

As Reported by the House Civil and Commercial Law Committee

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Sub. H. B. No. 374

Representative Coley

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

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A B I L L

To amend sections 1701.04, 1701.24, 1701.55, 1701.58, 1
1701.591, 1701.69, 1701.70, and 1701.76 of the 2
Revised Code to allow the original articles of 3
incorporation to eliminate cumulative voting in 4
the election of directors, to remove restrictions 5
for certain corporations regarding the elimination 6
of cumulative voting, to exclude from the existing 7
procedures for the sale of all or substantially 8
all of the assets of a corporation the sale of 9
those assets to the corporation's wholly owned 10
subsidiaries, to permit the articles or certain 11
regulations of a corporation to provide for 12
uncertificated shares, and to authorize the 13
directors to amend the articles with respect to 14
series of shares. 15

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

Section 1. That sections 1701.04, 1701.24, 1701.55, 1701.58, 16
1701.591, 1701.69, 1701.70, and 1701.76 of the Revised Code be 17
amended to read as follows: 18

Sec. 1701.04. (A) Any person, singly or jointly with others, 19
and without regard to residence, domicile, or state of 20
incorporation, may form a corporation by signing and filing with 21
the secretary of state articles of incorporation that shall set 22
forth all of the following: 23

(1) The name of the corporation, which shall be in compliance 24
with division (A) of section 1701.05 of the Revised Code; 25

(2) The place in this state where the principal office of the 26
corporation is to be located; 27

(3) The authorized number and the par value per share of 28
shares with par value, and the authorized number of shares without 29
par value, except that the articles of a banking, safe deposit, 30
trust, or insurance corporation shall not authorize shares without 31
par value; the express terms, if any, of the shares; and, if the 32
shares are classified, the designation of each class, the 33
authorized number and par value per share, if any, of the shares 34
of each class, and the express terms of the shares of each class; 35

(4) If the corporation is to have an initial stated capital, 36
the amount of that stated capital. 37

(B) The articles also may set forth any of the following: 38

(1) The names of the individuals who are to serve as initial 39
directors; 40

(2) The purpose or purposes for which the corporation is 41
formed, but in the absence of a statement of the purpose or 42
purposes or except as expressly set forth in such statement, the 43
purpose for which any corporation is formed is to engage in any 44
lawful act or activity for which a corporation may be formed under 45
this chapter, and all lawful acts and activities of the 46
corporation are within the purposes of the corporation; 47

(3) Any lawful provision for the purpose of defining, 48

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 79
secretary, the treasurer, or an assistant treasurer of the 80
corporation, ~~which~~ that shall certify the number and class of 81
shares held by the holder in the corporation, but no certificate 82
for shares shall be executed or delivered until ~~such~~ those shares 83
are fully paid. When the certificate is countersigned by an 84
incorporated transfer agent or registrar, the signature of any of 85
those officers of the corporation may be facsimile, engraved, 86
stamped, or printed. Although any officer of the corporation whose 87
manual or facsimile signature is affixed to the certificate ceases 88
to be such officer before the certificate is delivered, the 89
certificate nevertheless shall be effective in all respects when 90
delivered. 91

(C) A corporation is not obligated to but may issue 92
fractional shares. The holder of a fractional share is entitled to 93
exercise the rights of a shareholder, including the right to vote, 94
to receive dividends, and to participate in the assets of the 95
corporation upon liquidation. In the case of uncertificated 96
securities, the corporation may proceed as provided in divisions 97
(C)(1) and (2) of this section. In the case of certificated 98
securities, the corporation may execute and deliver a certificate 99
for or including a fraction of a share or, in lieu thereof, may do 100
any of the following: 101

(1) Pay to the person otherwise entitled to become a holder 102
of a fraction of a share an amount in cash specified as the value 103
of the fraction of a share in the articles, a resolution of the 104
directors, or other agreement or instrument pursuant to which ~~such~~ 105
that fraction of a share otherwise would be issued, or, if not so 106
specified, then the amount determined for that purpose by the 107
directors of the issuing corporation, or the amount realized upon 108
sale of the fraction of a share; 109

(2) Provide reasonable means to afford to the person the 110

opportunity, on specified terms and conditions, to purchase or 111
sell fractional interests in shares, to the exclusion of all 112
rights the person otherwise might have; 113

(3) Execute and deliver registered or bearer scrip over the 114
manual or facsimile signature of an officer of the corporation or 115
of its agent for that purpose, exchangeable as provided in the 116
scrip for full shares, but such scrip shall not entitle the holder 117
to any rights as a shareholder except as provided in the scrip. 118
The scrip may provide that it shall become void unless the rights 119
of the holders are exercised within a specified period and may 120
contain any other provisions that the corporation deems advisable. 121
Whenever any such scrip ceases to be exchangeable for full shares, 122
the shares that otherwise would have been issuable as provided in 123
the scrip shall be deemed to be treasury shares unless the scrip 124
contains other provision for their disposition. 125

