

AN ACT

To amend sections 1702.01, 1702.02, 1702.08, 1702.11, 1702.17, 1702.18, 1702.19, 1702.20, 1702.22, 1702.25, 1702.27, 1702.31, 1702.33, 1702.38, 1702.39, 1702.42, 1702.47, and 1702.58 of the Revised Code relating to the use of authorized communications equipment, including electronic or telephonic transmissions, in certain meetings and votings of nonprofit corporations and the authority to take action on behalf of a nonprofit corporation without a meeting of incorporators, directors, or members.

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

SECTION 1. That sections 1702.01, 1702.02, 1702.08, 1702.11, 1702.17, 1702.18, 1702.19, 1702.20, 1702.22, 1702.25, 1702.27, 1702.31, 1702.33, 1702.38, 1702.39, 1702.42, 1702.47, and 1702.58 of the Revised Code be amended to read as follows:

Sec. 1702.01. As used in this chapter, unless the context otherwise requires:

(A) "Corporation" or "domestic corporation" means a nonprofit corporation formed under the laws of this state, or a business corporation formed under the laws of this state that, by amendment to its articles as provided by law, becomes a nonprofit corporation.

(B) "Foreign corporation" means a nonprofit corporation formed under the laws of another state.

(C) "Nonprofit corporation" means a domestic or foreign corporation that is formed otherwise than for the pecuniary gain or profit of, and whose net earnings or any part of them is not distributable to, its members, directors, officers, or other private persons, except that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution as permitted by section 1702.49 of the Revised Code is not pecuniary gain or profit or distribution of net earnings. In a corporation all of whose members are nonprofit corporations, distribution to members does not deprive it of the status of a nonprofit corporation.

(D) "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 a foreign country or nation.

(E) "Articles" includes original articles of incorporation, agreements of merger or consolidation if and only to the extent that articles of incorporation are adopted or amended in the agreements, 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.

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

(G) "Member" means one having membership rights and privileges in a corporation in accordance with its articles or regulations.

(H) "Voting member" means a member possessing voting rights, either generally or in respect of the particular question involved, as the case may be.

(I) "Person" includes, but is not limited to, a nonprofit corporation, a business corporation, a partnership, an unincorporated society or association, and two or more persons having a joint or common interest.

(J) The location of the "principal office" of a corporation is the place named as such in its articles.

(K) "Directors" means the persons vested with the authority to conduct the affairs of the corporation irrespective of the name, such as trustees, by which they are designated.

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

(M)(1) Subject to division (M)(2) of this section, "volunteer" means a director, officer, or agent of a corporation, or another person associated with a corporation, who satisfies both of the following:

(a) Performs services for or on behalf of, and under the authority or auspices of, that corporation;

(b) Does not receive compensation, either directly or indirectly, for performing those services.

(2) For purposes of division (M)(1) of this section, "compensation" does not include any of the following:

(a) Actual and necessary expenses that are incurred by a volunteer in connection with the services performed for a corporation, and that are reimbursed to the volunteer or otherwise paid;

(b) Insurance premiums paid on behalf of a volunteer, and amounts paid

or reimbursed, pursuant to division (E) of section 1702.12 of the Revised Code;

(c) Modest perquisites.

(N) "Business corporation" means any entity, as defined in section 1701.01 of the Revised Code, other than a public benefit corporation or a mutual benefit corporation, that is organized pursuant to Chapter 1701. of the Revised Code.

(O) "Mutual benefit corporation" means any corporation organized under this chapter other than a public benefit corporation.

(P) "Public benefit corporation" means a corporation that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation, the United States, a state or any political subdivision of a state, or a person that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," as amended. "Public benefit corporation" does not include a nonprofit corporation that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.

(Q) "Authorized communications equipment" means any communications equipment to which both of the following apply:

(1) The articles, regulations, or bylaws, or the regulations, constitution, or other fundamental agreement if section 1702.08 of the Revised Code applies, permit the use of the communications equipment for the purpose of giving notice of meetings or any notice required by this chapter, attending and participating in meetings, giving a copy of any document or transmitting any writing required or permitted under this chapter, or voting.

(2) The communications equipment provides a transmission, including, but not limited to, by telephone, telecopy, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention of, the member or director involved and, with respect to meetings, allows all persons participating in the meeting to contemporaneously communicate with each other.

