

**As Introduced**

**124th General Assembly  
Regular Session  
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**H. B. No. 278**

**REPRESENTATIVE Manning**

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**A B I L L**

To amend sections 1701.70, 1701.71, and 1701.73 of the Revised Code to permit the directors of Ohio corporations to make specific, limited changes to the articles of incorporation and to require a corporation to send written notice to its shareholders following any amendment of the articles of incorporation by the directors.

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

**Section 1.** That sections 1701.70, 1701.71, and 1701.73 of the Revised Code be amended to read as follows:

**Sec. 1701.70.** (A) If initial directors are not named in the articles, before subscriptions to shares have been received and before the incorporators have elected directors, the incorporators may adopt an amendment to the articles by a writing signed by them. If initial directors are named in the articles, or if the incorporators have elected directors and have not received subscriptions, then before subscriptions to shares have been received, the directors may adopt an amendment to the articles.

(B) The directors may adopt an amendment to the articles in the following cases:

(1) When and to the extent authorized by the articles, the

directors may adopt an amendment determining, in whole or in part, the express terms, within the limits set forth in this chapter, of any class of shares before the issuance of any shares of that class, or of one or more series within a class before the issuance of shares of that series.

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(2) When the corporation has issued shares or obligations convertible into shares of the corporation or has granted options to purchase any shares, and the conversion or option rights are set forth in the articles or have been approved by the same vote of shareholders as, at the time of the approval, would have been required to amend the articles to authorize the shares required for that purpose, and the corporation does not have sufficient authorized but unissued shares to satisfy those conversion or option rights, the directors may adopt an amendment to authorize the shares.

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(3) Whenever shares of any class have been redeemed, or have been surrendered to or acquired by the corporation upon conversion, exchange, purchase, or otherwise, the directors may adopt an amendment to reduce the authorized number of shares of the class by the number so redeemed, surrendered, or acquired; and when all of the authorized shares of a class have been redeemed or surrendered to or acquired by the corporation, the directors may adopt an amendment to eliminate from the articles all references to the shares of the class and to make other appropriate changes that are required by the elimination.

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(4) When articles have been amended and any change of issued or unissued shares provided for in the amendment or amended articles has become effective, the directors may adopt an amendment to eliminate from the articles all references to the change of shares and to make any other appropriate changes that are required by the elimination; however, an amendment to articles that is so adopted by the directors shall contain a statement with

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respect to the authorized number and the par value, if any, of the  
shares of each class.

(5) After a merger or consolidation, in which the surviving  
or new corporation is a domestic corporation, becomes effective,  
the directors may adopt an amendment:

(a) To eliminate from the articles any statement or provision  
pertaining exclusively to the merger or consolidation, or that was  
required to be set forth in the agreement of merger or  
consolidation and that would not be required in original articles  
or amendments to articles filed at the time the statement or  
provision was adopted;

(b) To make any other appropriate changes required by that  
elimination.

An amendment to articles adopted by the directors under  
division (B)(5) of this section need not contain or continue any  
statement with respect to the amount of stated capital.

(6) Unless otherwise provided in the articles, the directors  
may adopt an amendment changing the name of the corporation.

(7) The directors may adopt an amendment changing the place  
in this state where the principal office of the corporation is to  
be located.

(8) When the directors have declared a dividend or  
distribution on any class of outstanding shares of the corporation  
to be paid in shares of the same class, the directors may adopt an  
amendment to proportionately increase the authorized number of  
shares of the class, provided that the corporation has only one  
class of shares outstanding or the dividend or distribution is not  
substantially prejudicial to the holders of any other class of the  
corporation's shares, and further provided that such an amendment  
be adopted concurrently with the amendment described in division  
(B)(10) of this section when the dividend or distribution is

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declared on outstanding shares with par value.

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(9) The directors may adopt an amendment to change each  
issued and unissued authorized share of an outstanding class into  
a greater number of shares of that class and to proportionately  
increase the authorized number of shares of that class, provided  
that the corporation has only one class of shares outstanding or  
the change is not substantially prejudicial to the holders of any  
other class of the corporation's shares, and further provided that  
such an amendment be adopted concurrently with the amendment  
described in division (B)(10) of this section when the change is  
made to outstanding shares with par value.

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(10) Concurrently with the adoption of an amendment under  
division (B)(8) or (9) of this section, the directors may adopt an  
amendment decreasing the par value of issued and unissued shares  
of a particular class to the extent necessary to prevent an  
increase in the aggregate par value of the outstanding shares of  
the class as a result of the dividend or distribution described in  
division (B)(8) of this section or the change described in  
division (B)(9) of this section.

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(C) If a vote on the adoption of an amendment is required by  
division (B)(4) of section 1701.71 of the Revised Code, any  
amendment to the articles adopted pursuant to division (B) of this  
section that creates a class or series of shares the express terms  
of which provide for the convertibility of the shares into shares  
of another class shall also require the approval of the holders,  
voting as a class, of any issued and outstanding shares into which  
the shares may be converted.

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(D) Divisions (B)(6) to (10) of this section shall not apply  
to a corporation with one hundred or fewer shareholders unless the  
corporation was created on or after the effective date of this  
amendment, or the articles of the corporation have been amended in  
compliance with section 1701.71 or 1701.72 of the Revised Code

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specifically to make those divisions applicable.

