

AN ACT

To amend sections 1701.04, 1701.24, 1701.55, 1701.58, 1701.591, 1701.69, 1701.70, and 1701.76 of the Revised Code to allow the original articles of incorporation to eliminate cumulative voting in the election of directors, to remove restrictions for certain corporations regarding the elimination of cumulative voting, to exclude from the existing procedures for the sale of all or substantially all of the assets of a corporation the sale of those assets to the corporation's wholly owned subsidiaries, to permit the articles or certain regulations of a corporation to provide for uncertificated shares, and to authorize the directors to amend the articles with respect to series of shares.

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

SECTION 1. That sections 1701.04, 1701.24, 1701.55, 1701.58, 1701.591, 1701.69, 1701.70, and 1701.76 of the Revised Code be amended to read as follows:

Sec. 1701.04. (A) Any person, singly or jointly with others, and without regard to residence, domicile, or state of incorporation, may form a corporation by signing and filing with the secretary of state articles of incorporation that shall set forth all of the following:

(1) The name of the corporation, which shall be in compliance with division (A) of section 1701.05 of the Revised Code;

(2) The place in this state where the principal office of the corporation is to be located;

(3) The authorized number and the par value per share of shares with par value, and the authorized number of shares without par value, except that the articles of a banking, safe deposit, trust, or insurance corporation shall not authorize shares without par value; the express terms, if any, of the shares; and, if the shares are classified, the designation of each class, the authorized number and par value per share, if any, of the shares of each

class, and the express terms of the shares of each class;

(4) If the corporation is to have an initial stated capital, the amount of that stated capital.

(B) The articles also may set forth any of the following:

(1) The names of the individuals who are to serve as initial directors;

(2) The purpose or purposes for which the corporation is formed, but in the absence of a statement of the purpose or purposes or except as expressly set forth in such statement, the purpose for which any corporation is formed is to engage in any lawful act or activity for which a corporation may be formed under this chapter, and all lawful acts and activities of the corporation are within the purposes of the corporation;

(3) Any lawful provision for the purpose of defining, limiting, or regulating the exercise of the authority of the corporation, the incorporators, the directors, the officers, the shareholders, or the holders of any class of shares;

(4) Any provision that may be set forth in the regulations;

(5) A provision specifying the period of existence of the corporation if it is to be otherwise than perpetual;

(6) Subject to division (C) of this section, any A provision eliminating the right of every shareholder to vote cumulatively in the election of directors;

(7) Any additional provision permitted by this chapter.

~~(C) Original articles of a corporation may not set forth any provision that eliminates the rights of shareholders under this chapter to cumulate the voting power that they possess in the election of directors.~~

~~(D)~~ A written appointment of a statutory agent for the purposes set forth in section 1701.07 of the Revised Code shall be filed with the articles, unless the corporation belongs to one of the classes mentioned in division (O) of that section.

~~(E)~~(D) The legal existence of the corporation begins upon the filing of the articles or on a later date specified in the articles that is not more than ninety days after filing, and, unless the articles otherwise provide, its period of existence shall be perpetual.

Sec. 1701.24. (A) The shares of a corporation are personal property.

(B) ~~Each~~ Unless the articles, the regulations adopted by the shareholders, or the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code provide otherwise, a holder of shares is entitled to one or more certificates, signed by the chairperson of the board or the president or a vice-president and by the secretary, an assistant secretary, the treasurer, or an assistant treasurer of the corporation,

~~which that~~ shall certify the number and class of shares held by the holder in the corporation, but no certificate for shares shall be executed or delivered until ~~such~~ those shares are fully paid. When the certificate is countersigned by an incorporated transfer agent or registrar, the signature of any of those officers of the corporation may be facsimile, engraved, stamped, or printed. Although any officer of the corporation whose manual or facsimile signature is affixed to the certificate ceases to be such officer before the certificate is delivered, the certificate nevertheless shall be effective in all respects when delivered.

