time of

filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(2) So long as conflicting security interests are unperfected, the first to attach has priority.

(F) For the purpose of division (E) of this section, a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(G) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section ~~1308.36~~ 1309.112 or 1309.113 of the Revised Code on ~~securities~~ investment property, the security interest has the same priority for the purposes of division (E) of this section or division (E) of section 1309.112 Of the Revised Code with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

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

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

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

(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.

(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.

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

(F) "Shareholder" means a person whose name appears on the books of the corporation as the owner of shares of such corporation. Unless the articles, the regulations, or the contract of subscription otherwise provides, "shareholder" includes a subscriber to shares, whether the subscription is

eived by the incorporators or pursuant to authorization by the directors, and such shares shall be deemed to be outstanding shares.

(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.

(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 transferred.

(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:

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

(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.

(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.

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

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

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

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

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

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

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

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

- (b) One-third or more but less than a majority of such voting power;
- (c) A majority or more of such voting power.

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

(2) The acquisition by any person of any shares of an issuing public corporation does not constitute a control share acquisition for the purpose of section 1701.831 of the Revised Code if the acquisition was or is consummated in, results from, or is the consequence of any of the following circumstances:

- (a) Prior to November 19, 1982;
- (b) Pursuant to a contract existing prior to November 19, 1982;
- (c) By bequest or inheritance, by operation of law upon the death of an individual, or by any other transfer without valuable consideration, including a gift, that is made in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code;
- (d) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code;
- (e) Pursuant to a merger or consolidation adopted, or a combination or majority share acquisition authorized, by shareholder vote in compliance with section 1701.78, 1701.781, or 1701.83 of the Revised Code provided the issuing public corporation is the surviving or new corporation in the merger or consolidation or is the acquiring corporation in the combination or majority share acquisition;
- (f) The person's being entitled, immediately thereafter, to exercise or direct the exercise of voting power of the issuing public corporation in the election of directors within the same range theretofore attained by that person either in compliance with the provisions of section 1701.831 of the Revised Code or as a result solely of the issuing public corporation's purchase of shares issued by it.

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 such 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 such transferor's acquisition of shares of the issuing public corporation.

(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 (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 such 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.

(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.

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

(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:

- (a) An acquiring person;
- (b) Any officer of the issuing public corporation elected or appointed by the directors of the issuing public corporation;
- (c) Any employee of the issuing public corporation who is also a director of such corporation;

~~(2) "Interested shares" also means any shares of an issuing public corporation acquired, directly or indirectly, by any~~ (d) Any person from the holder or holders thereof for a that acquires such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposed control share acquisition of the issuing public corporation or any proposed merger, consolidation, or other transaction that

would result in a change in control of the corporation or all or substantially all of its assets, and ending on the record date of any special meeting of the corporation's shareholders held thereafter pursuant to section 1701.831 of the Revised Code, for the purpose of voting on a control share acquisition proposed by any acquiring person established by the directors pursuant to section 1701.45 and division (D) of section 1701.831 Of the Revised Code, if either of the following applies:

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

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

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

~~(3)~~(2) If any part of this division is held to be illegal or invalid in application, the illegality or invalidity does not affect any legal and valid application thereof or any other provision or application of this division or section 1701.831 of the Revised Code that can be given effect without the invalid or illegal provision, and the parts and applications of this division are severable.

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

(EE) "Entity" means any of the following:

(1) A for profit corporation existing under the laws of this state or any other state;

(2) Any of the following organizations existing under the laws of this state, the United States, or any other state:

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

(d) An unincorporated business or for profit organization, including a general or limited partnership;

(e) A limited liability company.

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

(B) Each holder of shares is entitled to one or more certificates, signed by the ~~chairman~~ chairperson of the board or the president or a vice-president

and by the secretary, an assistant secretary, the treasurer, or an assistant treasurer of the corporation, which shall certify the number and class of shares held by ~~him~~ the holder in such corporation, but no certificate for shares shall be executed or delivered until such shares are fully paid. When such a certificate is countersigned by an incorporated transfer agent or registrar, the signature of any of ~~said~~ such officers of the corporation may be facsimile, engraved, stamped, or printed. Although any officer of the corporation whose manual or facsimile signature is affixed to such a certificate ceases to be such officer before the certificate is delivered, such certificate nevertheless shall be effective in all respects when delivered.

