

AN ACT

To amend sections 1701.55, 1701.782, 1701.792, 1705.21, and 1775.14 of the Revised Code to modify corporation law relating to the election of directors and to conform conversion provisions of Chapter 1701. of the Revised Code with parallel provisions in Chapters 1705., 1775., and 1782. of the Revised Code.

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

SECTION 1. That sections 1701.55, 1701.782, 1701.792, 1705.21, and 1775.14 of the Revised Code be amended to read as follows:

Sec. 1701.55. (A) At a meeting of shareholders at which directors are to be elected, only persons nominated as candidates shall be eligible for election as directors.

(B) ~~At~~ Unless the articles set forth alternative election standards, at all elections of directors, the candidates receiving the greatest number of votes shall be elected.

(C) Unless the articles are amended as permitted by division (B)(10) of section 1701.69 of the Revised Code to provide that no shareholder of a corporation may cumulate ~~his~~ the shareholder's voting power, each shareholder has the right to vote cumulatively if notice in writing is given by any shareholder to the president, a vice-president, or the secretary of a corporation, not less than forty-eight hours before the time fixed for holding a meeting of the shareholders for the purpose of electing directors if notice of the meeting has been given at least ten days before the meeting, and, if the ten days' notice has not been given, not less than twenty-four hours before such meeting time, that ~~he~~ the shareholder desires that the voting at such election shall be cumulative, provided that an announcement of the giving of such notice is made upon the convening of the meeting by the ~~chairman~~ chairperson or secretary or by or on behalf of the shareholder giving such notice.

(D) Unless the articles are amended as permitted by division (B)(10) of section 1701.69 of the Revised Code to provide that no shareholder of a corporation may cumulate ~~his~~ the shareholder's voting power, each

shareholder has the right, subject to the notice requirements contained in division (C) of this section, to cumulate the voting power ~~he~~ the shareholder possesses and to give one candidate as many votes as the number of directors to be elected multiplied by the number of ~~his~~ the shareholder's votes equals, or to distribute ~~his~~ the shareholder's votes on the same principle among two or more candidates, as ~~he~~ the shareholder sees fit.

Sec. 1701.782. (A) Subject to division (B)(2) of this section, pursuant to a written declaration of conversion as provided in this section, a domestic or foreign entity that is not a domestic corporation and is not a nonprofit corporation may be converted into a domestic corporation. The conversion also must be permitted by the chapter of the Revised Code or by the laws under which the converting entity will exist.

(B)(1) The written declaration of conversion shall set forth all of the following:

(a) The name and form of entity that is being converted, the name of the entity into which the entity will be converted, and the jurisdiction of formation of the converting entity;

(b) The articles of the converted corporation;

(c) All statements and matters required to be set forth in an instrument of conversion by the laws under which the converting entity exists;

(d) The terms of the conversion; the mode of carrying them into effect; and the manner and basis of converting the interests or shares of the converting entity into, or substituting the interests or shares in the converting entity for, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, evidences of indebtedness, other securities, cash, rights, or any other property of the converted corporation.

(2) No conversion or substitution described in this section shall be effected if there are reasonable grounds to believe that the conversion or substitution would render the converted corporation unable to pay its obligations as they become due in the usual course of its affairs.

(C) The written declaration of conversion may set forth any of the following:

(1) The effective date of the conversion, which date may be on or after the date of the filing of the certificate of conversion pursuant to section 1701.811 of the Revised Code;

(2) A provision authorizing the converting entity to abandon the proposed conversion by action of authorized representatives of the converting entity taken prior to the filing of the certificate of conversion pursuant to section 1701.811 of the Revised Code;

(3) A statement of, or a statement of the method to be used to determine, the fair value of the assets owned by the converting entity at the time of the conversion;

(4) The regulations of the converted corporation;

(5) The identity of the directors of the converted corporation;

(6) The parties to the declaration of conversion in addition to the converting entity;

(7) The stated capital, if any, of each class of shares of the converted corporation to be outstanding at the time that the conversion becomes effective;

(8) Any additional provision necessary or desirable with respect to the proposed conversion or the converted entity.

(D) At any time before the filing of the certificate of conversion pursuant to section 1701.811 of the Revised Code, the conversion may be abandoned by any representatives authorized to do so by the declaration of conversion, or by the same vote as was required to adopt the declaration of conversion.

Sec. 1701.792. (A) Subject to division (B)(2) of this section, pursuant to a written declaration of conversion as provided in this section, a domestic corporation may be converted into a domestic or foreign entity other than a nonprofit corporation or a domestic corporation. The conversion also must be permitted by the chapter of the Revised Code or by the laws under which the converted entity will exist.