(D) A joint estate with the incidents of a joint estate as at 126
common law, including the right of survivorship, may be created in 127
shares by registering the same in the case of uncertificated 128
securities, or by executing and delivering a certificate in the 129
case of certificated securities to two or more persons with the 130
words "as joint tenants" or "as joint tenants with right of 131
survivorship and not as tenants in common" following their names. 132
Upon receipt by the corporation of proof satisfactory to it of the 133
death of one or more joint tenants, it may register the transfer 134
to, or execute and deliver a new certificate to, the survivor or 135
survivors. 136

(E) Whenever a corporation has determined that any 137
outstanding certificates for shares should be canceled and 138
exchanged for other certificates, the corporation may order and 139
require the holders of the outstanding certificates to surrender 140
them for that purpose within a reasonable time to be fixed by the 141
corporation. The order may provide that, until compliance with the 142

order, any or all rights as a shareholder of the holder of any 143
certificate so required to be surrendered shall be suspended with 144
respect to the shares represented by the certificate. Not less 145
than ten days before the order is to become effective, the 146
corporation shall give notice of the order by mail to each 147
shareholder affected by the order at the shareholder's address as 148
it appears on the records of the corporation. 149

(F) The articles of a corporation, the regulations adopted by 150
the shareholders of a corporation, or the regulations adopted by 151
the directors of a corporation pursuant to division (A)(1) of 152
section 1701.10 of the Revised Code may provide that some or all 153
of any or all classes and series of shares of that corporation 154
shall be uncertificated shares. Unless otherwise provided by the 155
articles or regulations, the directors may provide by resolution 156
that some or all of any or all classes and series of shares of a 157
corporation shall be uncertificated shares, provided that the 158
resolution shall not apply to shares represented by a certificate 159
until the certificate is surrendered to the corporation and that 160
the resolution shall not apply to a certificated security issued 161
in exchange for an uncertificated security. Within a reasonable 162
time after the issuance or transfer of uncertificated shares, the 163
corporation shall send to the registered owner of the shares a 164
written notice containing the information required to be set forth 165
or stated on certificates pursuant to division (A) of section 166
1701.25 of the Revised Code. Except as otherwise expressly 167
provided by law, the rights and obligations of the holders of 168
uncertificated shares and the rights and obligations of the 169
holders of certificates representing shares of the same class and 170
series shall be identical. 171

Sec. 1701.55. (A) At a meeting of shareholders at which 172
directors are to be elected, only persons nominated as candidates 173
shall be eligible for election as directors. 174

(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 206
immediately or at such other time as the director may specify. 207

(B) The directors may remove any director and thereby create 208
a vacancy in the board: 209

(1) If by order of court the director has been found to be of 210
unsound mind, or if the director is adjudicated a bankrupt; 211

(2) If within sixty days, or within any other period of time 212
as is prescribed in the articles or the regulations, from the date 213
of the director's election the director does not qualify by 214
accepting in writing the director's election to that office or by 215
acting at a meeting of the directors, and by acquiring the 216
qualifications specified in the articles or the regulations; or 217
if, for such period as is prescribed in the articles or the 218
regulations, the director ceases to hold the required 219
qualifications. 220

(C) Except as otherwise provided in this division, if the 221
shareholders have a the right to vote cumulatively in the election 222
of directors, then, unless the articles, the regulations adopted 223
by the shareholders, or the regulations adopted by the directors 224
pursuant to division (A)(1) of section 1701.10 of the Revised Code 225
expressly provide that no director may be removed from office or 226
that removal of directors requires a greater vote than that 227
specified in this division, all the directors, all the directors 228
of a particular class, or any individual director may be removed 229
from office, without assigning any cause, by the vote of the 230
holders of a majority of the voting power entitling them to elect 231
directors in place of those to be removed, except that, unless all 232
the directors, or all the directors of a particular class, are 233
removed, no individual director shall be removed if the votes of a 234
sufficient number of shares are cast against the director's 235
removal that, if cumulatively voted at an election of all the 236
directors, or all the directors of a particular class, as the case 237

may be, would be sufficient to elect at least one director. In the 238
case of an issuing public corporation whose directors are 239
classified pursuant to section 1701.57 of the Revised Code, the 240
shareholders may effect a removal under this division only for 241
cause. 242