(C) A corporation is not obligated to but may issue fractional shares. In the case of uncertificated securities, the corporation may ~~treat the issuance of fractional shares in accordance with the procedures set forth in section 1308.44 of the Revised Code, or may~~ proceed as provided in divisions (C)(1) and (2) of this section. In the case of certificated securities the corporation may execute and deliver a certificate for or including a fraction of a share; or, in lieu thereof, may:

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

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

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

(D) A joint estate with the incidents of a joint estate as at common law, including the right of survivorship, may be created in shares by registering the same in the case of uncertificated securities, or by executing and

ng a certificate therefor in the case of certificated securities to two or more persons with the words "as joint tenants" or "as joint tenants with right of survivorship and not as tenants in common" following their names. Upon receipt by the corporation of proof satisfactory to it of the death of one or more of such joint tenants, it may register the transfer to, or execute and deliver a new certificate to the survivor or survivors.

(E) Whenever a corporation has determined that any outstanding certificates for shares should be canceled and exchanged for other certificates, the corporation may order and require the holders of the outstanding certificates to surrender them for such purpose within a reasonable time to be fixed by the corporation. Such order may provide that, until compliance therewith, any or all rights as a shareholder of the holder of any certificate so required to be surrendered shall be suspended with respect to the shares represented thereby. Not less than ten days before any such order is to become effective, the corporation shall give notice thereof by mail to each shareholder affected thereby at his address as it appears on the records of the corporation.

(F) Unless otherwise provided by the articles or regulations, the directors may provide by resolution that some or all of any or all classes and series of shares of a corporation shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation ~~as provided in division (B) of section 1308.43 of the Revised Code~~, and that such resolution shall not apply to a certificated security issued in exchange for an uncertificated security ~~as provided in division (C) of section 1308.43 of the Revised Code~~. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to division (A) of section 1701.25 of the Revised Code. ~~Such notice may be contained in the statement required by section 1308.44 of the Revised Code.~~ Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

Sec. 1701.25. (A) Each certificate for shares of a corporation shall state:

- (1) That the corporation is organized under the laws of this state;
- (2) The name of the person to whom the shares represented by the certificate are issued;
- (3) The number of shares represented by the certificate;
- (4) If the shares of the corporation are classified, the designation of the

class, and the series, if any, of the shares represented by the certificate;

(5) On the face or the back of the certificate:

(a) The express terms, if any, of the shares represented by the certificate and of the other class or classes and series of shares, if any, which the corporation is authorized to issue; or

(b) A summary of such express terms; or

(c) That the corporation will mail to the shareholder a copy of such express terms without charge within five days after receipt of written request therefor; or

(d) That a copy of such express terms is attached to and by reference made a part of such certificate and that the corporation will mail to the shareholder a copy of such express terms without charge within five days after receipt of written request therefor if the copy has become detached from the certificate.

(B) No restriction on the right to transfer shares and no reservation of lien on shares shall be effective against a transferee of such shares unless, ~~as to uncertificated securities, there is set forth in the initial transaction statement required for liens by section 1308.02 of the Revised Code, and for restrictions on transfer by~~ there has been compliance with section 1308.11 of the Revised Code, and unless, as to certificated securities, there is set forth on the face or the back of the certificate therefor:

(1) A statement of the terms of such restriction or reservation; or

(2) A summary of the terms of such restriction or reservation and a statement that the corporation will mail to the shareholder a copy of such restriction or reservation without charge within five days after receipt of written request therefor; or

(3) If such restriction or reservation is contained in the articles or regulations of the corporation, or in an instrument in writing to which the corporation is a party, a statement to that effect and a statement that the corporation will mail to the shareholder a copy of such restriction or reservation without charge within five days after receipt of written request therefor; or

(4) If such restriction or reservation is contained in an instrument in writing (other than the articles or regulations of the corporation or an instrument in writing to which the corporation is a party), a statement to that effect identifying the instrument by title, date, and parties.

(C) A corporation shall mail to a shareholder without charge within five days after receipt of written request therefor the copy or copies referred to in paragraphs (5)(c) and (5)(d) of division (A) and paragraphs (2) and (3) of division (B) of this section.

Sec. 1701.27. (A) In case a certificate for shares is lost, stolen, or destroyed, the court of common pleas or the probate court of the county in which the principal office of the corporation is located shall have jurisdiction to hear and determine all questions respecting such loss, theft, or destruction, the person interested therein, the bond required to be given to protect the corporation or any person injured by the execution and delivery of a new certificate, the terms on which a new certificate shall be executed and delivered, and the costs and counsel fees, if any, to be allowed to the corporation.

(B) A corporation which voluntarily and in good faith executes and delivers a new certificate in lieu of one believed to have been lost, stolen, or destroyed, or which executes and delivers a new certificate in compliance with an order of a court of competent jurisdiction, may recognize the person named in the new certificate, or any certificate thereafter executed and delivered in exchange or substitution for such new certificate, as the owner of the shares described therein for all purposes, until the owner of the original certificate, or a transferee thereof without notice and for value, enjoins the corporation and the holder of any new certificate, or any certificate executed and delivered in exchange or substitution for such new certificate, from so acting.