(B)(1) The written declaration of conversion shall set forth all of the following:

(a) The name and form of entity that is being converted, the name of the entity into which the entity will be converted, the form of the converted entity, and the jurisdiction of formation of the converted entity;

(b) If the converted entity is a domestic entity, the complete terms of all documents required under the applicable chapter of the Revised Code to form the converted entity;

(c) If the converted entity is a foreign entity, all of the following:

(i) The complete terms of all documents required under the law of its formation to form the converted entity;

(ii) The consent of the converted entity to be sued and served with process in this state, and the irrevocable appointment of the secretary of state as the agent of the converted entity to accept service of process in this state to enforce against the converted entity any obligation of the converting corporation or to enforce the rights of a dissenting shareholder of the converting corporation;

(iii) If the converted entity desires to transact business in this state, the information required to qualify or to be licensed under the applicable chapter of the Revised Code.

(d) All other statements and matters required to be set forth in the declaration of conversion by the applicable chapter of the Revised Code, if the converted entity is a domestic entity, or by the laws under which the converted entity will be formed, if the converted entity is a foreign entity;

(e) The terms of the conversion; the mode of carrying them into effect; and the manner and basis of converting the interests or shares of the converting corporation into, or substituting the interests or shares in the converting corporation for, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, evidences of indebtedness, other securities, cash, rights, or any other property of the converted entity.

(2) No conversion or substitution described in this section shall be effected if there are reasonable grounds to believe that the conversion or substitution would render the converted entity unable to pay its obligations as they become due in the usual course of its affairs.

(C) The written declaration of conversion may set forth any of the following:

(1) The effective date of the conversion, which date may be on or after the date of the filing of the certificate of conversion;

(2) A provision authorizing, prior to the filing of the certificate of conversion pursuant to section 1701.811 of the Revised Code, the converting corporation to abandon the proposed conversion by action of the directors of the converting corporation or by the same vote as was required to adopt the declaration of conversion;

(3) A statement of, or a statement of the method to be used to determine, the fair value of the assets owned by the converting corporation at the time of the conversion;

(4) The parties to the declaration of conversion in addition to the converting entity;

(5) Any additional provision necessary or desirable with respect to the proposed conversion or the converted entity.

(D) The directors of the domestic converting corporation must approve the declaration of conversion to effect the conversion, and the declaration of conversion must be adopted by the shareholders of the domestic converting corporation, at a meeting held for the purpose.

(E) Notice of each meeting of shareholders of a domestic converting corporation at which a declaration of conversion is to be submitted shall be

given to all shareholders of that corporation, whether or not they are entitled to vote, and shall be accompanied by a copy or a summary of the material provisions of the declaration of conversion.

(F) The vote required to adopt a declaration of conversion at a meeting of the shareholders of a domestic converting corporation is the affirmative vote of the holders of shares of that corporation entitling them to exercise at least two-thirds of the voting power of the corporation on the proposal or a different proportion as provided in the articles, but not less than a majority, or, if the conversion is to a foreign corporation, a different proportion as the articles provide for a merger or consolidation, and the affirmative vote of the holders of shares of any particular class as required by the articles of the converting corporation.

If the declaration of conversion would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic converting corporation to vote as a class on the adoption of an amendment as provided in division (B) of section 1701.71 of the Revised Code, the declaration of conversion also must be adopted by the affirmative vote of the holders of at least two-thirds of the shares of such class, or a different proportion as the articles provide, but not less than a majority. However, if the declaration of conversion would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic converting corporation to vote as a class on the adoption of an amendment pursuant to division (B)(2) or (4) of section 1701.71 of the Revised Code solely because those shares are to be converted into or substituted for the same number of shares of a class of a different corporation having express terms identical in all material respects to those of the class of shares so converted or substituted, the declaration of conversion does not need to be adopted by the affirmative vote of the holders of shares of that particular class voting as a class.

If the declaration of conversion would authorize any particular corporate action that under any applicable provision of law or the articles could be authorized only by or pursuant to a specified vote of shareholders, the declaration of conversion also must be adopted by the same affirmative vote as required for such action.

(G)(1) At any time before the filing of the certificate of conversion pursuant to section 1701.811 of the Revised Code, the conversion may be abandoned by the directors of the converting corporation, if the directors are authorized to do so by the declaration of conversion, or by the same vote of the shareholders as was required to adopt the declaration of conversion.