Sec. 1702.02. (A) Unless another form of notice is required by the articles, the regulations, the bylaws, or by applicable law, any notice required by this chapter shall be in writing and shall be delivered personally or sent by telegram, ~~telecopy, or electronic mail transmission~~ by the use of authorized communications equipment, or by United States mail, express mail, or courier service, with postage or fees prepaid.

(B) In computing the period of time for the giving of a notice required or permitted under this chapter, or under the articles, the regulations, or the bylaws of a corporation, or a resolution of its members or directors, the day on which the notice is given shall be excluded, and the day when the act for which notice is given is to be done shall be included, unless the instrument calling for the notice otherwise provides. If notice is given by personal delivery or transmitted by telegram, ~~teletype~~, or ~~electronic mail~~ by the use of authorized communications equipment, the notice shall be deemed to have been given when delivered or transmitted. If notice is sent by United States mail, express mail, or courier service, the notice shall be deemed to have been given when deposited in the mail or with the courier service.

(C) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or, in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of ~~such~~ those members at the address appearing on the corporation's current list of members.

Sec. 1702.08. (A) When an unincorporated society or association, organized for any of the purposes for which a corporation could be formed under this chapter, authorizes the incorporation of ~~such~~ that society or association, by the same procedure and affirmative vote of its voting members as that the regulations, constitution, or other fundamental agreement of ~~such~~ the society or association requires for an amendment to ~~such~~ that fundamental agreement or, if no such vote is specified, by a majority vote of the voting members present in person or, if permitted, by mail ~~or~~, by proxy, or by the use of authorized communications equipment, at a duly convened meeting the purpose of which is stated in the notice of the meeting, then upon the filing of the articles under section 1702.04 of the Revised Code setting forth ~~such~~ those facts and that ~~such~~ the required vote has been obtained, ~~such~~ that society or association shall become a corporation, and the members of ~~such~~ the society or association shall become members of ~~such~~ that corporation in accordance with provisions in the articles to that effect.

(B) All the rights, privileges, immunities, powers, franchises, and authority, and all the property and obligations of ~~such~~ that unincorporated society or association, shall thereupon pass to, vest in, and (in the case of liabilities and obligations) be obligations of the corporation so formed.

Sec. 1702.11. (A) Without limiting the generality of such authority, the

regulations, whether designated a constitution or rules, or by some other term, may include provisions with respect to the following:

(1) The ~~time and place, if any, and time~~ for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of members, or their elected representatives or delegates;

(2) The qualifications, admission, voluntary withdrawal, censure, and suspension of members, and the termination of membership;

(3) The fees and dues of members;

(4) The rights of members or classes of members, or of their elected representatives or delegates, to vote; the manner of conducting votes of members on matters, including any right to vote by mail, by the use of authorized communications equipment, if permitted by this chapter, or by proxy; the specification of the relative rights and privileges among members and in the property of the corporation; and limitations upon or regulations governing the right of members to examine the books and records of the corporation;

(5) The election of representatives or delegates of members and their authority, rights, and privileges;

(6) The number, classification, manner of fixing or changing the number, qualifications, term of office, voting rights, compensation or manner of fixing compensation, and the removal of directors;

(7) The ~~time and place, if any, and time~~ 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;

(8) The appointment of an executive and other committees of the directors or of members, their authority, and the method by which they take action;

(9) The titles, qualifications, duties, term of office, compensation or manner of fixing compensation, and the removal, of officers;

(10) Defining, limiting, or regulating the exercise of the authority of the corporation, the directors, the officers, the members, or any class of members;

(11) The method by which voting members may change the regulations;

(12) Providing for the use of authorized communications equipment.

(B)(1) In the absence of provisions in the articles or the regulations with respect to the method of changing the regulations, the regulations may be amended, or new regulations may be adopted, by the voting members at a meeting held for such purpose, if a quorum is present, by the affirmative vote of a majority of the voting members present in person or, if permitted,

by mail, by the use of authorized communications equipment, or by proxy, ~~if a quorum is present.~~

(2) For purposes of division (B)(1) of this section, participation by a member in a meeting through the use of any of the means of communication described in that division constitutes presence in person of that member at the meeting for purposes of determining a quorum.