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**Sec. 1701.71.** (A)(1) Except as otherwise provided in this division or division (A)(2) of this section, the shareholders, at a meeting held for that purpose, may adopt an amendment, including any amendment that could be adopted by the directors, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal or, if the articles provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of such voting power, and by the affirmative vote of the holders of shares of any particular class that is required by the articles. If, at the time an amendment to eliminate cumulative voting rights permitted by division (B)(10) of section 1701.69 of the Revised Code is acted upon by the shareholders, a corporation does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, that amendment shall not be adopted if the votes of a sufficient number of shares are cast against the amendment that, if cumulatively voted at an election of all the directors, or all the directors of a particular class, as the case may be, would at the time the amendment is acted upon by the shareholders be sufficient to elect at least one director.

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(2) Whenever under division (B) of this section the holders of shares of any particular class are entitled to vote as a class on the adoption of an amendment, the amendment, in order to be adopted, must receive the affirmative vote of the holders of at least two-thirds of the shares of that class or, if the articles provide or permit, a greater or lesser proportion, but not less than a majority, of the shares of that class. If the proposed amendment would authorize any particular corporate action that, under any applicable provision of law or under the existing

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articles, could be authorized only by or pursuant to a specified  
vote of shareholders, the amendment, in order to be adopted, must  
receive the affirmative vote so specified.

(B) Regardless of limitations or restrictions in the articles  
on the voting rights of the shares of any class, the holders of  
shares of a particular class, and in the cases specified in  
divisions (B)(6), (7), and (8) of this section the holders of  
shares of every class, shall be entitled to vote as a class on the  
adoption of an amendment that does any of the following:

(1) Increases or decreases the par value of the issued shares  
of the particular class, except in the case of an amendment to the  
articles adopted by the directors pursuant to division (B)(10) of  
section 1701.70 of the Revised Code;

(2) Changes issued shares of the particular class, whether  
with or without par value, into a lesser number of shares of the  
same class or into the same or a different number of shares of any  
other class, with or without par value, previously or then  
authorized;

(3) Changes the express terms, or adds express terms, of the  
shares of the particular class in any manner substantially  
prejudicial to the holders of the shares;

(4) Changes the express terms of issued shares of any class  
senior to the particular class in any manner substantially  
prejudicial to the holders of shares of the particular class;

(5) Authorizes shares of another class that are convertible  
into, or authorizes the conversion of shares of another class  
into, shares of the particular class, or authorizes the directors  
to fix or alter conversion rights of shares of another class that  
are convertible into shares of the particular class; provided,  
however, both of the following apply:

(a) The failure to obtain the shareholders' approval only 179  
prevents the conversion of the shares until the shareholders' 180  
approval is obtained and does not otherwise affect the 181  
authorization or any other express terms of the shares; 182

(b) The articles may provide that no vote of the holders of 183  
common shares, as a class, is required in connection with the 184  
authorization of shares of any class that are convertible into 185  
common shares. 186

(6) Provides, in the case of an amendment described in 187  
division (B)(1) or (2) of this section, that the stated capital of 188  
the corporation shall be reduced or eliminated as a result of the 189  
amendment, or provides, in the case of an amendment described in 190  
division (B)(5) of this section, that the stated capital of the 191  
corporation shall be reduced or eliminated upon the exercise of 192  
such conversion rights, provided that any reduction or elimination 193  
is consistent with section 1701.30 of the Revised Code; 194

(7) Changes substantially the purposes of the corporation, or 195  
provides that a subsequent amendment to the articles may be 196  
adopted that changes substantially the purposes of the 197  
corporation; 198

(8) Changes a corporation into a nonprofit corporation. 199

(C) An amendment that changes a corporation into a nonprofit 200  
corporation shall contain a statement of purposes proper in the 201  
case of a nonprofit corporation and a statement that, after the 202  
effective date of the amendment, the corporation shall be subject 203  
to the provisions of the Revised Code relating to nonprofit 204  
corporations. In the case of a corporation formed on or after June 205  
9, 1927, the amendment also shall provide for the cancellation of 206  
all outstanding shares and the terms and considerations, if any, 207  
for the cancellation. In the case of a corporation formed prior to 208  
June 9, 1927, the amendment may provide for the cancellation of 209

outstanding shares, but if it does not so provide, the amendment shall contain a provision forbidding the payment of dividends or distributions on any shares after the effective date of the amendment.

**Sec. 1701.73.** (A) Upon the adoption of any amendment or amended articles, a certificate containing a copy of the resolution adopting the amendment or amended articles, a statement of the manner of its adoption, and, in the case of adoption of the resolution by the incorporators or directors, a statement of the basis for such adoption, shall be filed with the secretary of state, and thereupon the articles shall be amended accordingly, any change of shares provided for in the amendment or amended articles shall become effective, and the amended articles shall supersede the existing articles. When an amendment or amended articles are adopted by the directors pursuant to section 1701.70 of the Revised Code, the corporation shall send written notice of the amendment or amended articles, and a copy or summary thereof, to each shareholder of the corporation of record as of the date on which the directors approved the amendment or amended articles. The notice shall be sent to the shareholders within twenty days after the filing of the certificate required by this division.

(B) When an amendment or amended articles are adopted by the incorporators, the certificate shall be signed by each of them.

(C) When an amendment or amended articles are adopted by the directors or by the shareholders, the certificate shall be signed by any authorized officer.

(D) A copy of an amendment or amended articles changing the name of a corporation or its principal office in this state, certified by the secretary of state, may be filed for record in the office of the county recorder of any county in this state, and for such recording the county recorder shall charge and collect

the same fee as provided for in division (A) of section 317.32 of  
the Revised Code. Such copy shall be recorded in the records of  
deeds.

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**Section 2.** That existing sections 1701.70, 1701.71, and  
1701.73 of the Revised Code are hereby repealed.

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