(C) A corporation is not obligated to but may issue fractional shares. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. In the case of uncertificated securities, the corporation may proceed as provided in divisions (C)(1) and (2) of this section. In the case of certificated securities, the corporation may execute and deliver a certificate for or including a fraction of a share or, in lieu thereof, may do any of the following:

(1) Pay to the person otherwise entitled to become a holder of a fraction of a share an amount in cash specified as the value of the fraction of a share in the articles, a resolution of the directors, or other agreement or instrument pursuant to which ~~such that~~ fraction of a share otherwise would be issued, or, if not so specified, then the amount determined for that purpose by the directors of the issuing corporation, or the amount realized upon sale of the fraction of a share;

(2) Provide reasonable means to afford to the person the opportunity, on specified terms and conditions, to purchase or sell fractional interests in shares, to the exclusion of all rights the person otherwise might have;

(3) Execute and deliver registered or bearer scrip over the manual or facsimile signature of an officer of the corporation or of its agent for that purpose, exchangeable as provided in the scrip for full shares, but such scrip shall not entitle the holder to any rights as a shareholder except as provided in the scrip. The scrip may provide that it shall become void unless the rights of the holders are exercised within a specified period and may contain any other provisions that the corporation deems advisable. Whenever any such scrip ceases to be exchangeable for full shares, the shares that otherwise would have been issuable as provided in the scrip shall be deemed to be treasury shares unless the scrip contains other provision for their disposition.

(D) A joint estate with the incidents of a joint estate as at common law, including the right of survivorship, may be created in shares by registering

the same in the case of uncertificated securities, or by executing and delivering a certificate in the case of certificated securities to two or more persons with the words "as joint tenants" or "as joint tenants with right of survivorship and not as tenants in common" following their names. Upon receipt by the corporation of proof satisfactory to it of the death of one or more joint tenants, it may register the transfer to, or execute and deliver a new certificate to, the survivor or survivors.

(E) Whenever a corporation has determined that any outstanding certificates for shares should be canceled and exchanged for other certificates, the corporation may order and require the holders of the outstanding certificates to surrender them for that purpose within a reasonable time to be fixed by the corporation. The order may provide that, until compliance with the order, any or all rights as a shareholder of the holder of any certificate so required to be surrendered shall be suspended with respect to the shares represented by the certificate. Not less than ten days before the order is to become effective, the corporation shall give notice of the order by mail to each shareholder affected by the order at the shareholder's address as it appears on the records of the corporation.

(F) The articles of a corporation, the regulations adopted by the shareholders of a corporation, or the regulations adopted by the directors of a corporation pursuant to division (A)(1) of section 1701.10 of the Revised Code may provide that some or all of any or all classes and series of shares of that corporation shall be uncertificated shares. Unless otherwise provided by the articles or regulations, the directors may provide by resolution that some or all of any or all classes and series of shares of a corporation shall be uncertificated shares, provided that the resolution shall not apply to shares represented by a certificate until the certificate is surrendered to the corporation and that the resolution shall not apply to a certificated security issued in exchange for an uncertificated security. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner of the shares a written notice containing the information required to be set forth or stated on certificates pursuant to division (A) of section 1701.25 of the Revised Code. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

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) 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 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~~ the meeting time, that the shareholder desires that the voting at such election shall be cumulative, provided that an announcement of the giving of ~~such~~ that notice is made upon the convening of the meeting by the chairperson or secretary or by or on behalf of the shareholder giving ~~such~~ the 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 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 the shareholder possesses and to give one candidate as many votes as the number of directors to be elected multiplied by the number of the shareholder's votes equals, or to distribute the shareholder's votes on the same principle among two or more candidates, as the shareholder sees fit.

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

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

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

(2) If within sixty days, or within any other period of time as is prescribed in the articles or the regulations, from the date of the director's election the director does not qualify by accepting in writing the director's election to that office or by acting at a meeting of the directors, and by acquiring the qualifications specified in the articles or the regulations; or if, for such period as is prescribed in the articles or the regulations, the director ceases to hold the required qualifications.