(D) If the shareholders do not have the right to vote 243
cumulatively ~~as a result of an amendment to the articles permitted~~ 244
~~by division (B)(10) of section 1701.69 of the Revised Code~~ in the 245
election of directors, then, unless the articles, the regulations 246
adopted by the shareholders, or the regulations adopted by the 247
directors pursuant to division (A)(1) of section 1701.10 of the 248
Revised Code expressly provide that no director may be removed 249
from office or that removal of directors requires a greater vote 250
than that specified in this division, all the directors, all the 251
directors of a particular class, or any individual director may be 252
removed from office, without assigning any cause, by the vote of 253
the holders of a majority of the voting power entitling them to 254
elect directors in place of those to be removed; except that in 255
the case of an issuing public corporation whose directors are 256
classified pursuant to section 1701.57 of the Revised Code, the 257
shareholders may effect that removal only for cause. 258

(E) In case of any removal pursuant to division (C) or (D) of 259
this section, a new director may be elected at the same meeting 260
for the unexpired term of each director removed. Failure to elect 261
a director to fill the unexpired term of any director removed is 262
deemed to create a vacancy in the board. 263

(F) Unless the articles or the regulations otherwise provide, 264
the remaining directors, though less than a majority of the whole 265
authorized number of directors, may, by the vote of a majority of 266
their number, fill any vacancy in the board for the unexpired 267
term. Under this section, a vacancy exists if the shareholders 268
increase the authorized number of directors but fail at the 269

meeting at which such increase is authorized, or an adjournment of 270
that meeting, to elect the additional directors provided for, or 271
if the shareholders fail at any time to elect the whole authorized 272
number of directors. 273

Sec. 1701.591. (A) In order to qualify as a close corporation 274
agreement under this section, the agreement shall meet the 275
following requirements: 276

(1) Every person who is a shareholder of the corporation at 277
the time of the agreement's adoption, whether or not entitled to 278
vote, shall have assented to the agreement in writing; 279

(2) The agreement shall be set forth in the articles, the 280
regulations, or another written instrument; 281

(3) The agreement shall include a statement that it is to be 282
governed by this section. 283

(B) A close corporation agreement that is not set forth in 284
the articles or the regulations shall be entered in the record of 285
minutes of the proceedings of the shareholders of the corporation 286
and shall be subject to the provisions of division (C) of section 287
1701.92 of the Revised Code. 288

(C) Irrespective of any other provisions of this chapter, but 289
subject to division (D)(2) of this section, a close corporation 290
agreement may contain provisions, which shall be binding on the 291
corporation and all of its shareholders, regulating any aspect of 292
the internal affairs of the corporation or the relations of the 293
shareholders among themselves, including the following: 294

(1) Regulation of the management of the business and affairs 295
of the corporation; 296

(2) The right of one or more shareholders to dissolve the 297
corporation at will or on the occurrence of a specified event or 298
contingency; 299

(3) The obligation to vote the shares of a person as	300
specified, or voting requirements, including the requirement of	301
the affirmative vote or approval of all shareholders or of all	302
directors, which voting requirements need not appear in the	303
articles unless the close corporation agreement is set forth in	304
the articles;	305
(4) The designation of the persons who shall be the officers	306
or directors of the corporation;	307
(5) The authority of any individual who holds more than one	308
office of the corporation to execute, acknowledge, or certify in	309
more than one capacity any instrument required to be executed,	310
acknowledged, or certified by the holders of two or more offices;	311
(6) The terms and conditions of employment of an officer or	312
employee of the corporation without regard to the period of	313
employment;	314
(7) The declaration and payment of dividends or distributions	315
or the division of profits;	316
(8) Elimination of the board of directors, restrictions upon	317
the exercise by directors of their authority, or delegation to one	318
or more shareholders or other persons of all or part of the	319
authority of the directors;	320
(9) Conferring on any shareholder or agent of a shareholder	321
the absolute right, without the necessity of stating any purpose,	322
to examine and copy during usual business hours any of the	323
corporation's records or documents to which reference is made in	324
section 1701.37 of the Revised Code;	325
(10) Prohibition of or limitation upon the issuance or sale	326
by the corporation of any of its shares, including treasury	327
shares, without the affirmative vote or approval of the holders of	328
all or a proportion of the outstanding shares or unless other	329
specified terms and conditions are met;	330

(11) Arbitration of issues on which the shareholders are 331
deadlocked in voting power or on which the directors or other 332
parties managing the corporation are deadlocked; 333

(12) Dispensing with the annual meeting of shareholders 334
unless a shareholder, by written notice to the president or 335
secretary either by personal delivery or by mail within thirty 336
days after the end of the most recent fiscal year of the 337
corporation, requests that the meeting be held. 338

(D) Except as may be necessary to give effect to divisions 339
(C)(3), (5), (8), (9), and (12) and division (I) of this section, 340
any provision of a close corporation agreement that does either of 341
the following shall be invalid: 342

(1) Eliminates the filing with the secretary of state of any 343
document required under this chapter or changes the required form 344
or content of the document; 345