(C) The members of a nonprofit corporation may adopt or authorize the directors to adopt, either before or during an emergency, as defined in division (U) of section 1701.01 of the Revised Code, emergency regulations operative only during an emergency. The emergency regulations may include ~~such~~ those provisions ~~as 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 regulations, and notwithstanding any different provisions in this chapter and any different provision in the articles or regulations that are not expressly stated to be operative during an emergency, the emergency regulations may make any provision that may be practical or necessary with respect to meetings, committees, vacancies, and temporary appointments of the directors, and the rank and succession of officers, the same as may be done by corporations for profit under division (C) of section 1701.11 of the Revised Code.

(D) Any change in the regulations made in accordance with their provisions or pursuant to division (B) of this section shall be binding on all members.

(E) ~~If, pursuant to the regulations, such regulations~~ are amended or new regulations adopted without a meeting of the voting members, the secretary of the corporation shall send by mail, overnight delivery service, or authorized communications equipment a copy of the amendment or the new regulations to each voting member who would have been entitled to vote on the amendment or new regulations and did not participate in the adoption of the amendment or new regulations. If the secretary of the corporation mails the copy or sends it by overnight delivery service, the secretary shall send the copy of the amendment or the new regulations to the voting member at the voting member's address as it appears on the records of the corporation. If the secretary sends the copy by means of authorized communications equipment, the secretary shall send the copy of the amendment or the new regulations to the address provided by the voting member for transmissions by authorized communications equipment.

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

(G) Unless expressly prohibited by the articles or regulations, or unless

otherwise provided by the emergency regulations, and notwithstanding any different provision in this chapter, the special rules provided for corporations for profit under division (F) of section 1701.11 of the Revised Code are applicable to a nonprofit corporation during an emergency, as defined in division (U) of section 1701.01 of the Revised Code.

Sec. 1702.17. (A) Meetings of voting members may be called by any of the following:

(1) The chairperson of the board, the president, or, in case of the president's absence, death, or disability, the vice-president authorized to exercise the authority of the president;

(2) The directors by action at a meeting, or a majority of the directors acting without a meeting;

(3) The lesser of (a) ten per cent of the voting members or (b) twenty-five of ~~such the~~ voting members, unless the articles or the regulations specify for such purpose a smaller or larger proportion or number, but not in excess of fifty per cent of ~~such the~~ voting members;

(4) ~~Such~~ Any other officers or persons as that the articles or the regulations authorize to call such meetings.

(B) ~~Meetings~~ If so provided in the articles or the regulations, meetings of voting members may be held either within or without this state ~~if so provided in the articles or the regulations~~ or solely by means of authorized communications equipment. In the absence of any such provision, all meetings shall be held at the principal office of the corporation in this state.

(C) If authorized by the directors, the voting members and proxyholders who are not physically present at a meeting of voting members may attend the meeting by the use of authorized communications equipment that enables the voting members and proxyholders an opportunity to participate in the meeting and to vote on matters submitted to the voting members, including an opportunity to read or hear the proceedings of the meeting, participate in the proceedings, and contemporaneously communicate with the persons who are physically present at the meeting. Any voting member who uses authorized communications equipment under this division is deemed to be present in person at the meeting whether the meeting is held at a designated place or solely by means of authorized communications equipment. The directors may adopt procedures and guidelines for the use of authorized communications equipment in connection with a meeting of voting members to permit the corporation to verify that a person is a voting member or proxyholder and to maintain a record of any vote or other action taken at the meeting.

Sec. 1702.18. Unless the articles or the regulations provide for notice of

meetings otherwise than as provided in this section, written notice stating the ~~time and place, if any, and the time~~ of a meeting ~~of and the means, if any, by which~~ the voting members can be present and vote at the meeting through the use of authorized communications equipment, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given in the manner described in section 1702.02 of the Revised Code, not less than ten or not more than sixty days before the date of the meeting: (A) to each member entitled to notice of the meeting; (B) by or at the direction of the president or the secretary or any other person required or permitted by the regulations to give notice or the officers or persons calling the meeting. If mailed or sent by overnight delivery service, such that notice shall be addressed to the member at the member's address as it appears on the records of the corporation. If sent by means of authorized communications equipment, that notice shall be sent to the address furnished by the voting member for transmissions by authorized communications equipment. Notice of adjournment of a meeting need not be given if the ~~time and place, if any, and the time~~ to which it is adjourned and the procedure by which the voting members can be present and vote at the adjourned meeting through the use of authorized communications equipment are fixed and announced at ~~such~~ the meeting.

