David M. Gold *Legislative Service Commission*

Am. Sub. H.B. 301

126th General Assembly
(As Passed by the General Assembly)

Reps. **Seitz, Fessler, Combs, Wagoner, Coley, Trakas, Reidelbach, Gilb, White, Schneider, Willamowski, Allen, Aslanides, Barrett, Book, Carano, Cassell, Collier, Core, DeGeeter, Domenick, Evans, C., Fende, Flowers, Garrison, Gibbs, Harwood, Healy, Hughes, Key, McGregor, J., McGregor, R., Miller, Mitchell, Oelslager, Otterman, Patton, T., Sayre, Seaver, Webster, Yuko, Beatty, Mason**

Sens. **Goodman, Miller, D., Padgett, Roberts, Stivers, Zurz, Kearney, Fedor**

Effective date: *

ACT SUMMARY

- Creates procedures by which a domestic or foreign business entity that is not a domestic corporation or a nonprofit corporation may be converted into a domestic corporation, a domestic corporation may be converted into a domestic or foreign entity other than a nonprofit corporation or a domestic corporation, a domestic or foreign entity other than a domestic limited liability company may be converted into a domestic limited liability company, a domestic limited liability company may be converted into a domestic or foreign entity other than a domestic limited liability company, a domestic or foreign entity other than a domestic partnership may be converted into a domestic partnership, a domestic partnership may be converted into a domestic or foreign entity other than a domestic partnership, a domestic or foreign entity other than a domestic limited partnership may be converted into a domestic limited partnership, and a domestic limited partnership may be converted into a domestic or foreign entity.

- Sets forth the legal consequences of a conversion of a business entity.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Provides for the rights of shareholders, members, or partners of a business entity who dissent from a conversion.

- Authorizes, and provides procedures for, the merger of a domestic parent corporation and a domestic subsidiary corporation that the parent, directly or indirectly, wholly owns so that the parent corporation becomes the direct or indirect wholly owned subsidiary and the subsidiary becomes the parent.

- Establishes new requirements for mergers and consolidations of domestic partnerships.

- Makes changes in the law governing the adoption, amendment, and repeal of corporate regulations.

- Makes changes in the law governing the permissible content of corporate regulations.

- Requires the Secretary of State to charge and collect a $25 fee for creating and affixing the seal of the office of the Secretary of State to a certificate of conversion for various types of entities.

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CONTENT AND OPERATION

Definition of "entity" in partnership law

Continuing law defines "entity" in the Revised Code chapters on corporations, limited liability companies, and limited partnerships. Prior law did not define "entity" in the chapter on partnerships. The act adds the following definition to the Uniform Partnership Law (R.C. 1775.01(G)):

"Entity" means either of the following:

(1) A for profit corporation existing under the laws of this state or any other state;

(2) Any of the following organizations existing under the laws of this state, the United States, or any other state:

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

(d) An unincorporated business or for profit organization, including a general or limited partnership;

(e) A limited liability company.

This definition is the same as the definition of "entity" in the limited liability company and limited partnership laws. The definition in the General Corporation Law differs only in that it includes a nonprofit corporation existing under the laws of Ohio, the United States, or any other state. (R.C. 1701.01(EE) and R.C. 1705.01(D) and 1782.01(C)--not in the act.)

Conversion of business entities

The act authorizes and establishes procedures for the conversion of business entities from one form to another. The conversions provided for in the act are:

(1) From a domestic (Ohio) or foreign (non-Ohio) entity that is not a domestic corporation or a nonprofit corporation into a domestic corporation (R.C. 1701.782(A));

(2) From a domestic corporation into a domestic or foreign entity other than a nonprofit corporation or a domestic corporation (R.C. 1701.792(A));

(3) From a domestic or foreign entity other than a domestic limited liability company into a domestic limited liability company (R.C. 1705.361(A));

(4) From a domestic limited liability company into a domestic or foreign entity other than a domestic limited liability company (R.C. 1705.371(A));

(5) From a domestic or foreign entity other than a domestic partnership into a domestic partnership (R.C. 1775.53(A));

(6) From a domestic partnership into a domestic or foreign entity other than a domestic partnership (R.C. 1775.54(A));

(7) From a domestic or foreign entity other than a domestic limited partnership into a domestic limited partnership (R.C. 1782.438(A));

(8) From a domestic limited partnership into a domestic or foreign entity other than a domestic limited partnership (R.C. 1782.439(A)).

In each case, the basic steps in the conversion are the adoption and filing of a written declaration of conversion. The act sets forth the mandatory and optional

provisions of a declaration, which are similar in all cases. Provisions allowing abandonment of the conversion before it takes effect, prohibiting conversions that would result in entities that are unable to pay their obligations, requiring the filing of declarations of conversion with the Secretary of State, setting forth the legal consequences of a conversion, and imposing related duties on the Secretary of State are also similar in all cases. The chief differences involve approvals of the declaration by the directors and shareholders, members, or partners of a converting domestic entity and the power to amend the declaration in those cases.