(2) Waives or alters the effect of any of the provisions of 346
section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31, 347
1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591, 348
1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of 349
section 1701.64 of the Revised Code. 350

Unless otherwise provided in the close corporation agreement, 351
the invalidity of a provision pursuant to this division does not 352
affect the validity of the remainder of the agreement. 353

Any certificate that is required to be filed with the 354
secretary of state with respect to the authorization or taking of 355
any action pursuant to a close corporation agreement that would 356
not be permitted under this chapter in the absence of division (C) 357
of this section shall recite the existence of a close corporation 358
agreement that authorizes the action. 359

(E)(1) Except as provided in division (E)(2) of this section, 360
a close corporation agreement may be amended or terminated by the 361

affirmative vote or written consent of the holders, then parties 362
to the close corporation agreement, of all of the outstanding 363
shares of each class or, as may be provided by the close 364
corporation agreement, of the holders, then parties to the close 365
corporation agreement, of a proportion of not less than 366
four-fifths of the outstanding shares of each class. If a close 367
corporation agreement is amended or terminated by the written 368
consent of the holders of fewer than all of the shares, the 369
secretary of the corporation shall mail a copy of the amendment or 370
a notice of the termination to each shareholder who did not so 371
consent. If a close corporation agreement set forth in the 372
articles is amended, the amendment shall not be effective unless 373
it is filed as an amendment to the articles pursuant to section 374
1701.73 of the Revised Code. No corporation with respect to which 375
a close corporation agreement is in effect shall cause to occur 376
any of the actions described in division (I)(1)(a), (b), or (c) of 377
this section unless the action has been authorized by the 378
affirmative vote or written consent of the holders, then parties 379
to the close corporation agreement, of that proportion of shares 380
of each class that is required to terminate the close corporation 381
agreement. 382

(2) A close corporation agreement that was in existence on 383
December 31, 1993, and that did not specify on that date and that 384
has not specified since that date the proportion of shares 385
required to amend or terminate the close corporation agreement may 386
be amended or terminated by the affirmative vote or written 387
consent of the holders, then parties to the close corporation 388
agreement, of four-fifths of the outstanding shares of each class. 389

(F) No close corporation agreement is invalid among the 390
parties or in respect of the corporation on any of the following 391
grounds: 392

(1) The agreement is an attempt to treat the corporation as 393

if it were a partnership or to arrange the relationship of the 394
parties in a manner that would be appropriate only among partners; 395

(2) The agreement provides for the conduct of the affairs of 396
a corporation or relations among shareholders in any manner that 397
would be inappropriate or unlawful under provisions of this 398
chapter other than those set forth in division (D)(2) of this 399
section or under other applicable law; 400

(3) The agreement interferes with the authority or discretion 401
of the directors; 402

(4) The agreement has not been filed with the minutes as 403
required by division (B) of this section. 404

(G) If a close corporation agreement provides that there 405
shall be no board of directors, both of the following apply: 406

(1) The shareholders, for the purposes of any statute or rule 407
of law relating to corporations, are deemed to be the directors 408
and to have all of the liabilities, immunities, defenses, and 409
indemnifications of directors with respect to any action or 410
inaction of the corporation, except that any shareholder who is 411
not permitted by the articles, the regulations, or the close 412
corporation agreement to vote on or assent to an action or assent 413
to an inaction shall not be liable as a director with respect to 414
the action or inaction. 415

(2) Except to the extent that the voting rights of the shares 416
of a class are increased, limited, or denied by the articles, the 417
regulations, or the close corporation agreement, each outstanding 418
share regardless of class shall entitle its holder to one vote on 419
each matter, including any matter normally voted on by directors, 420
that is properly submitted to the shareholders for their vote, 421
consent, waiver, release, or other action. 422

(H) The existence of a close corporation agreement shall be 423
noted conspicuously on the face or the back of every certificate 424

for shares of the corporation and a purchaser or transferee of 425
shares represented by a certificate on which such a notation so 426
appears shall be conclusively considered to have taken delivery 427
with notice of the close corporation agreement. Any transferee of 428
shares by gift, bequest, or inheritance and any purchaser or 429
transferee of shares with knowledge or notice of a close 430
corporation agreement is bound by the agreement and shall be 431
considered to be a party to the agreement. 432

(I)(1) A close corporation agreement becomes invalid under 433
any of the following circumstances: 434

(a) Shares of the corporation are listed on a national 435
securities exchange. 436

(b) Shares of the corporation are registered under section 437
12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 438
U.S.C. 781, as amended. 439

(c) Shares of the corporation have been included in a 440
registration statement that has become effective pursuant to the 441
"Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and the 442
corporation is required to file periodic reports and information 443
pursuant to section 15(d) of the "Securities Exchange Act of 444
1934," 48 Stat. 892, 15 U.S.C. 77m, as amended. 445