Sec. 1702.19. (A) Notice of the ~~time~~, place, ~~if any,~~ the time, and the purposes of any meeting of voting members or directors, as the case may be, whether required by law, the articles, the regulations, or (in the case of directors) the bylaws, may be waived in writing, either before or after the holding of such meeting, by any member, or by any director, which writing shall be filed with or entered upon the records of the meeting. ~~The attendance of any member or any director at any such meeting~~ A transmission by authorized communications equipment that contains a waiver is a writing for purposes of this division.

(B) If a member or director attends a meeting described in division (A) of this section without protesting, prior to or at the commencement of the meeting, then the lack of proper notice shall be deemed to be a waiver by the member or director of notice of such the meeting.

(C) A member or director shall be considered in attendance at a meeting described in division (A) of this section, if the member or director is present in person or, if permitted by the regulations, is present by the use of authorized communications equipment.

Sec. 1702.20. (A) Except as otherwise provided in the articles or the regulations, each member, regardless of class, shall be entitled to one vote on each matter properly submitted to the members for their vote, consent,

waiver, release, or other action. ~~The~~

~~(B) The~~ articles or the regulations may provide that voting at elections and votes on other matters may be conducted by mail or by the use of authorized communications equipment. ~~Unless~~

~~(C) Participation by a member in a meeting through the use of any of the means of communication described in division (B) of this section constitutes presence in person of that member at the meeting. The directors may adopt procedures and guidelines for the use of authorized communications equipment to permit the corporation to verify that a person is a voting member and to maintain a record of any vote.~~

~~(D) Unless~~ the articles or the regulations otherwise provide, no member who is a natural person shall vote or act by proxy.

Sec. 1702.22. Unless the articles or the regulations otherwise provide:

~~(A)(1) The~~ voting members present in person or, if permitted, by mail ~~or,~~ by proxy, or by the use of authorized communications equipment at any meeting of voting members shall constitute a quorum for ~~such the~~ meeting. ~~The~~

~~(2) The~~ affirmative vote of a majority of the voting members present at a meeting at which a quorum is present as provided in division (A)(1) of this section shall be necessary for the authorization or taking of any action voted upon by the members, except that no action required by law, the articles, or the regulations to be authorized or taken by a specified proportion or number of the voting members or of any class of voting members may be authorized or taken by a lesser proportion or number.

(B) A majority of the voting members present at a meeting, whether or not a quorum is present, may adjourn ~~such the~~ meeting from time to time.

Sec. 1702.25. ~~(A)~~ Unless the articles or the regulations prohibit the authorization or taking of any action of the incorporators, the members, or the directors without a meeting, any action that may be authorized or taken at a meeting of the incorporators, the members, or the directors, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, all of the incorporators, all of the members, or all of the directors, as the case may be, who would be entitled to notice of a meeting for ~~such that~~ purpose, or, in the case of members, ~~such any~~ other proportion or number of voting members, not less than a majority, as that the articles or the regulations permit. Any such writing shall be filed with or entered upon the records of the corporation. Any certificate with respect to the authorization or taking of any ~~such~~ action described in this division that is required to be filed in the office of the secretary of state shall recite that the authorization or taking of

~~such that~~ action was in a writing or writings approved and signed as specified in this section.

(B) Any transmission by authorized communications equipment that contains an affirmative vote or approval of the person described in division (A) of this section is a signed writing for purposes of this section. The date on which that transmission by authorized communications equipment is sent is the date on which the writing is signed.

Sec. 1702.27. (A) Except as provided in division (B) of this section and section 1702.521 of the Revised Code:

(1) The number of directors as fixed by the articles or the regulations shall be not less than three or, if not so fixed, the number shall be three, except that if there are only one or two members of the corporation, the number of directors may be less than three but not less than the number of members.

(2) ~~Unless (a) Subject to division (A)(2)(c) of this section, unless the articles or the regulations fix the number of directors or provide the manner in which such that number may be fixed or changed by the voting members, the number may be fixed or changed at a meeting of the voting members called for the purpose of electing directors, if a quorum is present, by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail, by the use of authorized communications equipment, or by proxy; if.~~

(b) For purposes of division (A)(2)(a) of this section, participation by a voting member in a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum is present, but no.

(c) No reduction in the number of directors shall of itself have the effect of shortening the term of any incumbent director.