(C) Except as otherwise provided in this division, if the shareholders have a the right to vote cumulatively in the election of directors, then, unless the articles, the regulations adopted by the shareholders, or the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code expressly provide that no director may be removed from office or that removal of directors requires a greater vote than that specified in this division, all the directors, all the directors of a particular class, or any individual director may be removed from office, without assigning any cause, by the vote of the holders of a majority of the voting power entitling them to elect directors in place of those to be removed, except that, unless all the directors, or all the directors of a particular class, are removed, no individual director shall be removed if the votes of a sufficient number of shares are cast against the director's removal that, if cumulatively voted at an election of all the directors, or all the directors of a particular class, as the case may be, would be sufficient to elect at least one director. In the case of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code, the shareholders may effect a removal under this division only for cause.

(D) If the shareholders do not have the right to vote cumulatively ~~as a result of an amendment to the articles permitted by division (B)(10) of section 1701.69 of the Revised Code~~ in the election of directors, then, unless the articles, the regulations adopted by the shareholders, or the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code expressly provide that no director may be removed from office or that removal of directors requires a greater vote than that specified in this division, all the directors, all the directors of a particular class, or any individual director may be removed from office, without assigning any cause, by the vote of the holders of a majority of the voting power entitling them to elect directors in place of those to be removed; except that in the case of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code, the shareholders may effect that removal only for cause.

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

(F) Unless the articles or the regulations otherwise provide, the remaining directors, though less than a majority of the whole authorized number of directors, may, by the vote of a majority of their number, fill any

vacancy in the board for the unexpired term. Under this section, a vacancy exists if the shareholders increase the authorized number of directors but fail at the meeting at which such increase is authorized, or an adjournment of that meeting, to elect the additional directors provided for, or if the shareholders fail at any time to elect the whole authorized number of directors.

Sec. 1701.591. (A) In order to qualify as a close corporation agreement under this section, the agreement shall meet the following requirements:

(1) Every person who is a shareholder of the corporation at the time of the agreement's adoption, whether or not entitled to vote, shall have assented to the agreement in writing;

(2) The agreement shall be set forth in the articles, the regulations, or another written instrument;

(3) The agreement shall include a statement that it is to be governed by this section.

(B) A close corporation agreement that is not set forth in the articles or the regulations shall be entered in the record of minutes of the proceedings of the shareholders of the corporation and shall be subject to the provisions of division (C) of section 1701.92 of the Revised Code.

(C) Irrespective of any other provisions of this chapter, but subject to division (D)(2) of this section, a close corporation agreement may contain provisions, which shall be binding on the corporation and all of its shareholders, regulating any aspect of the internal affairs of the corporation or the relations of the shareholders among themselves, including the following:

(1) Regulation of the management of the business and affairs of the corporation;

(2) The right of one or more shareholders to dissolve the corporation at will or on the occurrence of a specified event or contingency;

(3) The obligation to vote the shares of a person as specified, or voting requirements, including the requirement of the affirmative vote or approval of all shareholders or of all directors, which voting requirements need not appear in the articles unless the close corporation agreement is set forth in the articles;

(4) The designation of the persons who shall be the officers or directors of the corporation;

(5) The authority of any individual who holds more than one office of the corporation to execute, acknowledge, or certify in more than one capacity any instrument required to be executed, acknowledged, or certified by the holders of two or more offices;

(6) The terms and conditions of employment of an officer or employee of the corporation without regard to the period of employment;

(7) The declaration and payment of dividends or distributions or the division of profits;

(8) Elimination of the board of directors, restrictions upon the exercise by directors of their authority, or delegation to one or more shareholders or other persons of all or part of the authority of the directors;

(9) Conferring on any shareholder or agent of a shareholder the absolute right, without the necessity of stating any purpose, to examine and copy during usual business hours any of the corporation's records or documents to which reference is made in section 1701.37 of the Revised Code;

(10) Prohibition of or limitation upon the issuance or sale by the corporation of any of its shares, including treasury shares, without the affirmative vote or approval of the holders of all or a proportion of the outstanding shares or unless other specified terms and conditions are met;

(11) Arbitration of issues on which the shareholders are deadlocked in voting power or on which the directors or other parties managing the corporation are deadlocked;

(12) Dispensing with the annual meeting of shareholders unless a shareholder, by written notice to the president or secretary either by personal delivery or by mail within thirty days after the end of the most recent fiscal year of the corporation, requests that the meeting be held.

