

As Reported by the House Civil and Commercial Law Committee

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SENATORS Johnson, Hottinger, Amstutz, Oelslager
REPRESENTATIVES Willamowski, Seitz, Sulzer, Manning

A B I L L

To amend sections 1701.11, 1701.16, 1701.58, and 1
1701.71 of the Revised Code to restrict shareholder 2
removal of directors on a classified board of 3
directors of issuing public corporations to removal 4
for cause, to require in addition to existing law's 5
requirements that an amendment to declassify such a 6
board be with the approval of a majority of the 7
shares held by voting disinterested shareholders, 8
and to confirm the authority of directors to redeem 9
options. 10

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

Section 1. That sections 1701.11, 1701.16, 1701.58, and 11
1701.71 of the Revised Code be amended to read as follows: 12

Sec. 1701.11. (A)(1) Regulations for the government of a 13
corporation, the conduct of its affairs, and the management of its 14
property, consistent with law and the articles, may be adopted in 15
any of the following ways: 16

(a) Within ninety days after the corporation is formed, by 17
the directors in accordance with section 1701.10 of the Revised 18
Code; 19

(b) By the shareholders at a meeting held for that purpose, 20
by the affirmative vote of the holders of shares entitling them to 21
exercise a majority of the voting power of the corporation on the 22
proposal; 23

(c) Without a meeting, by the written consent of the holders 24
of shares entitling them to exercise two-thirds of the voting 25
power of the corporation on the proposal. 26

(2) ~~The~~ Except as otherwise provided in division (A)(4) of 27
this section, the regulations may be amended, or new regulations 28
may be adopted, in either of the following ways: 29

(a) By the shareholders at a meeting held for that purpose, 30
by the affirmative vote of the holders of shares entitling them to 31
exercise a majority of the voting power of the corporation on the 32
proposal; 33

(b) Without a meeting, by the written consent of the holders 34
of shares entitling them to exercise two-thirds of the voting 35
power of the corporation on the proposal. 36

(3) ~~If~~ Except as otherwise provided in division (A)(4) of 37
this section, if the articles or regulations that have been 38
adopted so provide or permit, regulations may be adopted or 39
amended or new regulations may be adopted by the affirmative vote 40
or written consent of the holders of shares entitling them to 41
exercise a greater or lesser proportion but not less than a 42
majority of the voting power of the corporation. 43

(4) Any amendment of regulations and any amended or new 44
regulations adopted by shareholders of an issuing public 45
corporation whose directors are classified pursuant to section 46
1701.57 of the Revised Code that would change or eliminate the 47
classification of directors shall be adopted by the shareholders 48
only at a meeting held for that purpose, by the affirmative vote 49
of holders of shares entitling them to exercise the voting power 50

of the corporation that is required for shareholders at a meeting 51
under division (A)(2)(a) or (3) of this section, and also by the 52
affirmative vote of the holders of a majority of disinterested 53
shares voted on the proposal determined as specified in division 54
(C)(9) of section 1704.01 of the Revised Code. 55

(B) Without limiting the generality of the authority 56
described in division (A) of this section, the regulations may 57
include provisions with respect to all of the following: 58

(1) The time and place for holding, the manner of and 59
authority for calling, giving notice of, and conducting, and the 60
requirements of a quorum for, meetings of shareholders; 61

(2) The taking of a record of shareholders or the temporary 62
closing of books against transfers of shares; 63

(3) The number, classification, manner of fixing or changing 64
the number, qualifications, term of office, and compensation or 65
manner of fixing compensation, of directors; 66

(4) The time and place for holding, the manner of and 67
authority for calling, giving notice of, and conducting, and the 68
requirements of a quorum for, meetings of the directors; 69

(5) The appointment of an executive and other committees of 70
the directors, and their authority; 71

(6) The titles, qualifications, duties, term of office, 72
compensation or manner of fixing compensation, and the removal, of 73
officers; 74

(7) The terms on which new certificates for shares may be 75
issued in the place of lost, stolen, or destroyed certificates; 76

(8) The manner in which and conditions upon which a 77
certificated security, and the conditions upon which an 78
uncertificated security, and the shares represented by a 79
certificated or uncertificated security, may be transferred, 80