(C) Special provisions in ~~sections 1308.01 to 1308.36, inclusive, of the Revised Code, (particularly~~ section ~~1308.35~~ 1308.41 of the Revised Code) relating to the replacement of lost, apparently destroyed, or wrongfully taken securities shall govern to the exclusion of the provisions of this section on this subject, except where it clearly appears that a special provision is cumulative, in which case it and the provisions of this section on the same subject shall apply.

Sec. 1701.49. (A) By written agreement certificates for shares of a corporation may be deposited within or without this state by any holder or holders thereof with one or more persons as trustees, or with any depositary designated by or pursuant to such agreement to act for such trustees, for the purpose and with the effect of granting to such trustees or a majority of them, or to such persons as may be designated by or pursuant to such agreement, all the voting, consenting, or other rights in respect of the shares represented by such certificates, or such of these rights as may be specified in the agreement, or for such other lawful purposes as may be specified in the agreement, for such period and upon such terms as may be stated therein.

In the case of uncertificated securities, the deposit of the shares may be accomplished by registration in the name of the trustee or trustees as

provided in division (F) of this section.

(B) No such agreement which grants the voting or consenting rights in respect of shares shall be irrevocable for a period of more than ten years, unless the voting or consenting rights granted thereby are coupled with an interest in the shares to which such rights relate, except that, if the agreement so provides, such irrevocable grant may be extended for additional periods of not more than ten years each, upon the affirmative vote or assent of the beneficial owners of not less than a majority of the shares deposited under the agreement. Such rights shall be deemed coupled with an interest in the shares if granted in connection with: an option, authority, or contract to buy or sell the shares or a part thereof; a pledge of the shares to secure the performance or nonperformance of any act; the performance or nonperformance of any act, or agreement for an act, by the corporation issuing the shares; or any other act or thing constituting an interest sufficient in law to support a power coupled therewith.

(C) The trustees under the agreement may issue, or cause to be issued by their depository or agent, voting trust certificates registered in the name of the owners thereof. So far as consistent with the agreement and the voting trust certificates issued thereunder, the provisions of ~~sections 1308.01 to 1308.44~~ Chapter 1308., and of sections 1701.01 to 1701.99 of the Revised Code, with respect to the transfer of certificates for shares shall apply to transfers of such voting trust certificates.

Voting trust certificates must be in certificated form, and interests in a voting trust shall not be eligible for treatment as uncertificated securities.

(D) The agreement may include any terms not repugnant to law, including provisions defining, limiting, or regulating the exercise of the authority, and the liability of, the trustees, or of such persons as are designated by or pursuant to any such agreement to exercise the voting, consenting, or other rights in respect of the deposited shares or to act as depository thereunder.

(E) An executed counterpart of the agreement may be filed with the secretary of the corporation, and upon such filing shall be open to inspection by any shareholder at the office of the corporation at all reasonable times.

(F) The certificates for shares so deposited may be surrendered to and canceled by the issuing corporation, and if this is done new certificates therefor shall be issued by the corporation in the names of the trustees or of such persons as are designated by or pursuant to the agreement, as specified in a writing signed by the trustees and delivered to the issuing corporation. The new certificates shall be delivered to the trustees, or to any depository, as the trustees may direct. The new certificates shall be issued in such

manner that it shall appear that they are issued pursuant to the agreement, and in the entry of ownership in the proper books of the corporation that fact shall also be noted.

If the corporation has elected to issue uncertificated securities, shares in uncertificated form may be deposited, with the effect provided by division (A) of this section, by registration in the name of the trustee or trustees or of such persons as are designated by or pursuant to the agreement, in accordance with ~~sections 1308.01 to 1308.44~~ Chapter 1308. of the Revised Code.

(G) Shares issued by a foreign corporation may be made the subject of an agreement under this section.

(H) The rights conferred by this section are in addition to rights at common law, and no limitation established by this section shall limit rights at common law.

(I) Any such agreement shall be conclusively deemed to have been made under the common law, and not under this section, if the agreement so states.

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

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

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

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

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

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

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

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

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

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

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

(6) The terms and conditions of employment of an officer or employee of the corporation without regard to the period of ~~his~~ employment;

(7) The declaration and payment of dividends or distributions or the division of profits;

(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;

(9) Conferring on any shareholder or ~~his~~ 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;

(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;

(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;

(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.

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

(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;

(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.

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.

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.

(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 written consent of the holders of fewer than all of the shares, the secretary of the corporation shall mail a copy of the amendment or a notice of the termination to each shareholder who did not so consent. If a close corporation agreement set forth in the articles is amended, the amendment shall not be effective unless it is filed as an amendment to the articles pursuant to section 1701.73 of the Revised Code. No corporation with respect to which a close corporation agreement is in effect shall cause to occur any of the actions described in division (I)(1)(a), (b), or (c) of this section unless the action has been authorized by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of that proportion of shares of each class that is required to terminate the close corporation agreement.

