

As Passed by the House

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H. B. No. 134

Representative Seitz

Cosponsors: Representatives McGregor, J., Zehringer, Collier, Blessing, Combs, Bacon, Uecker, Harwood, Hughes, Flowers, Latta, White, Huffman, Wagoner, Adams, Letson, Wolpert, Batchelder, Coley, Dolan, Seitz, Budish, Dyer, Foley, Okey, Aslanides, Bolon, Book, Brown, Bubp, Daniels, Domenick, Evans, Fende, Fessler, Garrison, Gibbs, Goodwin, Hagan, J., Hagan, R., Hite, Jones, Luckie, Lundy, Mallory, Oelslager, Otterman, Patton, Raussen, Schindel, Schneider, Setzer, Stebelton, Wachtmann, Webster, Yates, Yuko

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A B I L L

To amend sections 1701.55, 1701.782, 1701.792, 1
1705.21, and 1775.14 of the Revised Code to modify 2
corporation law relating to the election of 3
directors and to conform conversion provisions of 4
Chapter 1701. of the Revised Code with parallel 5
provisions in Chapters 1705., 1775., and 1782. of 6
the Revised Code. 7

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

Section 1. That sections 1701.55, 1701.782, 1701.792, 8
1705.21, and 1775.14 of the Revised Code be amended to read as 9
follows: 10

Sec. 1701.55. (A) At a meeting of shareholders at which 11
directors are to be elected, only persons nominated as candidates 12
shall be eligible for election as directors. 13

(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 45
provided in this section, a domestic or foreign entity that is not 46
a domestic corporation and is not a nonprofit corporation may be 47
converted into a domestic corporation. The conversion also must be 48
permitted by the chapter of the Revised Code or by the laws under 49
which the converting entity will exist. 50

(B)(1) The written declaration of conversion shall set forth 51
all of the following: 52

(a) The name and form of entity that is being converted, the 53
name of the entity into which the entity will be converted, and 54
the jurisdiction of formation of the converting entity; 55

(b) The articles of the converted corporation; 56

(c) All statements and matters required to be set forth in an 57
instrument of conversion by the laws under which the converting 58
entity exists; 59

(d) The terms of the conversion; the mode of carrying them 60
into effect; and the manner and basis of converting the interests 61
or shares of the converting entity into, or substituting the 62
interests or shares in the converting entity for, interests, 63
evidences of indebtedness, other securities, cash, rights, or any 64
other property or any combination of interests, evidences of 65
indebtedness, other securities, cash, rights, or any other 66
property of the converted corporation. 67

(2) No conversion or substitution described in this section 68
shall be effected if there are reasonable grounds to believe that 69
the conversion or substitution would render the converted 70
corporation unable to pay its obligations as they become due in 71
the usual course of its affairs. 72

(C) The written declaration of conversion may set forth any 73
of the following: 74

(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;	75 76 77
(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;	78 79 80 81
(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;	82 83 84
(4) The regulations of the converted corporation;	85
(5) The identity of the directors of the converted corporation;	86 87
(6) The parties to the declaration of conversion in addition to the converting entity;	88 89
(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;	90 91 92
(8) Any additional provision necessary or desirable with respect to the proposed conversion or the converted entity.	93 94
(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.	95 96 97 98 99
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. <u>The conversion also must be</u>	100 101 102 103 104

permitted by the chapter of the Revised Code or by the laws under 105
which the converted entity will exist. 106

(B)(1) The written declaration of conversion shall set forth 107
all of the following: 108

(a) The name and form of entity that is being converted, the 109
name of the entity into which the entity will be converted, the 110
form of the converted entity, and the jurisdiction of formation of 111
the converted entity; 112

(b) If the converted entity is a domestic entity, the 113
complete terms of all documents required under the applicable 114
chapter of the Revised Code to form the converted entity; 115

(c) If the converted entity is a foreign entity, all of the 116
following: 117

(i) The complete terms of all documents required under the 118
law of its formation to form the converted entity; 119

(ii) The consent of the converted entity to be sued and 120
served with process in this state, and the irrevocable appointment 121
of the secretary of state as the agent of the converted entity to 122
accept service of process in this state to enforce against the 123
converted entity any obligation of the converting corporation or 124
to enforce the rights of a dissenting shareholder of the 125
converting corporation; 126

(iii) If the converted entity desires to transact business in 127
this state, the information required to qualify or to be licensed 128
under the applicable chapter of the Revised Code. 129

(d) All other statements and matters required to be set forth 130
in the declaration of conversion by the applicable chapter of the 131
Revised Code, if the converted entity is a domestic entity, or by 132
the laws under which the converted entity will be formed, if the 133
converted entity is a foreign entity; 134