(3) The director shall have ~~such the~~ qualifications, if any, as ~~that~~ are stated in the articles or the regulations.

(4) The articles or the regulations may provide that persons occupying certain positions within or without the corporation shall be ex officio directors, but, unless otherwise provided in the articles or the regulations, such ex officio directors shall not be considered for quorum purposes and shall have no vote.

(B) The court of common pleas of the county in which the corporation maintains its principal office may, pursuant to division (A) of section 1702.521 of the Revised Code, order the appointment of a provisional director for the corporation without regard to the number or qualifications of

directors stated in the articles or regulations of the corporation.

Sec. 1702.31. Unless otherwise provided in the articles, regulations, or bylaws, and subject to the exceptions applicable during an emergency for which provision is made in division (G) of section 1702.11 of the Revised Code:

(A) Meetings of the directors may be called by the chairperson of the board, the president, any vice-president, or any two directors;

(B) Meetings of the directors may be held at any place within or without the state ~~and, including by means of authorized communications equipment,~~ unless the articles or regulations prohibit participation by directors at a meeting by means of authorized communications equipment, ~~meetings of the directors may be held through any communications equipment if all persons participating can hear each other and participation.~~ Participation in a meeting pursuant to this division ~~shall constitute~~ constitutes presence at ~~such~~ that meeting;

(C) ~~Written notice~~ Notice of the ~~time and place, if any, and time~~ of each meeting of the directors shall be given to each director either by personal delivery or by mail, ~~telegram by overnight delivery service, or cablegram by means of authorized communications equipment~~ at least two days before the meeting, ~~which. That~~ notice need not specify the purposes of the meeting;

(D) Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at ~~such~~ that meeting.

Sec. 1702.33. (A) The regulations may provide for the creation by the directors of an executive committee or any other committee of the directors, to consist of one or more directors, and may authorize the delegation to any such committee of any of the authority of the directors, however conferred.

(B) The directors may appoint one or more directors as alternate members of any ~~such~~ committee described in division (A) of this section, who may take the place of any absent member or members at any meeting of the particular committee.

(C) Each ~~such~~ committee described in division (A) of this section shall serve at the pleasure of the directors, shall act only in the intervals between meetings of the directors, and shall be subject to the control and direction of the directors.

(D) Unless otherwise provided in the regulations or ordered by the directors, any ~~such~~ committee described in division (A) of this section may act by a majority of its members at a meeting or by a writing or writings signed by all of its members.

(E) ~~Unless~~ Meetings of committees described in division (A) of this

section may be held by any means of authorized communications equipment, unless participation by members of ~~any such~~ the committee at a meeting by means of authorized communications equipment is prohibited by the articles, the regulations, or an order of the directors, ~~meetings of the particular committee may be held through any communications equipment if all persons participating can hear each other.~~ Participation in a meeting pursuant to this division constitutes presence at the meeting.

(F) An act or authorization of an act by any ~~such~~ committee described in division (A) of this section within the authority delegated to it shall be as effective for all purposes as the act or authorization of the directors.

Sec. 1702.38. (A) The articles may be amended from time to time in any respect if the articles as amended set forth all ~~such the~~ provisions as that are required in, and only ~~such those~~ provisions as that may properly be in, original articles filed at the time of adopting the amendment, other than with respect to the initial directors, except that a public benefit corporation shall not amend its articles in such manner that it will cease to be a public benefit corporation.

(B) Without limiting the generality of ~~such the~~ authority described in division (A) of this section, the articles may be amended to:

- (1) Change the name of the corporation;
- (2) Change the place in this state where its principal office is to be located;
- (3) Change, enlarge, or diminish its purpose or purposes;
- (4) Change any provision of the articles or add any provision that may properly be included ~~therein~~ in the articles.

(C)~~(1)~~ The voting members present in person or, if permitted, by mail ~~or~~, by proxy, or by use of authorized communications equipment, at a meeting held for ~~such that~~ purpose, may adopt an amendment by the affirmative vote of a majority of the voting members present if a quorum is present; or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by ~~such the~~ affirmative vote of the voting members of any particular class as that is required by the articles or the regulations.

(2) For purposes of division (C)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(D) In addition to or in lieu of adopting an amendment to the articles, the voting members may adopt amended articles by the same action or vote as that required to adopt the amendment.