(d) Shares of the corporation are transferred or issued to a 446
person who takes delivery of the certificate for the shares other 447
than by gift, bequest, or inheritance and without knowledge or 448
notice of the close corporation agreement; that person delivers to 449
the corporation a written rejection of the close corporation 450
agreement within ninety days after the date on which that person 451
first received notice of the existence of the close corporation 452
agreement or within three years of the date of transfer or 453
issuance, whichever is earlier; and the corporation does not offer 454
in writing, within thirty days after the date on which the 455

corporation received the written rejection, to purchase the shares 456
from that person for the full amount paid for the shares, or, 457
having made an offer to purchase the shares for that amount, the 458
corporation, upon that person's acceptance of the offer, does not 459
purchase the shares in accordance with division (I)(3) of this 460
section. 461

(2) A close corporation agreement does not become invalid and 462
the person to whom the shares are transferred or issued is not 463
entitled to any payment from the corporation pursuant to division 464
(I)(3) of this section if both of the following apply: 465

(a) Shares of the corporation are transferred or issued to a 466
person who takes delivery of the certificate for the shares other 467
than by gift, bequest, or inheritance and without knowledge or 468
notice of the close corporation agreement; 469

(b) That person does either of the following: 470

(i) Fails to deliver a written rejection of the close 471
corporation agreement to the corporation within ninety days after 472
the date on which that person first received notice of the 473
existence of the close corporation agreement or within three years 474
of the date of transfer or issuance, whichever is earlier; 475

(ii) Fails, within thirty days after the date on which that 476
person receives a written offer by the corporation to purchase the 477
shares from that person for the full amount paid for the shares, 478
to accept the offer. 479

(3) If shares of a corporation are transferred or issued to a 480
person who takes delivery of the certificate for the shares other 481
than by gift, bequest, or inheritance and without knowledge or 482
notice of the close corporation agreement and that person accepts 483
an offer by the corporation to purchase the shares, the 484
corporation shall pay to that person the full amount paid for the 485
shares within seven days after that person delivers to the 486

corporation the certificate for the shares and proof of payment of 487
the amount paid for the shares. If the amount paid for the shares 488
included property other than cash, the corporation, at its option, 489
may return the property to that person or may pay to that person 490
cash in an amount equal to the fair market value of the property 491
on the date of transfer or issuance of the shares, as determined 492
in good faith by the corporation. A shareholder who transfers 493
shares to a person who takes delivery of the certificate for the 494
shares other than by gift, bequest, or inheritance and without 495
knowledge or notice of the close corporation agreement is liable 496
to the corporation, upon the corporation's written demand made 497
upon the shareholder within ninety days after the date on which 498
the corporation made payment for the shares, for the full amount 499
that the corporation paid for the shares. Upon receiving payment 500
in that amount from the shareholder, the corporation shall 501
transfer the shares to the shareholder. 502

(4) In the event of the invalidity of a close corporation 503
agreement and unless otherwise provided in the close corporation 504
agreement, any provision contained in the close corporation 505
agreement that would not be invalid under any other section of 506
this chapter or under other applicable law remains valid and 507
binding on the parties to the close corporation agreement. 508

Any officer of the corporation who learns of the occurrence 509
of any event causing the invalidity of the close corporation 510
agreement shall immediately give written notice of the invalidity 511
to all of the shareholders. 512

If a close corporation agreement set forth in the articles of 513
the corporation is terminated or becomes invalid, the officers of 514
the corporation shall promptly sign and file the certificate of 515
amendment prescribed by section 1701.73 of the Revised Code, 516
setting forth the reason for the termination or invalidity and 517
deleting the close corporation agreement from the articles. If the 518

officers fail to execute and file the certificate within thirty 519
days after the occurrence of the event giving rise to the 520
termination or invalidity, the certificate may be signed and filed 521
by any shareholder and shall set forth a statement that the person 522
signing the certificate is a shareholder and is filing the 523
certificate because of the failure of the officers to do so. 524

(J) A close corporation agreement, in the sound discretion of 525
a court exercising its equity powers, is enforceable by 526
injunction, specific performance, or other relief that the court 527
may determine to be fair and appropriate. 528

(K) This section shall not be construed as prohibiting any 529
other lawful agreement among two or more shareholders. 530

(L) No corporation with respect to which a close corporation 531
agreement is in effect, shall issue shares in uncertificated form, 532
and any provision of the articles or regulations or any resolution 533
of the directors of such a corporation, providing for the issuance 534
of shares in uncertificated form, shall be ineffective during any 535
period in which a close corporation agreement is in effect. The 536
adoption of a close corporation agreement shall act as a transfer 537
instruction to the corporation to replace uncertificated 538
securities with appropriate certificated securities. 539