(e) The terms of the conversion; the mode of carrying them 135
into effect; and the manner and basis of converting the interests 136
or shares of the converting corporation into, or substituting the 137
interests or shares in the converting corporation for, interests, 138
evidences of indebtedness, other securities, cash, rights, or any 139
other property or any combination of interests, evidences of 140
indebtedness, other securities, cash, rights, or any other 141
property of the converted entity. 142

(2) No conversion or substitution described in this section 143
shall be effected if there are reasonable grounds to believe that 144
the conversion or substitution would render the converted entity 145
unable to pay its obligations as they become due in the usual 146
course of its affairs. 147

(C) The written declaration of conversion may set forth any 148
of the following: 149

(1) The effective date of the conversion, which date may be 150
on or after the date of the filing of the certificate of 151
conversion; 152

(2) A provision authorizing, prior to the filing of the 153
certificate of conversion pursuant to section 1701.811 of the 154
Revised Code, the converting corporation to abandon the proposed 155
conversion by action of the directors of the converting 156
corporation or by the same vote as was required to adopt the 157
declaration of conversion; 158

(3) A statement of, or a statement of the method to be used 159
to determine, the fair value of the assets owned by the converting 160
corporation at the time of the conversion; 161

(4) The parties to the declaration of conversion in addition 162
to the converting entity; 163

(5) Any additional provision necessary or desirable with 164
respect to the proposed conversion or the converted entity. 165

(D) The directors of the domestic converting corporation must 166
approve the declaration of conversion to effect the conversion, 167
and the declaration of conversion must be adopted by the 168
shareholders of the domestic converting corporation, at a meeting 169
held for the purpose. 170

(E) Notice of each meeting of shareholders of a domestic 171
converting corporation at which a declaration of conversion is to 172
be submitted shall be given to all shareholders of that 173
corporation, whether or not they are entitled to vote, and shall 174
be accompanied by a copy or a summary of the material provisions 175
of the declaration of conversion. 176

(F) The vote required to adopt a declaration of conversion at 177
a meeting of the shareholders of a domestic converting corporation 178
is the affirmative vote of the holders of shares of that 179
corporation entitling them to exercise at least two-thirds of the 180
voting power of the corporation on the proposal or a different 181
proportion as provided in the articles, but not less than a 182
majority, or, if the conversion is to a foreign corporation, a 183
different proportion as the articles provide for a merger or 184
consolidation, and the affirmative vote of the holders of shares 185
of any particular class as required by the articles of the 186
converting corporation. 187

If the declaration of conversion would have an effect that, 188
if accomplished through an amendment to the articles, would 189
entitle the holders of shares of any particular class of a 190
domestic converting corporation to vote as a class on the adoption 191
of an amendment as provided in division (B) of section 1701.71 of 192
the Revised Code, the declaration of conversion also must be 193
adopted by the affirmative vote of the holders of at least 194
two-thirds of the shares of such class, or a different proportion 195
as the articles provide, but not less than a majority. However, if 196
the declaration of conversion would have an effect that, if 197

accomplished through an amendment to the articles, would entitle 198
the holders of shares of any particular class of a domestic 199
converting corporation to vote as a class on the adoption of an 200
amendment pursuant to division (B)(2) or (4) of section 1701.71 of 201
the Revised Code solely because those shares are to be converted 202
into or substituted for the same number of shares of a class of a 203
different corporation having express terms identical in all 204
material respects to those of the class of shares so converted or 205
substituted, the declaration of conversion does not need to be 206
adopted by the affirmative vote of the holders of shares of that 207
particular class voting as a class. 208

If the declaration of conversion would authorize any 209
particular corporate action that under any applicable provision of 210
law or the articles could be authorized only by or pursuant to a 211
specified vote of shareholders, the declaration of conversion also 212
must be adopted by the same affirmative vote as required for such 213
action. 214

(G)(1) At any time before the filing of the certificate of 215
conversion pursuant to section 1701.811 of the Revised Code, the 216
conversion may be abandoned by the directors of the converting 217
corporation, if the directors are authorized to do so by the 218
declaration of conversion, or by the same vote of the shareholders 219
as was required to adopt the declaration of conversion. 220

(2) The declaration of conversion may contain a provision 221
authorizing the directors of the converting corporation to amend 222
the declaration of conversion at any time before the filing of the 223
certificate of conversion pursuant to section 1701.811 of the 224
Revised Code, except that, after the adoption of the declaration 225
of conversion by the stockholders of the converting corporation, 226
the directors may not amend the declaration of conversion to do 227
any of the following: 228