restrictions on the right to transfer the shares, and reservations
of liens on the shares; 81
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(9)(a) Restrictions on the transfer and the right to transfer
shares of either of the following: 83
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(i) An issuing public corporation to any person in a control
share acquisition; 85
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(ii) A corporation with fifty or more shareholders to any
person in an acquisition that would be a control share acquisition
if the corporation were an issuing public corporation. 87
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(b) The restrictions on the transfer and the right to
transfer shares described in division (B)(9)(a)(i) and (ii) of
this section may include requirements and procedures for consent
to an acquisition of the shares by directors based on a
determination by the directors of the best interests of the
corporation and its shareholders, consent to an acquisition of the
shares by shareholders, and reasonable sanctions for a violation
of those requirements, including the right of the corporation to
refuse to transfer, to redeem, or to deny voting or other
shareholder rights appurtenant to shares acquired in an
acquisition of the shares. 90
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(10) Defining, limiting, or regulating the exercise of the
authority of the corporation, the directors, the officers, or all
the shareholders. 101
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(C) The shareholders of a corporation may adopt and may
authorize the directors to adopt, either before or during an
emergency, as that term is defined in division (U) of section
1701.01 of the Revised Code, emergency regulations that shall be
operative only during an emergency. The emergency regulations may
include any provisions that are authorized to be included in
regulations by divisions (A) and (B) of this section. In addition,
unless expressly prohibited by the articles or the regulations, 104
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the emergency regulations may make any provision, notwithstanding
any different provisions in this chapter and notwithstanding any
different provisions in the articles or the regulations that are
not expressly stated to be operative during an emergency, that may
be practical or necessary with respect to the following:

(1) The time and place for holding, the manner of and
authority for calling, giving notice of, and conducting, and the
requirements of a quorum for, meetings of the directors;

(2) The creation and appointment of an executive and other
committees of the directors and the delegation of authority to the
committees by the board;

(3) The creation, existence, and filling of vacancies,
including temporary vacancies, in the office of director;

(4) The selection, by appointment, election, or otherwise, of
officers and other persons to serve as directors for a meeting of
the board in the absence from the meeting of one or more of the
directors;

(5) The creation, existence, and filling of vacancies,
including temporary vacancies, in any office;

(6) The order of rank and the succession to the duties and
authority of officers.

(D) If the regulations are amended or new regulations are
adopted, without a meeting of the shareholders, the secretary of
the corporation shall mail a copy of the amendment or the new
regulations to each shareholder who would have been entitled to
vote on the adoption of the amendment or the new regulations and
did not participate in the adoption of the amendment or the new
regulations.

(E) No person dealing with the corporation shall be charged
with constructive notice of the regulations.

(F) Unless expressly prohibited by the articles or the regulations or unless otherwise provided by the emergency regulations, the following special rules shall be applicable during an emergency notwithstanding any different provision elsewhere in this chapter:

(1) Meetings of the directors may be called by any officer or director.

(2) Notice of the time and place of each meeting of the directors shall be given to such of the directors as it may be feasible to reach at the time and by the means of communication, written or oral, personal or mass, as may be practicable at the time.

(3) The director or directors present at any meeting of the directors that has been duly called and notice of which has been duly given shall constitute a quorum for the meeting, and, in the absence of one or more of the directors, the director or directors present may appoint one or more of the officers of the corporation directors for the meeting.

(4) If none of the directors attends a meeting of the directors that has been duly called and notice of which has been duly given, the officers of the corporation who are present, not exceeding three, in order of rank, shall be directors for the meeting, shall constitute a quorum for the meeting, and may appoint one or more of the other officers of the corporation directors for the meeting.

(5) If the chief executive officer dies, is missing, or for any other reason is temporarily or permanently incapable of discharging the duties of the office, the next ranking officer who is available shall assume the duties and authority of the office of the deceased, missing, or incapacitated chief executive officer until such time as the directors shall otherwise order.

(6) The offices of secretary and treasurer shall be deemed to 174
be of equal rank, and, within the same office and as between the 175
offices of secretary and treasurer, rank shall be determined by 176
priority in time of the first election to the office or, if two or 177
more persons have been first elected to the office at the same 178
time, by seniority in age. 179

Sec. 1701.16. (A) Unless the articles otherwise provide, a 180
corporation by its directors may grant options to subscribe for or 181
to purchase shares of any authorized class at the times and on the 182
terms that are set forth in the securities, or in the contracts, 183
warrants or instruments that evidence the options, which 184
contracts, warrants, or instruments may be transferable or 185
nontransferable and may be separable or inseparable from 186
securities, upon the following conditions: 187

(1) If the shares are subject to preemptive rights and if the 188
options are not granted to shareholders in satisfaction of their 189
preemptive rights, the granting of the options must be authorized 190
by the vote or consent of the shareholders or holders of shares of 191
particular classes that then would be required to waive or release 192
such preemptive rights. The vote or consent shall release the 193
preemptive rights to the shares required to satisfy the options if 194
and when exercised. 195