(D) Except as may be necessary to give effect to divisions (C)(3), (5), (8), (9), and (12) and division (I) of this section, any provision of a close corporation agreement that does either of the following shall be invalid:

(1) Eliminates the filing with the secretary of state of any document required under this chapter or changes the required form or content of the document;

(2) Waives or alters the effect of any of the provisions of section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31, 1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591, 1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of section 1701.64 of the Revised Code.

Unless otherwise provided in the close corporation agreement, the invalidity of a provision pursuant to this division does not affect the validity of the remainder of the agreement.

Any certificate that is required to be filed with the secretary of state with respect to the authorization or taking of any action pursuant to a close corporation agreement that would not be permitted under this chapter in the absence of division (C) of this section shall recite the existence of a close corporation agreement that authorizes the action.

(E)(1) Except as provided in division (E)(2) of this section, a close corporation agreement may be amended or terminated by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of all of the outstanding shares of each class or, as may be provided by the close corporation agreement, of the holders, then parties to the close corporation agreement, of a proportion of not less than four-fifths of the outstanding shares of each class. If a close corporation agreement is amended or terminated by the written consent of the holders of fewer than all of the shares, the secretary of the corporation shall mail a copy of the amendment or a notice of the termination to each shareholder who did not so consent. If a close corporation agreement set forth in the articles is amended, the amendment shall not be effective unless it is filed as an amendment to the articles pursuant to section 1701.73 of the Revised Code. No corporation with respect to which a close corporation agreement is in effect shall cause to occur any of the actions described in division (I)(1)(a), (b), or (c) of this section unless the action has been authorized by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of that proportion of shares of each class that is required to terminate the close corporation agreement.

(2) A close corporation agreement that was in existence on December 31, 1993, and that did not specify on that date and that has not specified since that date the proportion of shares required to amend or terminate the close corporation agreement may be amended or terminated by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of four-fifths of the outstanding shares of each class.

(F) No close corporation agreement is invalid among the parties or in respect of the corporation on any of the following grounds:

(1) The agreement is an attempt to treat the corporation as if it were a partnership or to arrange the relationship of the parties in a manner that would be appropriate only among partners;

(2) The agreement provides for the conduct of the affairs of a corporation or relations among shareholders in any manner that would be inappropriate or unlawful under provisions of this chapter other than those set forth in division (D)(2) of this section or under other applicable law;

(3) The agreement interferes with the authority or discretion of the directors;

(4) The agreement has not been filed with the minutes as required by division (B) of this section.

(G) If a close corporation agreement provides that there shall be no board of directors, both of the following apply:

(1) The shareholders, for the purposes of any statute or rule of law relating to corporations, are deemed to be the directors and to have all of the liabilities, immunities, defenses, and indemnifications of directors with respect to any action or inaction of the corporation, except that any shareholder who is not permitted by the articles, the regulations, or the close corporation agreement to vote on or assent to an action or assent to an inaction shall not be liable as a director with respect to the action or inaction.

(2) Except to the extent that the voting rights of the shares of a class are increased, limited, or denied by the articles, the regulations, or the close corporation agreement, each outstanding share regardless of class shall entitle its holder to one vote on each matter, including any matter normally voted on by directors, that is properly submitted to the shareholders for their vote, consent, waiver, release, or other action.

(H) The existence of a close corporation agreement shall be noted conspicuously on the face or the back of every certificate for shares of the corporation and a purchaser or transferee of shares represented by a certificate on which such a notation so appears shall be conclusively considered to have taken delivery with notice of the close corporation agreement. Any transferee of shares by gift, bequest, or inheritance and any purchaser or transferee of shares with knowledge or notice of a close corporation agreement is bound by the agreement and shall be considered to be a party to the agreement.

(I)(1) A close corporation agreement becomes invalid under any of the following circumstances:

(a) Shares of the corporation are listed on a national securities exchange.

(b) Shares of the corporation are registered under section 12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 781, as amended.

(c) Shares of the corporation have been included in a registration statement that has become effective pursuant to the "Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and the corporation is required to file periodic reports and information pursuant to section 15(d) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended.