(E) The directors may adopt amended articles to consolidate the original articles and all previously adopted amendments to the articles that are in force at the time, or the voting members at a meeting held for ~~such~~ that purpose may adopt ~~such~~ the amended articles by the same vote as that required to adopt an amendment.

(F) Amended articles shall set forth all ~~such~~ the provisions as that are required in, and only ~~such~~ the provisions as that may properly be in, original articles filed at the time of adopting the amended articles, other than with respect to the initial directors, and shall contain a statement that they supersede the existing articles.

(G) 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 directors, a statement of the basis for such adoption, shall be filed with the secretary of state, and ~~thereupon~~ upon that filing the articles shall be amended accordingly, and the amended articles shall supersede the existing articles. The certificate shall be signed by any authorized officer of the corporation.

(H) 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~~ that 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~~ That copy shall be recorded in the records of deeds.

Sec. 1702.39. (A)(1) Unless the articles or the regulations, or the terms of any trust on which the corporation holds any particular property, otherwise provide, a lease, sale, exchange, transfer, or other disposition of any assets of a mutual benefit corporation may be made without the necessity of procuring authorization from the court under section 1715.39 of the Revised Code, upon ~~such~~ the terms and for ~~such~~ the consideration, which may consist, in whole or in part, of money or other property, including shares or other securities or promissory obligations of any business corporation, domestic or foreign, as that may be authorized by the directors, except that a lease, sale, exchange, transfer, or other disposition of all, or substantially all, the assets may be made only when ~~such~~ that transaction is also authorized (either before or after authorization by the directors) by the voting members present in person or, if permitted, by mail, by proxy, or by the use of authorized communications equipment, at a meeting held for ~~such~~ that purpose, by the affirmative vote of a majority of

the voting members present as described in this division, if a quorum is present, or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by ~~such the~~ affirmative vote of the voting members of any particular class ~~as that~~ is required by the articles or the regulations. Notice of the meeting of the members shall be given to all members entitled to vote ~~thereat at the meeting~~. Such notice shall be accompanied by a copy or summary of the terms of ~~such that~~ transaction.

(2) For purposes of division (A)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(B)(1) A public benefit corporation may not dispose of its assets with value equal to more than fifty per cent of the fair market value of the net tangible and intangible assets, including goodwill, of the corporation over a period of thirty-six consecutive months in a transaction or series of transactions, including the lease, sale, exchange, transfer, or other disposition of those assets, that are outside the ordinary course of its business or that are not in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds such assets, unless one or more of the following apply:

(a) The transaction has received the prior approval of the court of common pleas of the county in this state in which the principal office of the corporation is located, in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right.

(b)(i) The corporation has provided written notice of the proposed transaction, including a copy or summary of the terms of such transaction, at least twenty days before consummation of the lease, sale, exchange, transfer, or other disposition of the assets, to the attorney general's charitable law section and to the members of the corporation, and the proposed transaction has been approved by the voting members present in person or, if permitted, by mail, by proxy, or by the use of authorized communications equipment, at a meeting held for ~~such that~~ purpose, by the affirmative vote of a majority of the voting members present as described in this division, if a quorum is present, or, if the articles or regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and if the articles or regulations require, by the affirmative vote of

the voting members of any particular class.

(ii) For purposes of division (B)(1)(b)(i) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(c) The transaction is in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds the assets, and the lessee, purchaser, or transferee of the assets is also a public benefit corporation or a foreign corporation that would qualify under the Revised Code as a public benefit corporation.

(2) The attorney general may require, pursuant to section 109.24 of the Revised Code, the production of the documents necessary for review of a proposed transaction under division (B)(1) of this section. The attorney general may retain, at the expense of the public benefit corporation, one or more experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed transaction under division (B)(1) of this section.

(C) The attorney general may institute a civil action to enforce the requirements of division (B)(1) of this section in the court of common pleas of the county in this state in which the principal office of the corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.

(D) The corporation by its directors may abandon the proposed lease, sale, exchange, transfer, or other disposition of the assets of the corporation pursuant to division (A) or (B) of this section, subject to the contract rights of other persons, if ~~such~~ that power of abandonment is conferred upon the directors either by the terms of the transaction or by the same vote of voting members and at the same meeting of members as that referred to in division (A) or (B) of this section, as applicable, or at any subsequent meeting.

(E) An action to set aside a conveyance by a corporation, on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of the assets of such corporation has not been complied with, shall be brought within one year after ~~such~~ that transaction, or the action shall be forever barred.

