

As Introduced

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H. B. No. 374

Representative Coley

**Cosponsors: Representatives McGregor, J., Wagoner, Huffman, Combs,
Stebelton**

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A B I L L

To amend sections 1701.04, 1701.55, 1701.58, 1701.69, 1
and 1701.76 of the Revised Code to allow the 2
original articles of incorporation to eliminate 3
cumulative voting in the election of directors, to 4
remove restrictions for certain corporations 5
regarding the elimination of cumulative voting, 6
and to exclude from the existing procedures for 7
the sale of all or substantially all of the assets 8
of a corporation the sale of those assets to the 9
corporation's wholly owned subsidiaries. 10

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

Section 1. That sections 1701.04, 1701.55, 1701.58, 1701.69, 11
and 1701.76 of the Revised Code be amended to read as follows: 12

Sec. 1701.04. (A) Any person, singly or jointly with others, 13
and without regard to residence, domicile, or state of 14
incorporation, may form a corporation by signing and filing with 15
the secretary of state articles of incorporation that shall set 16
forth all of the following: 17

(1) The name of the corporation, which shall be in compliance 18

with division (A) of section 1701.05 of the Revised Code;	19
(2) The place in this state where the principal office of the corporation is to be located;	20 21
(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;	22 23 24 25 26 27 28 29
(4) If the corporation is to have an initial stated capital, the amount of that stated capital.	30 31
(B) The articles also may set forth any of the following:	32
(1) The names of the individuals who are to serve as initial directors;	33 34
(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;	35 36 37 38 39 40 41
(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;	42 43 44 45
(4) Any provision that may be set forth in the regulations;	46
(5) A provision specifying the period of existence of the corporation if it is to be otherwise than perpetual;	47 48

~~(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;~~ 49
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(7) Any additional provision permitted by this chapter. 52

~~(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.~~ 53
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~~(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. 57
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~~(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. 61
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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. 66
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(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. 69
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(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 72
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the shareholders for the purpose of electing directors if notice 79
of the meeting has been given at least ten days before the 80
meeting, and, if the ten days' notice has not been given, not less 81
than twenty-four hours before ~~such~~ the meeting time, that the 82
shareholder desires that the voting at such election shall be 83
cumulative, provided that an announcement of the giving of ~~such~~ 84
that notice is made upon the convening of the meeting by the 85
chairperson or secretary or by or on behalf of the shareholder 86
giving ~~such~~ the notice. 87

(D) Unless the articles ~~are amended as permitted by division~~ 88
~~(B)(10) of section 1701.69 of the Revised Code~~ to provide that no 89
shareholder of a corporation may cumulate the shareholder's voting 90
power, each shareholder has the right, subject to the notice 91
requirements contained in division (C) of this section, to 92
cumulate the voting power the shareholder possesses and to give 93
one candidate as many votes as the number of directors to be 94
elected multiplied by the number of the shareholder's votes 95
equals, or to distribute the shareholder's votes on the same 96
principle among two or more candidates, as the shareholder sees 97
fit. 98

Sec. 1701.58. (A) The office of a director becomes vacant if 99
the director dies or resigns. A resignation shall take effect 100
immediately or at such other time as the director may specify. 101

(B) The directors may remove any director and thereby create 102
a vacancy in the board: 103

(1) If by order of court the director has been found to be of 104
unsound mind, or if the director is adjudicated a bankrupt; 105

(2) If within sixty days, or within any other period of time 106
as is prescribed in the articles or the regulations, from the date 107
of the director's election the director does not qualify by 108
accepting in writing the director's election to that office or by 109

acting at a meeting of the directors, and by acquiring the 110
qualifications specified in the articles or the regulations; or 111
if, for such period as is prescribed in the articles or the 112
regulations, the director ceases to hold the required 113
qualifications. 114

(C) Except as otherwise provided in this division, if the 115
shareholders have a the right to vote cumulatively in the election 116
of directors, then, unless the articles, the regulations adopted 117
by the shareholders, or the regulations adopted by the directors 118
pursuant to division (A)(1) of section 1701.10 of the Revised Code 119
expressly provide that no director may be removed from office or 120
that removal of directors requires a greater vote than that 121
specified in this division, all the directors, all the directors 122
of a particular class, or any individual director may be removed 123
from office, without assigning any cause, by the vote of the 124
holders of a majority of the voting power entitling them to elect 125
directors in place of those to be removed, except that, unless all 126
the directors, or all the directors of a particular class, are 127
removed, no individual director shall be removed if the votes of a 128
sufficient number of shares are cast against the director's 129
removal that, if cumulatively voted at an election of all the 130
directors, or all the directors of a particular class, as the case 131
may be, would be sufficient to elect at least one director. In the 132
case of an issuing public corporation whose directors are 133
classified pursuant to section 1701.57 of the Revised Code, the 134
shareholders may effect a removal under this division only for 135
cause. 136