(2) A close corporation agreement that was in existence on December 31, 1993, and that did not specify on that date and that has not specified since that date the proportion of shares required to amend or terminate the 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 four-fifths of the outstanding shares of each class.

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

(1) The agreement is an attempt to treat the corporation as if it were a

partnership or to arrange the relationship of the parties in a manner that would be appropriate only among partners;

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

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

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

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

(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.

(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.

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

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

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

(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. 781, as

amended.

(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.

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

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

(a) 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;

(b) That person does either of the following:

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

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

(3) If shares of a corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement and that person accepts an offer by the corporation to purchase

the shares, the corporation shall pay to that person the full amount paid for the shares within seven days after that person delivers to the corporation the certificate for the shares and proof of payment of the amount paid for the shares. If the amount paid for the shares included property other than cash, the corporation, at its option, may return the property to that person or may pay to that person cash in an amount equal to the fair market value of the property on the date of transfer or issuance of the shares, as determined in good faith by the corporation. A shareholder who transfers shares to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement is liable to the corporation, upon the corporation's written demand made upon the shareholder within ninety days after the date on which the corporation made 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 officers of the corporation shall promptly sign and file the certificate of amendment prescribed by section 1701.73 of the Revised Code, setting forth the reason for the termination or invalidity and deleting the close corporation agreement from the articles. If the officers fail to execute and file the certificate within thirty days after the occurrence of the event giving rise to the termination or invalidity, the certificate may be signed and filed by any shareholder and shall set forth a statement that the person signing the certificate is a shareholder and is filing the certificate because of the failure of the officers to do so.

(J) A close corporation agreement, in the sound discretion of a court exercising its equity powers, is enforceable by injunction, specific performance, or other relief that the court may determine to be fair and appropriate.

(K) This section shall not be construed as prohibiting any other lawful

agreement among two or more shareholders.

(L) No corporation with respect to which a close corporation agreement is in effect, shall issue shares in uncertificated form, and any resolution of the directors of such a corporation, providing for the issuance of shares in uncertificated form, shall be ineffective during any period in which a close corporation agreement is in effect. The adoption of a close corporation agreement shall act as a transfer instruction to the corporation to replace uncertificated securities with appropriate certificated securities ~~in accordance with division (C) of section 1308.43 of the Revised Code.~~

(M) If the annual meeting of the shareholders is dispensed with in accordance with a provision in the close corporation agreement authorized by division (C)(12) of this section, the annual financial statements 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. 1701.831. (A) Unless the articles or the regulations of the issuing public corporation provide that this section does not apply to control share acquisitions of shares of such corporation, any control share acquisition of an issuing public corporation shall be made only with the prior authorization of the shareholders of such corporation in accordance with this section.

(B) Any person who proposes to make a control share acquisition shall deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal executive offices. Such acquiring person statement shall set forth all of the following:

- (1) The identity of the acquiring person;
- (2) A statement that the acquiring person statement is given pursuant to this section;
- (3) The number of shares of the issuing public corporation owned, directly or indirectly, by the acquiring person;
- (4) The range of voting power, described in division (Z)(1)(a), (b), or (c) of section 1701.01 of the Revised Code, under which the proposed control share acquisition would, if consummated, fall;
- (5) A description in reasonable detail of the terms of the proposed control share acquisition;

(6) Representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

(C) Within ten days after receipt of an acquiring person statement that complies with division (B) of this section, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of voting on the proposed control share acquisition. Unless the acquiring person agrees in writing to another date, such special meeting of shareholders shall be held within fifty days after receipt by the issuing public corporation of the acquiring person statement. If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, such special meetings shall be held no sooner than thirty days after receipt by the issuing public corporation of the acquiring person statement. Such special meeting of shareholders shall be held no later than any other special meeting of shareholders that is called, after receipt by the issuing public corporation of the acquiring person statement, in compliance with section 1701.76, 1701.78, 1701.79, 1701.83, or 1701.831 of the Revised Code.

(D) Notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for such meeting, whether or not entitled to vote thereat. Such notice shall include or be accompanied by both of the following:

(1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this section;

(2) A statement by the issuing public corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

(E) The acquiring person may make the proposed control share acquisition if both of the following occur:

(1) The shareholders of the issuing public corporation who hold shares as of the record date of such corporation entitling them to vote in the election of directors authorize ~~such~~ the acquisition at the special meeting held for that purpose at which a quorum is present by an affirmative vote of a majority of the voting power of such corporation in the election of directors represented at ~~such~~ the meeting in person or by proxy, and a majority of the portion of ~~such~~ the voting power excluding the voting power

of interested shares represented at the meeting in person or by proxy. A quorum shall be deemed to be present at ~~such the~~ special meeting if at least a majority of the voting power of the issuing public corporation in the election of directors, ~~and a majority of the portion of such voting power excluding the voting power of interested shares are~~ is represented at ~~such the~~ meeting in person or by proxy.