(2) If, at the time of granting the options, the corporation 196
does not have authorized and unissued shares sufficient to satisfy 197
the options if and when exercised, the granting of the options 198
must be authorized by the vote of the shareholders or holders of 199
shares of particular classes that then would be required to adopt 200
an amendment to the articles for the purpose of increasing the 201
authorized number of such shares, and the shares required to be 202
issued upon the exercise of the options shall be provided by an 203
amendment concurrently or thereafter adopted by the shareholders 204

or the directors.	205
(B)(1) The securities, contracts, warrants, or instruments	206
that evidence the options may contain any terms not repugnant to	207
law for the protection of the holders of the options, including,	208
but not limited to, the following:	209
(a) Restrictions upon the authorization or issuance of	210
additional shares;	211
(b) Provisions for the adjustment of the option price;	212
(c) Provisions concerning rights in the event of	213
reorganization, merger, consolidation, or sale of the entire	214
assets of the corporation;	215
(d) Provisions for the reservation of authorized but unissued	216
shares to satisfy the options;	217
(e) Restrictions upon the declaration or payment of dividends	218
or distributions;	219
(f) Conditions on the exercise <u>or redemption</u> of the options,	220
including, subject to the limitation specified in division (B)(2)	221
of this section, conditions that preclude the holder or holders of	222
at least a specified number or percentage of the outstanding	223
common shares of a corporation from exercising <u>or redeeming</u> the	224
options.	225
(2) The express or implied authority conferred by division	226
(B)(1) of this section or any other section of this chapter for	227
securities, contracts, warrants, or instruments that evidence	228
options to contain a condition on the exercise <u>or redemption</u> of	229
options that precludes the holder or holders of at least a	230
specified number or percentage of the outstanding common shares of	231
a corporation from exercising <u>or redeeming</u> options shall apply	232
only to the following:	233
(a) A corporation that has issued and outstanding shares	234

listed on a national securities exchange or regularly quoted in an 235
over-the-counter market by one or more members of a national or 236
affiliated securities association; 237

(b) A corporation that has adopted a close corporation 238
agreement pursuant to which options are granted, if the 239
securities, contracts, warrants, or instruments that evidence the 240
options contain a condition that precludes the holder or holders 241
of at least a specified number or percentage of the outstanding 242
common shares of that corporation from exercising or redeeming the 243
options. 244

(C) As used in this section, "securities" includes 245
obligations and shares of the corporation. 246

Sec. 1701.58. (A) The office of a director becomes vacant if 247
~~he~~ the director dies or resigns. A resignation shall take effect 248
immediately or at such other time as the director may specify. 249

(B) The directors may remove any director and thereby create 251
a vacancy in the board: 252

(1) If by order of court ~~he~~ the director has been found to be 253
of unsound mind, or if ~~he~~ the director is adjudicated a bankrupt; 254

(2) If within sixty days, or within such other period of time 256
as is prescribed in the articles or the regulations, from the date 257
of ~~his~~ the director's election ~~he~~ the director does not qualify by 258
accepting in writing ~~his~~ the director's election to such office or 259
by acting at a meeting of the directors, and by acquiring the 260
qualifications specified in the articles or the regulations; or 261
if, for such period as is prescribed in the articles or the 262
regulations, ~~he~~ the director ceases to hold the required 263
qualifications. 264

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(C) ~~If~~ Except as otherwise provided in this division, if the 265
shareholders have a right to vote cumulatively in the election of 266
directors, then, unless the articles or the regulations expressly 267
provide that no director may be removed from office or that 268
removal of directors requires a greater vote than that specified 269
in this division, all the directors, all the directors of a 270
particular class, or any individual director may be removed from 271
office, without assigning any cause, by the vote of the holders of 272
a majority of the voting power entitling them to elect directors 273
in place of those to be removed, except that, unless all the 274
directors, or all the directors of a particular class, are 275
removed, no individual director shall be removed if the votes of a 276
sufficient number of shares are cast against ~~his~~ the director's 277
removal that, if cumulatively voted at an election of all the 278
directors, or all the directors of a particular class, as the case 279
may be, would be sufficient to elect at least one director. In the 280
case of an issuing public corporation whose directors are 281
classified pursuant to section 1701.57 of the Revised Code, the 282
shareholders may effect a removal under this division only for 283
cause. 284

(D) If the shareholders do not have the right to vote 285
cumulatively as a result of an amendment to the articles permitted 286
by division (B)(10) of section 1701.69 of the Revised Code, then, 287
unless the articles or the regulations expressly provide that no 288
director may be removed from office or that removal of directors 289
requires a greater vote than that specified in this division, all 290
the directors, all the directors of a particular class, or any 291
individual director may be removed from office, without assigning 292
any cause, by the vote of the holders of a majority of the voting 293
power entitling them to elect directors in place of those to be 294
removed; except that in the case of an issuing public corporation 295
whose directors are classified pursuant to section 1701.57 of the 296

Revised Code, the shareholders may effect that removal only for 297
cause. 298

(E) In case of any removal pursuant to division (C) or (D) of 299
this section, a new director may be elected at the same meeting 300
for the unexpired term of each director removed. Failure to elect 301
a director to fill the unexpired term of any director removed is 302
deemed to create a vacancy in the board. 303