(2) The declaration of conversion may contain a provision authorizing the directors of the converting corporation to amend the declaration of conversion at any time before the filing of the certificate of conversion pursuant to section 1701.811 of the Revised Code, except that, after the adoption of the declaration of conversion by the stockholders of the converting corporation, the directors may not amend the declaration of conversion to do any of the following:

(a) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by the shareholders of the converting corporation in conversion of, or substitution for, their shares;

(b) Alter or change any term of the organizational documents of the converted entity except for alterations or changes that are adopted with the vote or action of the persons, the vote or action of which would be required for the alteration or change after the conversion;

(c) Alter or change any other terms and conditions of the declaration of conversion if any of the alterations or changes, alone or in the aggregate, materially and adversely would affect the holders of any class or series of shares of the converting corporation.

Sec. 1705.21. (A) ~~If~~ Except as otherwise provided in the operating agreement or articles of organization, if a member who is an individual dies or is adjudged an incompetent, ~~his~~ the member's executor, administrator, guardian, or other legal representative may exercise all of ~~his~~ the member's rights as a member for the purpose of settling ~~his~~ the member's estate or administering ~~his~~ the member's property, including any authority that ~~he~~ the member had to give an assignee the right to become a member.

(B) If a member is a corporation, trust, general or limited partnership, or other entity and is dissolved or terminated, the powers of the member may be exercised by its legal representative or successor.

Sec. 1775.14. (A) Subject to section 5815.35 of the Revised Code and except as provided in division (B) of this section, all partners are liable as follows:

(1) Jointly and severally for everything chargeable to the partnership under sections 1775.12 and 1775.13 of the Revised Code. This joint and several liability is not subject to section 2307.22 or 2315.36 of the Revised Code with respect to a tort claim that otherwise is subject to either of those sections.

(2) Jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

~~(B) Subject to divisions (C)(1) and (2) of this section or as otherwise provided in a written agreement between the partners of a, an obligation incurred while the partnership is a registered limited liability partnership, a whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner in a registered limited liability partnership, solely by reason of being a partner; acting or failing to act as a partner; or participating as an employee, consultant, contractor, or otherwise in the conduct of the business or activities of the registered limited liability partnership while the partnership is a registered limited liability partnership, is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or other liabilities of any kind of, or chargeable to, the partnership or another partner or partners arising from negligence or from wrongful acts, errors, omissions, or misconduct, whether or not intentional or characterized as tort, contract, or otherwise, committed or occurring while the partnership is a registered limited liability partnership or committed or occurring in the course of the partnership business by another partner or an employee, agent, or representative of the partnership such an obligation solely by reason of being or acting as a partner. This division applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the filing of a registration application to become a domestic limited liability partnership under division (A) of section 1775.61 of the Revised Code.~~

(C)(1) Division (B) of this section does not affect the liability of a partner in a registered limited liability partnership for that partner's own negligence, wrongful acts, errors, omissions, or misconduct, including that partner's own negligence, wrongful acts, errors, omissions, or misconduct in directly supervising any other partner or any employee, agent, or representative of the partnership.

(2) Division (B) of this section shall not affect the liability of a partner for liabilities imposed by Chapters 5735., 5739., 5743., and 5747. and section 3734.908 of the Revised Code.

(D) A partner in a registered limited liability partnership is not a proper party to an action or proceeding by or against a registered limited liability partnership with respect to any debt, obligation, or other liability of any kind described in division (B) of this section, unless the partner is liable under divisions (C)(1) and (2) of this section.

(E) A registered limited liability partnership is liable out of partnership assets for partnership debts, obligations, and liabilities.

(F)(1) The personal liability of a partner solely by reason of being such a partner, or acting or omitting to act in such capacity, of a registered limited

liability partnership organized and registered under the laws of this state shall be determined only under the laws of this state.

(2) The only actions required of a registered limited liability partnership or of individual partners in such a partnership in order to avail themselves of the limited liability provisions of this section are those required by this chapter.

SECTION 2. That existing sections 1701.55, 1701.782, 1701.792, 1705.21, and 1775.14 of the Revised Code are hereby repealed.

SECTION 3. Any meeting conducted or vote held by a nonprofit corporation on or after August 19, 2005, pursuant to section 1702.01, 1702.08, 1702.11, 1702.17, 1702.19, 1702.20, 1702.22, 1702.27, 1702.38, 1702.39, 1702.42, or 1702.58 of the Revised Code, as amended by H.B. 42 of the 126th General Assembly, is valid if the meeting or vote would have been valid under those sections as amended by Am. Sub. H.B. 699 of the 126th General Assembly if those sections as amended by Am. Sub. H.B. 699 of the 126th General Assembly had been in effect at the time of the meeting or vote.

SECTION 4. Sections 1701.55, 1701.782, and 1701.792 of the Revised Code take effect January 1, 2008.

SECTION 5. Section 1775.14 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 301 and Sub. H.B. 416 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

H. B. No. 134

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

H. B. No. 134

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 _____