Sec. 1702.42. (A) The directors of each constituent corporation, upon approving an agreement of merger or consolidation, shall direct that the

agreement be submitted to the voting members entitled to vote on it at a meeting of voting members of such corporation held for that purpose, and notice of ~~such~~ the meeting shall be given to all members of ~~such~~ the constituent corporation entitled to vote ~~thereat~~ at the meeting. The notice shall be accompanied by a copy or summary of the agreement.

(B)(1) At each ~~such~~ meeting described in division (A) of this section, a vote of the members shall be taken on the proposed agreement. In order to be adopted, the agreement (including any amendments or additions ~~thereto~~ to the agreement proposed at each such meeting) must receive the affirmative vote of a majority of the voting members of each constituent corporation present at that meeting in person or, if permitted, by mail ~~or~~ by proxy, ~~at each such meeting~~ or by the use of authorized communications equipment, if a quorum is present, or, if the articles or the regulations of ~~such~~ that corporation provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and ~~such~~ the affirmative vote of the voting members of any particular class ~~as~~ that is required by the articles or the regulations of such corporation. If the agreement would authorize any particular corporate action that, under any applicable provision of law or under the existing articles of one or more of the constituent corporations, could be authorized only by or pursuant to a specified vote of voting members, ~~such~~ the agreement (including any amendments or additions ~~thereto~~ to the agreement proposed at each such meeting) in order to be adopted must receive the affirmative vote so specified.

(2) For purposes of division (B)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(C) At any time prior to the filing of the agreement, the merger or consolidation may be abandoned by the directors of one or more of the constituent corporations, if the power of abandonment is conferred upon ~~such~~ those directors either by the agreement or by the same vote of voting members of each of the constituent corporations and at the same meetings as those referred to in division (B) of this section or at subsequent meetings.

Sec. 1702.47. (A) A corporation may be dissolved voluntarily in the manner provided in this section.

(B) A resolution of dissolution for a corporation shall set forth:

(1) That the corporation elects to be dissolved;

(2) Any additional provision deemed necessary with respect to the proposed dissolution and winding up.

(C) The directors may adopt a resolution of dissolution in the following cases:

(1) When the corporation has been adjudged bankrupt or has made a general assignment for the benefit of creditors;

(2) By leave of the court, when a receiver has been appointed in a general creditors' suit or in any suit in which the affairs of the corporation are to be wound up;

(3) When substantially all of the assets have been sold at judicial sale or otherwise;

(4) When the period of existence of the corporation specified in its articles has expired.

(D)(1) The voting members at a meeting held for ~~such~~ that purpose may adopt a resolution of dissolution by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail ~~or~~ by proxy, or by the use of authorized communications equipment, if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by ~~such~~ the affirmative vote of the voting members or the affirmative vote of the voting members of any particular class ~~as~~ that is required by the articles or the regulations. Notice of the meeting of the members shall be ~~given~~ sent to all the members who would be entitled to vote thereat at the meeting by mail, overnight delivery service, or any authorized communications equipment.

(2) For purposes of division (D)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(E) Upon the adoption of a resolution of dissolution, a certificate shall be prepared, on a form prescribed by the secretary of state, setting forth the following:

(1) The name of the corporation;

(2) A statement that a resolution of dissolution has been adopted;

(3) A statement of the manner of adoption of ~~such~~ that resolution, and, in the case of its adoption by the directors, a statement of the basis for ~~such~~ the adoption;

(4) The place in this state where its principal office is or is to be located;

(5) The names and addresses of its directors and officers;

(6) The name and address of its statutory agent;

(7) The date of dissolution, if other than the filing date.

(F) ~~Such~~ The certificate described in division (E) of this section shall be

signed by any authorized officer, unless the officer fails to execute and file ~~such~~ the certificate within thirty days after the adoption of the resolution, or upon any date specified in the resolution as the date upon which ~~such~~ the certificate is to be filed, or upon the expiration of any period specified in the resolution as the period within which ~~such~~ the certificate is to be filed, whichever is latest, in which event the certificate of dissolution may be signed by any three voting members and shall set forth a statement that the persons signing the certificate are voting members and are filing the certificate because of the failure of the officers to do so.