(d) Shares of the corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement; that person delivers to the corporation a written rejection of the close corporation agreement within ninety days after the date on which that

person first received notice of the existence of the close corporation agreement or within three years of the date of transfer or issuance, whichever is earlier; and the corporation does not offer in writing, within thirty days after the date on which the corporation received the written rejection, to purchase the shares from that person for the full amount paid for the shares, or, having made an offer to purchase the shares for that amount, the corporation, upon that person's acceptance of the offer, does not purchase the shares in accordance with division (I)(3) of this section.

(2) A close corporation agreement does not become invalid and the person to whom the shares are transferred or issued is not entitled to any payment from the corporation pursuant to division (I)(3) of this section if both of the following apply:

(a) Shares of the corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement;

(b) That person does either of the following:

(i) Fails to deliver a written rejection of the close corporation agreement to the corporation within ninety days after the date on which that person first received notice of the existence of the close corporation agreement or within three years of the date of transfer or issuance, whichever is earlier;

(ii) Fails, within thirty days after the date on which that person receives a written offer by the corporation to purchase the shares from that person for the full amount paid for the shares, to accept the offer.

(3) If shares of a corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement and that person accepts an offer by the corporation to purchase the shares, the corporation shall pay to that person the full amount paid for the shares within seven days after that person delivers to the corporation the certificate for the shares and proof of payment of the amount paid for the shares. If the amount paid for the shares included property other than cash, the corporation, at its option, may return the property to that person or may pay to that person cash in an amount equal to the fair market value of the property on the date of transfer or issuance of the shares, as determined in good faith by the corporation. A shareholder who transfers shares to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement is liable to the corporation, upon the corporation's written demand made upon the shareholder within ninety days after the date

on which the corporation made payment for the shares, for the full amount that the corporation paid for the shares. Upon receiving payment in that amount from the shareholder, the corporation shall transfer the shares to the shareholder.

(4) In the event of the invalidity of a close corporation agreement and unless otherwise provided in the close corporation agreement, any provision contained in the close corporation agreement that would not be invalid under any other section of this chapter or under other applicable law remains valid and binding on the parties to the close corporation agreement.

Any officer of the corporation who learns of the occurrence of any event causing the invalidity of the close corporation agreement shall immediately give written notice of the invalidity to all of the shareholders.

If a close corporation agreement set forth in the articles of the corporation is terminated or becomes invalid, the officers of the corporation shall promptly sign and file the certificate of amendment prescribed by section 1701.73 of the Revised Code, setting forth the reason for the termination or invalidity and deleting the close corporation agreement from the articles. If the officers fail to execute and file the certificate within thirty days after the occurrence of the event giving rise to the termination or invalidity, the certificate may be signed and filed by any shareholder and shall set forth a statement that the person signing the certificate is a shareholder and is filing the certificate because of the failure of the officers to do so.

(J) A close corporation agreement, in the sound discretion of a court exercising its equity powers, is enforceable by injunction, specific performance, or other relief that the court may determine to be fair and appropriate.

(K) This section shall not be construed as prohibiting any other lawful agreement among two or more shareholders.

(L) No corporation with respect to which a close corporation agreement is in effect, shall issue shares in uncertificated form, and any provision of the articles or regulations or any resolution of the directors of such a corporation, providing for the issuance of shares in uncertificated form, shall be ineffective during any period in which a close corporation agreement is in effect. The adoption of a close corporation agreement shall act as a transfer instruction to the corporation to replace uncertificated securities with appropriate certificated securities.

(M) If the annual meeting of the shareholders is dispensed with in accordance with a provision in the close corporation agreement authorized by division (C)(12) of this section, the annual financial statements required

by section 1701.38 of the Revised Code shall be delivered to each shareholder on or before the last date upon which the annual meeting otherwise could have been held.

(N) The amendments to this section that are effective April 4, 1985, are remedial in nature and apply to all close corporation agreements created on or after November 17, 1981. The amendments to this section that are effective December 31, 1993, are remedial in nature and, except as those amendments otherwise provide, apply to all close corporation agreements created on or after November 17, 1981.