(2) ~~Such The~~ acquisition is consummated, in accordance with the terms so authorized, no later than three hundred sixty days following shareholder authorization of the control share acquisition.

(F) Except as expressly ~~improved~~ PROVIDED in this section, nothing in this section shall be construed to affect or impair any right, remedy, obligation, duty, power, or authority of any acquiring person, any issuing public corporation, the directors of any acquiring person or issuing public corporation, or any other person under the laws of this or any other state or of the United States.

(G) If any application of any provision of this section is for any reason held to be illegal or invalid, the illegality or invalidity shall not affect any legal and valid provision or application of this section, and the parts and applications of this section are severable.

Sec. 1701.832. (A) In enacting Amended Substitute House Bill No. 822 of the 114th general assembly, which amended sections 1701.01, 1701.11, 1701.37, 1701.48, 1707.01, 1707.23, 1707.26, 1707.29, and 1707.99 and enacted sections 1701.831 and 1707.042 of the Revised Code, the general assembly found and continues to find that:

(1) Existing Ohio corporate law was designed to deal with traditional methods of transfer of control of Ohio corporations. The tender offer has evolved as an alternative device to acquire control of a public corporation that has been in widespread use in the past several decades. The acquisition of significant blocks of the securities of a public company in the open market or private transactions in connection with actual or apparent efforts to acquire control has become more common in recent years and has further complicated the impact of tender offers upon a corporation and its shareholders. Numerous Ohio corporations have been the subject of tender offers and accumulations of significant blocks of securities.

(2) The accumulation of a large block of a corporation's voting shares, or other securities convertible into voting shares, through direct or indirect acquisition from one or more existing shareholders of the corporation has not been subject to the normal corporate approval mechanisms involved in other typical types of acquisition transactions such as mergers, consolidations, combinations, and majority share acquisitions. Such

accumulations, however, can result in shifts of effective corporate control and hence, from a business and financial perspective, directly or indirectly, can result in significant changes in a variety of basic corporate circumstances identical or substantially similar to those arising as a result of the above-mentioned transactions. For instance, a change in corporate control accompanying a large accumulation of shares will very often result in a fundamental change in the ongoing business of the corporation and a concomitant fundamental change in the nature of the shareholders' investment in it. Thus the potential that such changes in corporate circumstances will occur gives rise to basic issues concerning the internal affairs of the corporation typical of those arising in mergers, consolidations, combinations, and majority share acquisitions. The form of the transaction in which such issues arise should not alter the basic corporate mechanisms by which such issues are presented and resolved.

(3) Tender offers almost always involve a change in corporate control and, therefore, give rise to these same basic issues concerning internal corporate affairs. Although tender offers in theory offer shareholders the opportunity to consider such issues in deciding whether or not to tender their shares, in practice they do not. Tender offers are coercive in the sense that shareholders are normally concerned that a majority of their fellow shareholders will tender their shares, leaving them in a minority position with one controlling shareholder. Thus, shareholders often feel compelled to tender their shares, regardless of how they feel about the corporate control issues inherent in any tender offer. The opportunity for reasoned decision-making is further hindered by the short time periods in which tender offers can be consummated, the structures of many recent tender offers, which are designed to encourage prompt tenders, and the fact that individual shareholders typically receive or obtain tender offer materials much later than institutional shareholders.

(4) It is in the public interest for shareholders to have a reasonable opportunity to express their views by voting on a proposed shift of control, an opportunity currently available under Ohio general corporation law, Chapter 1701. Of the Revised Code, in transactions with similar effects. The general assembly also believes that it is in the public interest for Ohio securities laws, Chapter 1707. Of the Revised Code, to provide evenhanded protection of offerors and shareholders from fraudulent and manipulative transactions arising in connection with control acquisitions.

(5) Initial state efforts to deal with tender offer developments have been questioned by the federal courts. The general assembly observes that responsibility for general corporate laws is the function of state legislation

and that no federal law of corporations exists. The general assembly observes that securities law protection of state residents has long been recognized as an appropriate subject of state law regulation under the federal system. The general assembly acknowledges an in loco parentis responsibility to shareholders who invest in corporations created under the laws of Ohio and to shareholders generally who reside in Ohio.