(F) Unless the articles or the regulations otherwise provide, 304
the remaining directors, though less than a majority of the whole 305
authorized number of directors, may, by the vote of a majority of 306
their number, fill any vacancy in the board for the unexpired 307
term. Under this section, a vacancy exists if the shareholders 308
increase the authorized number of directors but fail at the 309
meeting at which such increase is authorized, or an adjournment of 310
that meeting, to elect the additional directors provided for, or 311
if the shareholders fail at any time to elect the whole authorized 312
number of directors. 313

Sec. 1701.71. (A)(1) Except as otherwise provided in this 314
division or division (A)(2) of this section, the shareholders, at 315
a meeting held for that purpose, may adopt an amendment, including 316
any amendment that could be adopted by the directors, by the 317
affirmative vote of the holders of shares entitling them to 318
exercise two-thirds of the voting power of the corporation on the 319
proposal or, if the articles provide or permit, by the affirmative 320
vote of a greater or lesser proportion, but not less than a 321
majority, of such voting power, and by the affirmative vote of the 322
holders of shares of any particular class that is required by the 323
articles. Any amendment that would change or eliminate the 324
classification of directors of an issuing public corporation whose 325
directors are classified pursuant to section 1701.57 of the 326
Revised Code shall be adopted by the shareholders only at a 327
meeting expressly held for that purpose, by the affirmative votes 328

required under this division, and also by the affirmative vote of 329
the holders of at least a majority of disinterested shares voted 330
on the proposal determined as specified in division (C)(9) of 331
section 1704.01 of the Revised Code. If, at the time an amendment 332
to eliminate cumulative voting rights permitted by division 333
(B)(10) of section 1701.69 of the Revised Code is acted upon by 334
the shareholders, a corporation does not have issued and 335
outstanding shares that are listed on a national securities 336
exchange or are regularly quoted in an over-the-counter market by 337
one or more members of a national or affiliated securities 338
association, that amendment shall not be adopted if the votes of a 339
sufficient number of shares are cast against the amendment that, 340
if cumulatively voted at an election of all the directors, or all 341
the directors of a particular class, as the case may be, would at 342
the time the amendment is acted upon by the shareholders be 343
sufficient to elect at least one director. 344

(2) Whenever under division (B) of this section the holders 345
of shares of any particular class are entitled to vote as a class 346
on the adoption of an amendment, the amendment, in order to be 347
adopted, must receive the affirmative vote of the holders of at 348
least two-thirds of the shares of that class or, if the articles 349
provide or permit, a greater or lesser proportion, but not less 350
than a majority, of the shares of that class. If the proposed 351
amendment would authorize any particular corporate action that, 352
under any applicable provision of law or under the existing 353
articles, could be authorized only by or pursuant to a specified 354
vote of shareholders, the amendment, in order to be adopted, must 355
receive the affirmative vote so specified. 356

(B) Regardless of limitations or restrictions in the articles 357
on the voting rights of the shares of any class, the holders of 358
shares of a particular class, and in the cases specified in 359
divisions (B)(6), (7), and (8) of this section the holders of 360

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;

(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
prevents the conversion of the shares until the shareholders'
approval is obtained and does not otherwise affect the
authorization or any other express terms of the shares;

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

(6) Provides, in the case of an amendment described in

division (B)(1) or (2) of this section, that the stated capital of 392
the corporation shall be reduced or eliminated as a result of the 393
amendment, or provides, in the case of an amendment described in 394
division (B)(5) of this section, that the stated capital of the 395
corporation shall be reduced or eliminated upon the exercise of 396
such conversion rights, provided that any reduction or elimination 397
is consistent with section 1701.30 of the Revised Code; 398

(7) Changes substantially the purposes of the corporation, or 399
provides that a subsequent amendment to the articles may be 400
adopted that changes substantially the purposes of the 401
corporation; 402

(8) Changes a corporation into a nonprofit corporation. 403

(C) An amendment that changes a corporation into a nonprofit 404
corporation shall contain a statement of purposes proper in the 405
case of a nonprofit corporation and a statement that, after the 406
effective date of the amendment, the corporation shall be subject 407
to the provisions of the Revised Code relating to nonprofit 408
corporations. In the case of a corporation formed on or after June 409
9, 1927, the amendment also shall provide for the cancellation of 410
all outstanding shares and the terms and considerations, if any, 411
for the cancellation. In the case of a corporation formed prior to 412
June 9, 1927, the amendment may provide for the cancellation of 413
outstanding shares, but if it does not so provide, the amendment 414
shall contain a provision forbidding the payment of dividends or 415
distributions on any shares after the effective date of the 416
amendment. 417

Section 2. That existing sections 1701.11, 1701.16, 1701.58, 418
and 1701.71 of the Revised Code are hereby repealed. 419