Sec. 1701.69. (A) The articles may be amended from time to time in any respect if the articles as amended set forth all such provisions as are required in, and, except for ~~amendments~~ an amendment to the articles as described in ~~divisions~~ division (B)(~~10~~) and (11) of this section, only such provisions as may properly be in, original articles filed at the time of adopting the amendment, and, if a change in issued shares is to be made, or if as the result of any amendment the stated capital of any class of shares is to be created, increased, reduced, or eliminated, then such provisions, not inconsistent with section 1701.30 of the Revised Code, as are necessary to effect such change, or to effect such creation, increase, reduction, or elimination of stated capital.

(B) Without limiting the generality of the authority to amend the articles, the articles may be amended to do any of the following:

- (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) Increase or decrease the authorized number of shares of any class;
- (5) Authorize shares of a new class or classes;
- (6) Increase or decrease the par value of issued or unissued shares with par value;
- (7) Change issued or unissued shares of any class, whether with or without par value, into the same or a different number of shares of any class with or without par value, theretofore or then authorized;
- (8) Provide that, as a result of an amendment described in division (B)(6), (7), or (11) of this section, the stated capital of any class of shares shall be created, increased, reduced, or eliminated, consistent with section 1701.30 of the Revised Code, except that, in the case of any amendment to change the corporation into a nonprofit corporation, the stated capital of the corporation may be reduced or eliminated;
- (9) Change any of the express terms of issued or unissued shares of any

class or series, which change may include the discharge, adjustment, or elimination of rights to accrued undeclared cumulative dividends or distributions on the shares of such class or series;

(10) Eliminate the right of every shareholder to vote cumulatively in the election of directors or to delete a provision that eliminates that right, ~~except that, if a corporation is formed after the effective date of this amendment or if a corporation that exists on the effective date of this amendment does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, the articles may be amended to eliminate the right of every shareholder to vote cumulatively in the election of directors only upon compliance with both of the following:~~

~~(a) Except as otherwise provided in this division in connection with surviving corporations in mergers and new corporations resulting from consolidations, the shareholder action on the amendment to the articles shall not occur earlier than ninety days after the effective date of this amendment or ninety days after the date that the corporation was formed, whichever date is later;~~

~~(b) A notice shall have been sent to the shareholders by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice is sent that states, in solid capital letters, that an effect of the amendment to the articles will be to do both of the following:~~

~~(i) To permit a majority of a quorum of the voting power in the election or removal of directors to elect or remove every director;~~

~~(ii) To preclude a minority of a quorum of the voting power in the election or removal of directors from electing or preventing the removal of any director.~~

~~In the case of a surviving corporation as a result of a merger or of a new corporation resulting from a consolidation, if immediately prior to the merger or consolidation at least one of the constituent corporations had issued and outstanding shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, then the ninety-day limitation prescribed in division (B)(10)(a) of this section does not apply and the agreement of merger or consolidation, as adopted pursuant to section 1701.78 or 1701.80 of the Revised Code, may eliminate, subject to division (B)(10)(b) of this section, the right of every shareholder to vote cumulatively in the election of directors. An agreement of merger or~~

~~consolidation that is so adopted and that eliminates the right of every shareholder to vote cumulatively in the election of directors shall be considered an amendment permitted by this division.;~~

(11) Change a corporation into a nonprofit corporation;

(12) Change any provision of the articles or add any provision that may properly be included in the articles.

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

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

(1) When and to the extent authorized by the articles, the directors may adopt an amendment determining, in whole or in part, the express terms, within the limits set forth in this chapter, of any class of shares before the issuance of any shares of that class, or of one or more series within a class before the issuance of shares of that series. When no shares of a series created by an amendment to the articles under division (B)(1) of this section have been issued and no option or right to acquire any share of that series is outstanding, the directors may adopt an amendment to reduce the number of shares in that series or to eliminate from the articles all references to the series and to make other appropriate changes that are required by the elimination of the series.