(B) Sections 1701.01, 1701.11, 1701.37, 1701.48, 1707.01, 1707.23, 1707.26, 1707.29, and 1707.99, as amended by Amended Substitute House Bill No. 822 of the 114th general assembly, and sections 1701.831 and 1707.042, as enacted by that act, were a recognition of the state's responsibility with respect to the subject matter of the act. Nevertheless, with a view to avoiding an undue burden on interstate commerce, as expressed in recent court decisions, the amendments were designed to have the minimum impact upon interstate commerce consistent with Ohio responsibility in respect to the subject matter. Accordingly, the security law amendments made by that act to sections 1707.23, 1707.26, 1707.29, and 1707.99 and in newly enacted section 1707.042 of the Revised Code were limited to application to Ohio resident investors, and the corporate law amendments made by that act to sections 1701.01, 1701.11, 1701.37, and 1701.48 and in newly enacted section 1701.831 of the Revised Code were limited to corporations created under the laws of Ohio with the strong Ohio ties provided in the amendments. The corporate legislation does not include a requirement for Ohio resident investors because of the difficulty of ascertainment by potential acquirers and others of the residence of shareholders. The general assembly finds that corporations satisfying the jurisdictional nexus provided by the amendments may be deemed to have a substantial and significant shareholder base in the state.

(C) The general assembly confirms all of the findings of this section as enacted by Amended Substitute House Bill No. 822 of the 114th general assembly, except that the general assembly declares that, from the effective date of this amendment, November 2, 1989, and the concurrent amendment of section 1701.11 of the Revised Code by the addition of division (B)(9)(a)(ii) to that section, the standards of that division are permitted, as an alternative to the ties with Ohio essential to the status of a control share acquisition, to qualify for the authorized restrictions on transfer of shares. The general assembly further finds that the omission of a reference to "1701.01" immediately following the phrase "the corporate law amendments in sections" in the enactment of division (B) of this section was inadvertent.

(D) The general assembly confirms all of the findings of this section as enacted by Amended Substitute House Bill No. 822 of the 114th general

assembly, and as amended by Amended Substitute House Bill No. 358 of the 118th general assembly, and further finds all of the following:

(1) Although Ohio general corporation law, Chapter 1701. of the Revised Code, requires that a special meeting be held to enable shareholders of an issuing public corporation to vote on any control share acquisition, it describes meeting procedures, like other states, primarily in general terms.

(2) Where the law, or the articles of incorporation and code of regulations of the issuing public corporation, do not mandate specific meeting procedures, the directors of the corporation must define appropriate procedures consistent with their fiduciary duties as provided in section 1701.59 of the Revised Code. In carrying out these duties, practices and procedures have developed from experience in this state and elsewhere to ensure fair and efficient meetings. These practices and procedures include the use of a variety and number of presumptions and forms of proxy.

(3) The use of presumptions and forms of proxy reflects the fact that, in this state and other states with similar laws, Efficiency and FINALITY are necessary priorities over precision and certitude in the conduct of a meeting. It is the responsibility of the directors to utilize practices and procedures, including presumptions and forms of proxy, that are consistent with their fiduciary duties.

Sec. 1705.01. As used in this chapter:

(A) "Business" means every trade, occupation, or profession.

(B) "Contribution" means any cash, property, services rendered, promissory note, or other binding obligation to contribute cash or property or to perform services that a member contributes to a limited liability company in ~~his~~ the capacity as a member.

(C) "Conveyance" means every assignment, lease, mortgage, or encumbrance.

(D) "Entity" means any of the following:

(1) A for profit corporation existing under the laws of this state or any other state;

(2) Any of the following organizations existing under the laws of this state, the United States, or any other state:

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

(d) An unincorporated business or for profit organization, including a general or limited partnership;

(e) A limited liability company.

(E) "Incompetent" has the same meaning as in section 2111.01 of the

Revised Code.

(F) "Knowledge," of a fact, means actual knowledge of that fact and knowledge of other facts that under the circumstances shows bad faith.

(G) "Member" means a person whose name appears on the records of the limited liability company as the owner of a membership interest in that company.

(H) "Membership interest" means a member's share of the profits and losses of a limited liability company and the right to receive distributions from that company.

(I) "Notice" means that the person who claims the benefit of the notice has done one of the following:

(1) Stated the fact to the person entitled to notice;

(2) Delivered through the mail or by other means of communication a written statement of the fact to the person entitled to notice or to a proper person at the place of business or residence of the person entitled to receive a notice.

(J) "Operating agreement" means all of the valid written or oral agreements of the members or, in the case of a limited liability company consisting of one member, a written declaration of that member, as to the affairs of a limited liability company and the conduct of its business.

(K) "Person" means any natural person; partnership, limited partnership, trust, estate, association, limited liability company, or corporation; any custodian, nominee, trustee, executor, administrator, or other fiduciary; or any other individual or entity in its own or any representative capacity.