(M) If the annual meeting of the shareholders is dispensed 540
with in accordance with a provision in the close corporation 541
agreement authorized by division (C)(12) of this section, the 542
annual financial statements required by section 1701.38 of the 543
Revised Code shall be delivered to each shareholder on or before 544
the last date upon which the annual meeting otherwise could have 545
been held. 546

(N) The amendments to this section that are effective April 547
4, 1985, are remedial in nature and apply to all close corporation 548
agreements created on or after November 17, 1981. The amendments 549

to this section that are effective December 31, 1993, are remedial 550
in nature and, except as those amendments otherwise provide, apply 551
to all close corporation agreements created on or after November 552
17, 1981. 553

Sec. 1701.69. (A) The articles may be amended from time to 554
time in any respect if the articles as amended set forth all such 555
provisions as are required in, and, except for ~~amendments~~ an 556
amendment to the articles ~~as~~ described in ~~divisions~~ division 557
(B) ~~(10)~~ and (11) of this section, only such provisions as may 558
properly be in, original articles filed at the time of adopting 559
the amendment, and, if a change in issued shares is to be made, or 560
if as the result of any amendment the stated capital of any class 561
of shares is to be created, increased, reduced, or eliminated, 562
then such provisions, not inconsistent with section 1701.30 of the 563
Revised Code, as are necessary to effect such change, or to effect 564
such creation, increase, reduction, or elimination of stated 565
capital. 566

(B) Without limiting the generality of the authority to amend 567
the articles, the articles may be amended to do any of the 568
following: 569

(1) Change the name of the corporation; 570

(2) Change the place in this state where its principal office 571
is to be located; 572

(3) Change, enlarge, or diminish its purpose or purposes; 573

(4) Increase or decrease the authorized number of shares of 574
any class; 575

(5) Authorize shares of a new class or classes; 576

(6) Increase or decrease the par value of issued or unissued 577
shares with par value; 578

(7) Change issued or unissued shares of any class, whether 579

with or without par value, into the same or a different number of 580
shares of any class with or without par value, theretofore or then 581
authorized; 582

(8) Provide that, as a result of an amendment described in 583
division (B)(6), (7), or (11) of this section, the stated capital 584
of any class of shares shall be created, increased, reduced, or 585
eliminated, consistent with section 1701.30 of the Revised Code, 586
except that, in the case of any amendment to change the 587
corporation into a nonprofit corporation, the stated capital of 588
the corporation may be reduced or eliminated; 589

(9) Change any of the express terms of issued or unissued 590
shares of any class or series, which change may include the 591
discharge, adjustment, or elimination of rights to accrued 592
undeclared cumulative dividends or distributions on the shares of 593
such class or series; 594

(10) Eliminate the right of every shareholder to vote 595
cumulatively in the election of directors or to delete a provision 596
that eliminates that right, ~~except that, if a corporation is~~ 597
~~formed after the effective date of this amendment or if a~~ 598
~~corporation that exists on the effective date of this amendment~~ 599
~~does not have issued and outstanding shares that are listed on a~~ 600
~~national securities exchange or are regularly quoted in an~~ 601
~~over the counter market by one or more members of a national or~~ 602
~~affiliated securities association, the articles may be amended to~~ 603
~~eliminate the right of every shareholder to vote cumulatively in~~ 604
~~the election of directors only upon compliance with both of the~~ 605
~~following:~~ 606

~~(a) Except as otherwise provided in this division in~~ 607
~~connection with surviving corporations in mergers and new~~ 608
~~corporations resulting from consolidations, the shareholder action~~ 609
~~on the amendment to the articles shall not occur earlier than~~ 610
~~ninety days after the effective date of this amendment or ninety~~ 611

~~days after the date that the corporation was formed, whichever
date is later;~~ 612
613

~~(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:~~ 614
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~~(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;~~ 619
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~~(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.~~ 622
623
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~~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.~~ 625
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(11) Change a corporation into a nonprofit corporation; 641

(12) Change any provision of the articles or add any 642

provision that may properly be included in the articles. 643

Sec. 1701.70. (A) If initial directors are not named in the 644
articles, before subscriptions to shares have been received and 645
before the incorporators have elected directors, the incorporators 646
may adopt an amendment to the articles by a writing signed by 647
them. If initial directors are named in the articles, or if the 648
incorporators have elected directors and have not received 649
subscriptions, then before subscriptions to shares have been 650
received, the directors may adopt an amendment to the articles. 651

(B) The directors may adopt an amendment to the articles in 652
the following cases: 653