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

(3) Whenever shares of any class or series have been redeemed, or have been surrendered to or acquired by the corporation upon conversion, exchange, purchase, or otherwise, the directors may adopt an amendment to reduce the authorized number of shares of ~~the~~ that class or series by the number so redeemed, surrendered, or acquired; and when all of the ~~authorized~~ issued shares of a class or series have been redeemed or

surrendered to or acquired by the corporation, the directors may adopt an amendment to eliminate from the articles all references to the shares of ~~the~~ that class or series and to make other appropriate changes that are required by the elimination.

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

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

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

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

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

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

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

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

(9) The directors may adopt an amendment to change each issued and unissued authorized share of an outstanding class into a greater number of

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

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

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

(D) Divisions (B)(6) to (10) of this section shall not apply to a corporation with one hundred or fewer shareholders unless the corporation was created on or after ~~the effective date of this amendment~~ May 16, 2002, or the articles of the corporation have been amended in compliance with section 1701.71 or 1701.73 of the Revised Code specifically to make those divisions applicable.

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. of the Revised Code do not prevent the transaction from being effected, a lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for the consideration, that may consist, in whole or in part, of money or other property of any description, including shares or other securities or promissory obligations of any other corporation, domestic or foreign, that may be authorized as follows:

(a) By the directors, either before or after authorization by the shareholders as required in this section; and

(b) At a meeting of the shareholders held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise two-thirds

of the voting power of the corporation on the proposal, or, if the articles so provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of the voting power, and by the affirmative vote of the holders of shares of any particular class that is required by the articles.

(2) At the shareholder meeting described in division (A)(1)(b) of this section or at any subsequent shareholder meeting, shareholders, by the same vote that is required to authorize the lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of the corporation, may grant authority to the directors to establish or amend any of the terms and conditions of the transaction, except that the shareholders shall not authorize the directors to do any of the following:

(a) Alter or change the amount or kind of shares, securities, money, property, or rights to be received in exchange for the assets;

(b) Alter or change to any material extent the amount or kind of liabilities to be assumed in exchange for the assets;

(c) Alter or change any other terms and conditions of the transaction if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the shareholders or the corporation.

(3) Notice of the meeting of the shareholders described in division (A)(1)(b) of this section shall be given to all shareholders whether or not entitled to vote at the meeting and shall be accompanied by a copy or summary of the terms of the transaction.

(B) The corporation by its directors may abandon the transaction under this section, subject to the contract rights of other persons, if the power of abandonment is conferred upon the directors either by the terms of the transaction or by the same vote of shareholders and at the same meeting of shareholders as that referred to in division (A)(1)(b) of this section or at any subsequent meeting.

(C) Dissenting holders of shares of any class, whether or not entitled to vote, shall be entitled to relief under section 1701.85 of the Revised Code.

(D) 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 all, or substantially all, of the assets of that corporation has not been complied with, shall be brought within ninety days after that transaction, or the action shall be forever barred.

(E) If a resolution of dissolution is adopted pursuant to section 1701.86 of the Revised Code, the directors may dispose of all, or substantially all, of the corporation's assets without the necessity of a shareholders' authorization under this section.

(F) The terms and conditions of any transaction under this section shall

be subject to the limitations specified in section 2307.97 of the Revised Code.

(G) This section does not apply to the distribution, pursuant to section 1701.33 of the Revised Code, to the shareholders of an issuing public corporation of shares owned by the issuing public corporation in one or more of its domestic or foreign subsidiary corporations, unless either of the following applies:

(1) The former subsidiary is a party to one or more agreements pursuant to which it is obligated to engage in an additional transaction that, if the transaction were authorized after the time at which the distribution becomes effective, would require the approval of its shareholders.

(2) Immediately prior to the time at which the distribution becomes effective, the issuing public corporation has more than one class of shares outstanding.

(H) For purposes of this section only, the assets of a corporation include the assets of any other entity that is wholly owned, directly or indirectly, by the corporation. Unless otherwise provided in the articles, this section does not apply to any lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets of a corporation to any entity that is wholly owned, directly or indirectly, by the corporation.

SECTION 2. That existing sections 1701.04, 1701.24, 1701.55, 1701.58, 1701.591, 1701.69, 1701.70, and 1701.76 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 374

127th G.A.

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 _____