(D) If the shareholders do not have the right to vote 137
cumulatively ~~as a result of an amendment to the articles permitted~~ 138
~~by division (B)(10) of section 1701.69 of the Revised Code~~ in the 139
election of directors, then, unless the articles, the regulations 140
adopted by the shareholders, or the regulations adopted by the 141

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. 1701.69. (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 173
the amendment, and, if a change in issued shares is to be made, or 174
if as the result of any amendment the stated capital of any class 175
of shares is to be created, increased, reduced, or eliminated, 176
then such provisions, not inconsistent with section 1701.30 of the 177
Revised Code, as are necessary to effect such change, or to effect 178
such creation, increase, reduction, or elimination of stated 179
capital. 180

(B) Without limiting the generality of the authority to amend 181
the articles, the articles may be amended to do any of the 182
following: 183

(1) Change the name of the corporation; 184

(2) Change the place in this state where its principal office 185
is to be located; 186

(3) Change, enlarge, or diminish its purpose or purposes; 187

(4) Increase or decrease the authorized number of shares of 188
any class; 189

(5) Authorize shares of a new class or classes; 190

(6) Increase or decrease the par value of issued or unissued 191
shares with par value; 192

(7) Change issued or unissued shares of any class, whether 193
with or without par value, into the same or a different number of 194
shares of any class with or without par value, theretofore or then 195
authorized; 196

(8) Provide that, as a result of an amendment described in 197
division (B)(6), (7), or (11) of this section, the stated capital 198
of any class of shares shall be created, increased, reduced, or 199
eliminated, consistent with section 1701.30 of the Revised Code, 200
except that, in the case of any amendment to change the 201
corporation into a nonprofit corporation, the stated capital of 202

the corporation may be reduced or eliminated; 203

(9) Change any of the express terms of issued or unissued 204
shares of any class or series, which change may include the 205
discharge, adjustment, or elimination of rights to accrued 206
undeclared cumulative dividends or distributions on the shares of 207
such class or series; 208

(10) Eliminate the right of every shareholder to vote 209
cumulatively in the election of directors or to delete a provision 210
that eliminates that right, ~~except that, if a corporation is~~ 211
~~formed after the effective date of this amendment or if a~~ 212
~~corporation that exists on the effective date of this amendment~~ 213
~~does not have issued and outstanding shares that are listed on a~~ 214
~~national securities exchange or are regularly quoted in an~~ 215
~~over the counter market by one or more members of a national or~~ 216
~~affiliated securities association, the articles may be amended to~~ 217
~~eliminate the right of every shareholder to vote cumulatively in~~ 218
~~the election of directors only upon compliance with both of the~~ 219
~~following:~~ 220

~~(a) Except as otherwise provided in this division in~~ 221
~~connection with surviving corporations in mergers and new~~ 222
~~corporations resulting from consolidations, the shareholder action~~ 223
~~on the amendment to the articles shall not occur earlier than~~ 224
~~ninety days after the effective date of this amendment or ninety~~ 225
~~days after the date that the corporation was formed, whichever~~ 226
~~date is later;~~ 227

~~(b) A notice shall have been sent to the shareholders by~~ 228
~~mail, overnight delivery service, or any other means of~~ 229
~~communication authorized by the shareholder to whom the notice is~~ 230
~~sent that states, in solid capital letters, that an effect of the~~ 231
~~amendment to the articles will be to do both of the following:~~ 232

~~(i) To permit a majority of a quorum of the voting power in~~ 233

~~the election or removal of directors to elect or remove every 234
director; 235~~

~~(ii) To preclude a minority of a quorum of the voting power 236
in the election or removal of directors from electing or 237
preventing the removal of any director. 238~~

~~In the case of a surviving corporation as a result of a 239
merger or of a new corporation resulting from a consolidation, if 240
immediately prior to the merger or consolidation at least one of 241
the constituent corporations had issued and outstanding shares 242
listed on a national securities exchange or regularly quoted in an 243
over the counter market by one or more members of a national or 244
affiliated securities association, then the ninety day limitation 245
prescribed in division (B)(10)(a) of this section does not apply 246
and the agreement of merger or consolidation, as adopted pursuant 247
to section 1701.78 or 1701.80 of the Revised Code, may eliminate, 248
subject to division (B)(10)(b) of this section, the right of every 249
shareholder to vote cumulatively in the election of directors. An 250
agreement of merger or consolidation that is so adopted and that 251
eliminates the right of every shareholder to vote cumulatively in 252
the election of directors shall be considered an amendment 253
permitted by this division.; 254~~