(G) A certificate of dissolution, filed with the secretary of state, shall be accompanied by:

(1) An affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the counties, if any, in this state in which the corporation has personal property subject to personal property taxes or a statement that the corporation is of a type required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing or, if applicable, to the later date specified in the certificate of dissolution in accordance with division (E) of this section, unless the affidavit provided for in division (G)(1) of this section states that the corporation has in this state no personal property subject to personal property taxes;

(3) A receipt, certificate, or other evidence from the director of job and family services showing that all contributions due from the corporation as an employer have been paid, ~~or~~ that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(4) A receipt, certificate, or other evidence showing the payment of all sales, use, and highway use taxes accruing up to the date of such filing or, if applicable, to the later date specified in the certificate of dissolution in accordance with division (E) of this section, or that such payment has been adequately guaranteed;

(5) In lieu of the receipt, certificate, or other evidence described in division (G)(2), (3), or (4) of this section, an affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled effective date of the dissolution and was advised in writing of the acknowledgement by the corporation of the applicability of section 1702.55 of the Revised Code.

(H) Upon the filing of a certificate of dissolution and ~~such~~ those accompanying documents or on a later date specified in the certificate that is not more than ninety days after the filing, the corporation shall be dissolved.

Sec. 1702.58. (A) Except as provided in sections 1702.01 to 1702.58 of the Revised Code, the provisions of those sections shall apply only to domestic corporations, and except as otherwise provided in this section, the provisions of those sections shall apply to all domestic corporations, whether formed under those sections or under previous laws of this state.

(B) Special provisions in the Revised Code for the organization, conduct, or government of designated classes of corporations shall govern to the exclusion of the provisions of sections 1702.01 to 1702.58 of the Revised Code on the same subject, except where it clearly appears that a special provision is cumulative, in which case, that provision and the provisions of those sections on the same subject shall apply.

(C) A corporation incorporated prior to June 9, 1927, with authority to issue shares may continue to issue and reissue shares in accordance with its articles, but shall be without authority to amend its articles in order to increase the authorized number of shares.

(D) A corporation created before September 1, 1851, that (1) has expressly elected to be governed by the laws passed since that date; (2) subsequent to that date has taken such action under laws then in effect as to make it subject, as a matter of law, to the Constitution of 1851 and laws passed ~~thereunder,~~ under the Constitution of 1851; or (3) subsequent to October 1, 1955, takes any action under sections 1702.01 to 1702.58 of the Revised Code, ~~or any of them,~~ that but for those sections it would not be authorized to take, shall be deemed to be a corporation exercising its corporate privileges under the Constitution of this state and the laws passed in pursuance ~~thereof~~ of the Constitution of this state, and not otherwise.

(E)(1) A corporation created before September 1, 1851, and actually carrying on its activities in this state, and which prior to October 11, 1955, has not taken action described in division (D) of this section, may accept the provisions of sections 1702.01 to 1702.58 of the Revised Code at a meeting of voting members held for ~~such~~ that purpose, by a resolution to that effect adopted by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail ~~or,~~ by proxy, or by the use of authorized communications equipment, if a quorum is present, and by filing in the office of the secretary of state a copy of the resolution certified by any authorized officer of the corporation, for which filing the secretary of state shall charge and collect a fee of five dollars. Thereafter the corporation shall be deemed to exercise its corporate privileges under the Constitution of this

state and the laws passed in pursuance ~~thereof~~ of the Constitution of this state, and not otherwise.

(2) For purposes of division (E)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(F) Except as provided in divisions (D) and (E) of this section, a corporation created before September 1, 1851, shall be governed by the laws in force on that date as modified since that date.

(G) A domestic business corporation, upon compliance with the provision of the Revised Code ~~as~~ that is in effect from time to time relating to ~~such that~~ that business corporation's becoming a nonprofit corporation upon amendment to its articles or upon adoption of amended articles, as provided by law, shall, upon filing the prescribed certificate in the office of the secretary of state, become a corporation subject to the provisions of, and entitled to all the rights, privileges, immunities, powers, franchises, and authority granted by, this chapter.

SECTION 2. That existing sections 1702.01, 1702.02, 1702.08, 1702.11, 1702.17, 1702.18, 1702.19, 1702.20, 1702.22, 1702.25, 1702.27, 1702.31, 1702.33, 1702.38, 1702.39, 1702.42, 1702.47, and 1702.58 of the Revised Code are hereby repealed.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

H. B. No. 42

22

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 _____