(L) "Professional association" and "professional service" have the same meanings as in section 1785.01 of the Revised Code.

(M) "State" has the same meaning as in section 1.59 of the Revised Code and additionally includes a foreign country and any province, territory, or other political subdivision of a foreign country.

Sec. 1705.04. (A) ~~Two~~ One or more persons, without regard to residence, domicile, or state of organization, may form a limited liability company. The entity is formed when one or more persons or their authorized representative signs and files with the secretary of state articles of organization that set forth all of the following:

(1) The name of the company;

(2) Except as provided in division (B) of this section, the period of its duration, which may be perpetual;

(3) The address to which interested persons may direct requests for copies of any operating agreement and any bylaws of the company;

(4) Any other provisions that are from the operating agreement or that

are not inconsistent with applicable law and that the members elect to set out in the articles for the regulation of the affairs of the company.

(B) If the articles of organization or operating agreement do not set forth the period of the duration of the limited liability company, its duration shall be perpetual.

(C) If a limited liability company is formed under this chapter for the purpose of rendering a professional service or the kinds of professional services authorized under Chapters 4703. and 4733. of the Revised Code, the following apply:

(1) Each member, employee, or other agent of the company who renders a professional service in this state and, if the management of the company is not reserved to its members, each manager of the company who renders a professional service in this state shall be licensed or otherwise legally authorized to render in this state the same kind of professional service or, if applicable, the kinds of professional services authorized under Chapters 4703. and 4733. of the Revised Code.

(2) Each member, employee, or other agent of the company who renders a professional service in another state and, if the management of the company is not reserved to its members, each manager of the company who renders a professional service in another state shall be licensed or otherwise legally authorized to render that professional service in the other state.

(D) Except for the provisions of this chapter pertaining to the personal liability of members, employees, or other agents of a limited liability company and, if the management of the company is not reserved to its members, the personal liability of managers of the company, 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 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 the individual is a member or manager of a limited liability company and is rendering the professional services or engaging in the practice of the profession through the limited liability company or that the organization is a limited liability company.

Sec. 1705.16. (A) ~~If~~ Except as provided in division (C) of this section, if the management of a limited liability company is reserved to its members, a member may withdraw from the company at any time by giving written notice to the other members. If the withdrawal violates the operating agreement, then, in addition to exercising any remedies otherwise available

under applicable law, the company may recover from the withdrawing member damages for breach of the operating agreement and may offset the damages against the amount otherwise distributable to ~~him~~ the withdrawing member on account of ~~his~~ the withdrawing member's membership interest.

(B) ~~If~~ Except as provided in division (C) of this section, if the management of a limited liability company is not reserved to its members, the operating agreement may prohibit withdrawal or may specify the time at which or the events the occurrence of which entitle a member to withdraw. If the operating agreement does not prohibit withdrawal, does not specify the time at which or the events upon the occurrence of which a member may withdraw, and does not indicate a definite time for the dissolution and the winding up of the company, a member may withdraw after giving at least six-months written notice of the proposed withdrawal to each nonwithdrawing member at its address as set forth in the records of the company that are required to be kept under section 1705.28 of the Revised Code.

(C) If the limited liability company was formed on or after the effective date of this amendment, or the company was formed prior to the effective date of this amendment and its articles of organization or operating agreement specifically state that this division applies to the company, a member may withdraw from the company only at the time or upon the occurrence of an event specified in writing in the articles of organization or the operating agreement.

Sec. 1705.43. (A) A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(1) The expiration of the period, if any, fixed by the operating agreement or articles of organization for the duration of the company;

(2) One or more events specified in writing in the operating agreement as causing the dissolution of the company;

(3) The unanimous written agreement of all members to dissolve the company;

(4) The withdrawal of a member of the company, unless the business of the company is continued by the consent of all of the remaining members or under a right to continue the company that is stated in writing in the operating agreement;

(5) ~~At any time when there are less than two members;~~

~~(6)~~ Upon entry of a decree of judicial dissolution under section 1705.47 of the Revised Code.

(B) Following the occurrence of any of the events specified in division

(A) of this section, the limited liability company shall deliver to the secretary of state for filing a certificate of dissolution on a form that is prescribed by the secretary of state and that includes the name of the company and the effective date of its dissolution.

Sec. 1782.33. ~~A~~ (A) Except as provided in division (B) of this section, a limited partner may withdraw from a limited partnership at the time, or upon the happening of events, specified in writing in the partnership agreement. If the partnership agreement does not specify in writing the time or events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his the general partner's address on the books of the limited partnership at its office in this state.