(a) Alter or change the amount or kind of interests, shares, 229

evidences of indebtedness, other securities, cash, rights, or any 230
other property to be received by the shareholders of the 231
converting corporation in conversion of, or substitution for, 232
their shares; 233

(b) Alter or change any term of the organizational documents 234
of the converted entity except for alterations or changes that are 235
adopted with the vote or action of the persons, the vote or action 236
of which would be required for the alteration or change after the 237
conversion; 238

(c) Alter or change any other terms and conditions of the 239
declaration of conversion if any of the alterations or changes, 240
alone or in the aggregate, materially and adversely would affect 241
the holders of any class or series of shares of the converting 242
corporation. 243

Sec. 1705.21. (A) ~~If~~ Except as otherwise provided in the 244
operating agreement or articles of organization, if a member who 245
is an individual dies or is adjudged an incompetent, ~~his~~ the 246
member's executor, administrator, guardian, or other legal 247
representative may exercise all of ~~his~~ the member's rights as a 248
member for the purpose of settling ~~his~~ the member's estate or 249
administering ~~his~~ the member's property, including any authority 250
that ~~he~~ the member had to give an assignee the right to become a 251
member. 252

(B) If a member is a corporation, trust, general or limited 253
partnership, or other entity and is dissolved or terminated, the 254
powers of the member may be exercised by its legal representative 255
or successor. 256

Sec. 1775.14. (A) Subject to section 5815.35 of the Revised 257
Code and except as provided in division (B) of this section, all 258
partners are liable as follows: 259

(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 292
liability partnership under division (A) of section 1775.61 of the 293
Revised Code. 294

(C)(1) Division (B) of this section does not affect the 295
liability of a partner in a registered limited liability 296
partnership for that partner's own negligence, wrongful acts, 297
errors, omissions, or misconduct, including that partner's own 298
negligence, wrongful acts, errors, omissions, or misconduct in 299
directly supervising any other partner or any employee, agent, or 300
representative of the partnership. 301

(2) Division (B) of this section shall not affect the 302
liability of a partner for liabilities imposed by Chapters 5735., 303
5739., 5743., and 5747. and section 3734.908 of the Revised Code. 304

(D) A partner in a registered limited liability partnership 305
is not a proper party to an action or proceeding by or against a 306
registered limited liability partnership with respect to any debt, 307
obligation, or other liability of any kind described in division 308
(B) of this section, unless the partner is liable under divisions 309
(C)(1) and (2) of this section. 310

(E) A registered limited liability partnership is liable out 311
of partnership assets for partnership debts, obligations, and 312
liabilities. 313

(F)(1) The personal liability of a partner solely by reason 314
of being such a partner, or acting or omitting to act in such 315
capacity, of a registered limited liability partnership organized 316
and registered under the laws of this state shall be determined 317
only under the laws of this state. 318

(2) The only actions required of a registered limited 319
liability partnership or of individual partners in such a 320
partnership in order to avail themselves of the limited liability 321
provisions of this section are those required by this chapter. 322

Section 2. That existing sections 1701.55, 1701.782, 323
1701.792, 1705.21, and 1775.14 of the Revised Code are hereby 324
repealed. 325

Section 3. Any meeting conducted or vote held by a nonprofit 326
corporation on or after August 19, 2005, pursuant to section 327
1702.01, 1702.08, 1702.11, 1702.17, 1702.19, 1702.20, 1702.22, 328
1702.27, 1702.38, 1702.39, 1702.42, or 1702.58 of the Revised 329
Code, as amended by H.B. 42 of the 126th General Assembly, is 330
valid if the meeting or vote would have been valid under those 331
sections as amended by Am. Sub. H.B. 699 of the 126th General 332
Assembly if those sections as amended by Am. Sub. H.B. 699 of the 333
126th General Assembly had been in effect at the time of the 334
meeting or vote. 335

Section 4. Sections 1701.55, 1701.782, and 1701.792 of the 336
Revised Code take effect January 1, 2008. 337

Section 5. Section 1775.14 of the Revised Code is presented 338
in this act as a composite of the section as amended by both Am. 339
Sub. H.B. 301 and Sub. H.B. 416 of the 126th General Assembly. The 340
General Assembly, applying the principle stated in division (B) of 341
section 1.52 of the Revised Code that amendments are to be 342
harmonized if reasonably capable of simultaneous operation, finds 343
that the composite is the resulting version of the section in 344
effect prior to the effective date of the section as presented in 345
this act. 346