(1) When and to the extent authorized by the articles, the 654
directors may adopt an amendment determining, in whole or in part, 655
the express terms, within the limits set forth in this chapter, of 656
any class of shares before the issuance of any shares of that 657
class, or of one or more series within a class before the issuance 658
of shares of that series. When no shares of a series created by an 659
amendment to the articles under division (B)(1) of this section 660
have been issued and no option or right to acquire any share of 661
that series is outstanding, the directors may adopt an amendment 662
to reduce the number of shares in that series or to eliminate from 663
the articles all references to the series and to make other 664
appropriate changes that are required by the elimination of the 665
series. 666

(2) When the corporation has issued shares or obligations 667
convertible into shares of the corporation or has granted options 668
to purchase any shares, and the conversion or option rights are 669
set forth in the articles or have been approved by the same vote 670
of shareholders as, at the time of the approval, would have been 671
required to amend the articles to authorize the shares required 672
for that purpose, and the corporation does not have sufficient 673

authorized but unissued shares to satisfy those conversion or 674
option rights, the directors may adopt an amendment to authorize 675
the shares. 676

(3) Whenever shares of any class or series have been 677
redeemed, or have been surrendered to or acquired by the 678
corporation upon conversion, exchange, purchase, or otherwise, the 679
directors may adopt an amendment to reduce the authorized number 680
of shares of ~~the~~ that class or series by the number so redeemed, 681
surrendered, or acquired; and when all of the ~~authorized~~ issued 682
shares of a class or series have been redeemed or surrendered to 683
or acquired by the corporation, the directors may adopt an 684
amendment to eliminate from the articles all references to the 685
shares of ~~the~~ that class or series and to make other appropriate 686
changes that are required by the elimination. 687

(4) When articles have been amended and any change of issued 688
or unissued shares provided for in the amendment or amended 689
articles has become effective, the directors may adopt an 690
amendment to eliminate from the articles all references to the 691
change of shares and to make any other appropriate changes that 692
are required by the elimination; however, an amendment to articles 693
that is so adopted by the directors shall contain a statement with 694
respect to the authorized number and the par value, if any, of the 695
shares of each class. 696

(5) After a merger or consolidation, in which the surviving 697
or new corporation is a domestic corporation, becomes effective, 698
the directors may adopt an amendment: 699

(a) To eliminate from the articles any statement or provision 700
pertaining exclusively to the merger or consolidation, or that was 701
required to be set forth in the agreement of merger or 702
consolidation and that would not be required in original articles 703
or amendments to articles filed at the time the statement or 704
provision was adopted; 705

(b) To make any other appropriate changes required by that 706
elimination. 707

An amendment to articles adopted by the directors under 708
division (B)(5) of this section need not contain or continue any 709
statement with respect to the amount of stated capital. 710

(6) Unless otherwise provided in the articles, the directors 711
may adopt an amendment changing the name of the corporation. 712

(7) The directors may adopt an amendment changing the place 713
in this state where the principal office of the corporation is to 714
be located. 715

(8) When the directors have declared a dividend or 716
distribution on any class of outstanding shares of the corporation 717
to be paid in shares of the same class, the directors may adopt an 718
amendment to proportionately increase the authorized number of 719
shares of the class, provided that the corporation has only one 720
class of shares outstanding or the dividend or distribution is not 721
substantially prejudicial to the holders of any other class of the 722
corporation's shares, and further provided that such an amendment 723
be adopted concurrently with the amendment described in division 724
(B)(10) of this section when the dividend or distribution is 725
declared on outstanding shares with par value. 726

(9) The directors may adopt an amendment to change each 727
issued and unissued authorized share of an outstanding class into 728
a greater number of shares of that class and to proportionately 729
increase the authorized number of shares of that class, provided 730
that the corporation has only one class of shares outstanding or 731
the change is not substantially prejudicial to the holders of any 732
other class of the corporation's shares, and further provided that 733
such an amendment be adopted concurrently with the amendment 734
described in division (B)(10) of this section when the change is 735
made to outstanding shares with par value. 736

(10) Concurrently with the adoption of an amendment under 737
division (B)(8) or (9) of this section, the directors may adopt an 738
amendment decreasing the par value of issued and unissued shares 739
of a particular class to the extent necessary to prevent an 740
increase in the aggregate par value of the outstanding shares of 741
the class as a result of the dividend or distribution described in 742
division (B)(8) of this section or the change described in 743
division (B)(9) of this section. 744

(C) If a vote on the adoption of an amendment is required by 745
division (B)(4) of section 1701.71 of the Revised Code, any 746
amendment to the articles adopted pursuant to division (B) of this 747
section that creates a class or series of shares the express terms 748
of which provide for the convertibility of the shares into shares 749
of another class shall also require the approval of the holders, 750
voting as a class, of any issued and outstanding shares into which 751
the shares may be converted. 752