(11) Change a corporation into a nonprofit corporation; 255

(12) Change any provision of the articles or add any 256
provision that may properly be included in the articles. 257

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. 258
of the Revised Code do not prevent the transaction from being 259
effected, a lease, sale, exchange, transfer, or other disposition 260
of all, or substantially all, of the assets, with or without the 261
good will, of a corporation, if not made in the usual and regular 262
course of its business, may be made upon the terms and conditions 263
and for the consideration, that may consist, in whole or in part, 264

of money or other property of any description, including shares or 265
other securities or promissory obligations of any other 266
corporation, domestic or foreign, that may be authorized as 267
follows: 268

(a) By the directors, either before or after authorization by 269
the shareholders as required in this section; and 270

(b) At a meeting of the shareholders held for that purpose, 271
by the affirmative vote of the holders of shares entitling them to 272
exercise two-thirds of the voting power of the corporation on the 273
proposal, or, if the articles so provide or permit, by the 274
affirmative vote of a greater or lesser proportion, but not less 275
than a majority, of the voting power, and by the affirmative vote 276
of the holders of shares of any particular class that is required 277
by the articles. 278

(2) At the shareholder meeting described in division 279
(A)(1)(b) of this section or at any subsequent shareholder 280
meeting, shareholders, by the same vote that is required to 281
authorize the lease, sale, exchange, transfer, or other 282
disposition of all, or substantially all, of the assets, with or 283
without the good will, of the corporation, may grant authority to 284
the directors to establish or amend any of the terms and 285
conditions of the transaction, except that the shareholders shall 286
not authorize the directors to do any of the following: 287

(a) Alter or change the amount or kind of shares, securities, 288
money, property, or rights to be received in exchange for the 289
assets; 290

(b) Alter or change to any material extent the amount or kind 291
of liabilities to be assumed in exchange for the assets; 292

(c) Alter or change any other terms and conditions of the 293
transaction if any of the alterations or changes, alone or in the 294
aggregate, would materially adversely affect the shareholders or 295

the corporation. 296

(3) Notice of the meeting of the shareholders described in 297
division (A)(1)(b) of this section shall be given to all 298
shareholders whether or not entitled to vote at the meeting and 299
shall be accompanied by a copy or summary of the terms of the 300
transaction. 301

(B) The corporation by its directors may abandon the 302
transaction under this section, subject to the contract rights of 303
other persons, if the power of abandonment is conferred upon the 304
directors either by the terms of the transaction or by the same 305
vote of shareholders and at the same meeting of shareholders as 306
that referred to in division (A)(1)(b) of this section or at any 307
subsequent meeting. 308

(C) Dissenting holders of shares of any class, whether or not 309
entitled to vote, shall be entitled to relief under section 310
1701.85 of the Revised Code. 311

(D) An action to set aside a conveyance by a corporation, on 312
the ground that any section of the Revised Code applicable to the 313
lease, sale, exchange, transfer, or other disposition of all, or 314
substantially all, of the assets of that corporation has not been 315
complied with, shall be brought within ninety days after that 316
transaction, or the action shall be forever barred. 317

(E) If a resolution of dissolution is adopted pursuant to 318
section 1701.86 of the Revised Code, the directors may dispose of 319
all, or substantially all, of the corporation's assets without the 320
necessity of a shareholders' authorization under this section. 321

(F) The terms and conditions of any transaction under this 322
section shall be subject to the limitations specified in section 323
2307.97 of the Revised Code. 324

(G) This section does not apply to the distribution, pursuant 325
to section 1701.33 of the Revised Code, to the shareholders of an 326

issuing public corporation of shares owned by the issuing public 327
corporation in one or more of its domestic or foreign subsidiary 328
corporations, unless either of the following applies: 329

(1) The former subsidiary is a party to one or more 330
agreements pursuant to which it is obligated to engage in an 331
additional transaction that, if the transaction were authorized 332
after the time at which the distribution becomes effective, would 333
require the approval of its shareholders. 334

(2) Immediately prior to the time at which the distribution 335
becomes effective, the issuing public corporation has more than 336
one class of shares outstanding. 337

(H) For purposes of this section only, the assets of a 338
corporation include the assets of any other entity that is wholly 339
owned, directly or indirectly, by the corporation. Unless 340
otherwise provided in the articles, this section does not apply to 341
any lease, sale, exchange, transfer, or other disposition of all, 342
or substantially all, of the assets of a corporation to any entity 343
that is wholly owned, directly or indirectly, by the corporation. 344

Section 2. That existing sections 1701.04, 1701.55, 1701.58, 345
1701.69, and 1701.76 of the Revised Code are hereby repealed. 346