(B) If the limited partnership was formed on or after the effective date of this amendment, or the limited partnership was formed prior to the effective date of this amendment and its certificate of limited partnership or partnership agreement specifically states that this division applies to the limited partnership, a limited partner may withdraw from the limited partnership only at the time or upon the occurrence of an event specified in writing in the partnership agreement.

Sec. 3901.51. As used in sections 3901.51 to 3901.55 of the Revised Code:

(A) "Clearing corporation" has the same meaning as in ~~division (C) of~~ section 1308.01 of the Revised Code, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business in that country, "clearing corporation" includes a corporation that is organized or existing under the laws of any foreign country and is legally qualified under those laws to effect transactions in securities by computerized book-entry.

(B) "Direct participant" means a bank, trust company, or other entity that maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(C) "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and agencies and instrumentalities of the United States for holding and transferring securities of the United States government and agencies and instrumentalities in federal reserve banks through banks that are members of the federal reserve system or that otherwise have access to these computerized systems.

(D) "Member bank" means a national or state bank or a trust company that is a member of the federal reserve system and through which an insurance company participates in the federal reserve book-entry system.

(E) "Provisions of the insurance laws of this state" means provisions of Title XXXIX of the Revised Code related to the deposit of securities for the benefit and security of policyholders, and includes, but is not limited to, sections 3901.18, 3903.73, 3905.24, 3905.25, 3905.41, 3907.07, 3909.03, 3909.09, 3909.17, 3913.01, 3913.04, 3919.13, 3919.36, 3919.37, 3919.41, 3925.07, 3927.02, 3927.06, 3929.01, 3929.07, 3929.08, 3929.09, 3929.10, 3929.11, 3941.30, 3941.31, 3941.32, 3941.33, 3941.34, 3941.42, 3953.06, 3953.11, and 3957.03 of the Revised Code.

(F) "Securities" has the same meaning as in ~~division (A)(3)~~ of section 1308.01 of the Revised Code.

SECTION 2. That existing sections 1301.05, 1301.12, 1303.02, 1304.01, 1304.02, 1305.10, 1305.13, 1308.03, 1308.04, 1308.08, 1308.09, 1308.10, 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.16, 1308.17, 1308.22, 1308.31, 1308.37, 1308.38, 1308.41, 1308.42, 1309.01, 1309.03, 1309.14, 1309.20, 1309.21, 1309.22, 1309.23, 1309.24, 1309.25, 1309.28, 1309.31, 1701.01, 1701.24, 1701.25, 1701.27, 1701.49, 1701.591, 1701.831, 1701.832, 1705.01, 1705.04, 1705.16, 1705.43, 1782.33, and 3901.51 and sections 1308.01, 1308.02, 1308.05, 1308.06, 1308.07, 1308.18, 1308.19, 1308.20, 1308.21, 1308.23, 1308.24, 1308.25, 1308.26, 1308.27, 1308.28, 1308.32, 1308.33, 1308.34, 1308.35, 1308.36, 1308.39, 1308.40, 1308.43, and 1308.44 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act, except for sections 1701.01, 1701.831, 1701.832, 1705.01, 1705.04, 1705.16, 1705.43, and 1782.33 of the Revised Code, shall take effect on January 1, 1998. Sections 1701.01, 1701.831, 1701.832, 1705.01, 1705.04, 1705.16, 1705.43, and 1782.33 of the Revised Code, as amended by this act, shall take effect at the earliest time permitted by law.

SECTION 4. (A) Sections 1301.05, 1301.12, 1303.02, 1304.01, 1304.02, 1305.10, 1305.13, 1308.01, 1308.02, 1308.03, 1308.04, 1308.05, 1308.06, 1308.07, 1308.08, 1308.09, 1308.10, 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.16, 1308.17, 1308.18, 1308.19, 1308.20, 1308.21, 1308.22, 1308.23, 1308.24, 1308.25, 1308.26, 1308.27, 1308.28, 1308.31, 1308.32,

308.33, 1308.34, 1308.35, 1308.36, 1308.37, 1308.38, 1308.39, 1308.40, 1308.41, 1308.42, 1308.43, 1308.44, 1308.51, 1308.52, 1308.53, 1308.54, 1308.55, 1308.56, 1308.57, 1308.58, 1308.59, 1308.60, 1308.61, 1309.01, 1309.03, 1309.112, 1309.113, 1309.14, 1309.20, 1309.21, 1309.22, 1309.23, 1309.24, 1309.25, 1309.28, 1309.31, 1701.24, 1701.25, 1701.27, 1701.49, 1701.591, and 3901.51 of the Revised Code, as amended, enacted, or repealed by this act, do not affect an action or proceeding commenced before January 1, 1998.

(B) If a security interest in a security is perfected at January 1, 1998, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected at January 1, 1998, but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for the period ending April 30, 1998, and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at January 1, 1998, and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____