(D) Divisions (B)(6) to (10) of this section shall not apply 753
to a corporation with one hundred or fewer shareholders unless the 754
corporation was created on or after ~~the effective date of this~~ 755
~~amendment~~ May 16, 2002, or the articles of the corporation have 756
been amended in compliance with section 1701.71 or 1701.73 of the 757
Revised Code specifically to make those divisions applicable. 758

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. 759
of the Revised Code do not prevent the transaction from being 760
effected, a lease, sale, exchange, transfer, or other disposition 761
of all, or substantially all, of the assets, with or without the 762
good will, of a corporation, if not made in the usual and regular 763
course of its business, may be made upon the terms and conditions 764
and for the consideration, that may consist, in whole or in part, 765
of money or other property of any description, including shares or 766
other securities or promissory obligations of any other 767

corporation, domestic or foreign, that may be authorized as 768
follows: 769

(a) By the directors, either before or after authorization by 770
the shareholders as required in this section; and 771

(b) At a meeting of the shareholders held for that purpose, 772
by the affirmative vote of the holders of shares entitling them to 773
exercise two-thirds of the voting power of the corporation on the 774
proposal, or, if the articles so provide or permit, by the 775
affirmative vote of a greater or lesser proportion, but not less 776
than a majority, of the voting power, and by the affirmative vote 777
of the holders of shares of any particular class that is required 778
by the articles. 779

(2) At the shareholder meeting described in division 780
(A)(1)(b) of this section or at any subsequent shareholder 781
meeting, shareholders, by the same vote that is required to 782
authorize the lease, sale, exchange, transfer, or other 783
disposition of all, or substantially all, of the assets, with or 784
without the good will, of the corporation, may grant authority to 785
the directors to establish or amend any of the terms and 786
conditions of the transaction, except that the shareholders shall 787
not authorize the directors to do any of the following: 788

(a) Alter or change the amount or kind of shares, securities, 789
money, property, or rights to be received in exchange for the 790
assets; 791

(b) Alter or change to any material extent the amount or kind 792
of liabilities to be assumed in exchange for the assets; 793

(c) Alter or change any other terms and conditions of the 794
transaction if any of the alterations or changes, alone or in the 795
aggregate, would materially adversely affect the shareholders or 796
the corporation. 797

(3) Notice of the meeting of the shareholders described in 798

division (A)(1)(b) of this section shall be given to all 799
shareholders whether or not entitled to vote at the meeting and 800
shall be accompanied by a copy or summary of the terms of the 801
transaction. 802

(B) The corporation by its directors may abandon the 803
transaction under this section, subject to the contract rights of 804
other persons, if the power of abandonment is conferred upon the 805
directors either by the terms of the transaction or by the same 806
vote of shareholders and at the same meeting of shareholders as 807
that referred to in division (A)(1)(b) of this section or at any 808
subsequent meeting. 809

(C) Dissenting holders of shares of any class, whether or not 810
entitled to vote, shall be entitled to relief under section 811
1701.85 of the Revised Code. 812

(D) An action to set aside a conveyance by a corporation, on 813
the ground that any section of the Revised Code applicable to the 814
lease, sale, exchange, transfer, or other disposition of all, or 815
substantially all, of the assets of that corporation has not been 816
complied with, shall be brought within ninety days after that 817
transaction, or the action shall be forever barred. 818

(E) If a resolution of dissolution is adopted pursuant to 819
section 1701.86 of the Revised Code, the directors may dispose of 820
all, or substantially all, of the corporation's assets without the 821
necessity of a shareholders' authorization under this section. 822

(F) The terms and conditions of any transaction under this 823
section shall be subject to the limitations specified in section 824
2307.97 of the Revised Code. 825

(G) This section does not apply to the distribution, pursuant 826
to section 1701.33 of the Revised Code, to the shareholders of an 827
issuing public corporation of shares owned by the issuing public 828
corporation in one or more of its domestic or foreign subsidiary 829

corporations, unless either of the following applies: 830

(1) The former subsidiary is a party to one or more 831
agreements pursuant to which it is obligated to engage in an 832
additional transaction that, if the transaction were authorized 833
after the time at which the distribution becomes effective, would 834
require the approval of its shareholders. 835

(2) Immediately prior to the time at which the distribution 836
becomes effective, the issuing public corporation has more than 837
one class of shares outstanding. 838

(H) For purposes of this section only, the assets of a 839
corporation include the assets of any other entity that is wholly 840
owned, directly or indirectly, by the corporation. Unless 841
otherwise provided in the articles, this section does not apply to 842
any lease, sale, exchange, transfer, or other disposition of all, 843
or substantially all, of the assets of a corporation to any entity 844
that is wholly owned, directly or indirectly, by the corporation. 845

Section 2. That existing sections 1701.04, 1701.24, 1701.55, 846
1701.58, 1701.591, 1701.69, 1701.70, and 1701.76 of the Revised 847
Code are hereby repealed. 848