Declaration of conversion

Mandatory provisions. The declaration of conversion must set forth all of the following (R.C. 1701.782(B)(1), 1701.792(B)(1), 1705.361(B)(1), 1705.371(B)(1), 1775.53(B)(1), 1775.54(B)(1), 1782.438(B)(1), and 1782.439(B)(1)):

(1) The name and form of the converting (original) entity, the name of the converted (new) entity, the form of the converted entity when the procedure can result in more than one type of domestic or foreign entity, and the jurisdiction of formation of the converting entity if it can be a domestic or foreign entity of the converted entity if it can be a domestic or foreign entity;

(2) If the converted entity is a domestic corporation, the articles of the converted corporation. If the converted entity is a domestic limited liability company, its articles of organization, its operating agreement or a provision that the attached written agreement of the converting entity with amendments in the declaration of conversion will be the operating agreement, and the names of its managers if not reserved to members. If the converted entity is a limited liability partnership, its registration application, its partnership agreement or a provision that the attached written agreement of the converting entity with amendments in the declaration of conversion is its partnership agreement, and its general partners. If the converted entity is a domestic limited partnership, its certificate of limited partnership, its partnership agreement or a provision that the attached agreement of the converting entity with amendments is its agreement, and its general partners. If the converted entity is a domestic entity other than a corporation, the complete terms of all documents required under the applicable chapter of the Revised Code to form the converted entity.

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

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

(b) The consent of the converted entity to be sued and served with process in Ohio, and the irrevocable appointment of the Secretary of State as the agent of the converted entity to accept service of process in Ohio to enforce against the converted entity any obligation of the converting entity or to enforce the rights of a dissenting shareholder, member, or partner of the converting entity;

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

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

(5) If the converting entity is a domestic or foreign entity that is being converted into a domestic entity, all statements and matters required to be set forth in an instrument of conversion by the laws under which the converting entity exists;

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

Optional provisions. In all cases, the written declaration of conversion may also set forth any of the following (R.C. 1701.782(C), 1701.792(C), 1705.361(C), 1705.371(C), 1775.53(C), 1775.54(C), 1782.438(C), and 1782.439(C)):

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

(2) A provision authorizing the converting entity to abandon the proposed conversion by action of authorized representatives of the converting entity (the directors of a converting domestic corporation or by the same vote as required to adopt the declaration of conversion, the members or managers of a converting domestic limited liability company, the partners of a converting domestic partnership, or the general partners in the case of a converting domestic limited partnership) taken prior to the filing of the certificate of conversion;

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

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

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

In the case of a foreign or domestic entity that converts to a domestic corporation, the optional provisions may also include any of the following (R.C. 1701.782(C)(4), (5), and (7)):

(1) The regulations of the converted corporation;

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

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

Approval of declaration of conversion

The act requires the approval of directors and shareholders, partners, or members of the converting entity to effect the conversion of a domestic entity into another entity (cases 2, 4, 6, and 8 under "***Conversion of business entities***," above) as discussed below.

Converting domestic corporation. When a domestic corporation converts into a domestic or foreign entity other than a nonprofit corporation or a domestic corporation, the directors of the domestic converting corporation must approve the declaration of conversion to effect the conversion, and the declaration of conversion must be adopted by the shareholders of the domestic converting corporation at a meeting held for the purpose. Notice of each meeting of shareholders of a domestic converting corporation at which a declaration of conversion is to be submitted must be given to all shareholders of that corporation, whether or not they are entitled to vote, and must be accompanied by a copy or a summary of the material provisions of the declaration of conversion. The vote required to adopt a declaration of conversion at a meeting of the shareholders of a domestic converting corporation is the affirmative vote of the holders of shares of that corporation entitling them to exercise at least two-thirds of the voting power of the corporation on the proposal or a different proportion as provided in the articles, but not less than a majority, or, if the conversion is to a foreign corporation, a different proportion as the articles provide for a merger or

consolidation, and the affirmative vote of the holders of shares of any particular class as required by the articles of the converting corporation.

If the declaration of conversion would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic converting corporation to vote as a class on the adoption of an amendment as provided in R.C. 1701.71(B),[1] the declaration of conversion also must be adopted by the affirmative vote of the holders of at least two-thirds of the shares of that class, or a different proportion as the articles provide, but not less than a majority. However, if the declaration of conversion would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic converting corporation to vote as a class on the adoption of an amendment pursuant to R.C. 1701.71(B)(2) or (4)[2] solely because those shares are to be converted into or substituted for the same number of shares of a class of a different corporation having express terms identical in all material respects to those of the class of shares so converted or substituted, the declaration of conversion does not need to be adopted by the affirmative vote of the holders of shares of that particular class voting as a class.

If the declaration of conversion would authorize any particular corporate action that under any applicable provision of law or the articles could be authorized only by or pursuant to a specified vote of shareholders, the declaration of conversion also must be adopted by the same affirmative vote as required for that action. (R.C. 1701.792(D), (E), and (F).)

Converting domestic limited liability company. When a domestic limited liability company converts into another entity, to effect the conversion, the members of the converting domestic limited liability company and, if management is not reserved to its members, the managers of the converting entity must adopt the declaration of conversion. All members, whether or not they are entitled to vote or act, must be given written notice of any meeting of members or of any

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[1] R.C. 1701.71(B) lists eight types of amendments to the articles of incorporation on which the holders of a particular class of shares, and in three cases the holders of every class of shares, may vote regardless of limitations or restrictions in the articles on the voting rights of shares.

[2] R.C. 1701.71(B)(2) describes an amendment that would change the number of shares of a particular class into a lesser number of shares of the same class or into the same or a different number of shares of any class. R.C. 1701.71(B)(4) describes an amendment that would change the express terms of issued shares of any class senior to the particular class in a manner that is substantially prejudicial to the holders of shares of the particular class.

proposed action by members to adopt a declaration of conversion. The notice must be given either as provided in writing in the operating agreement or by mail at the members' addresses as they appear on the records of the company, or in person. Unless the operating agreement provides for a different period, the notice must be given not less than seven nor more than 60 days before the meeting or the effective date of the action. A copy or a summary of the material provisions of the declaration of conversion must accompany the notice. The declaration of conversion must be adopted by the unanimous vote or action of the members of a converting company or by a different number or proportion as provided in writing in the operating agreement. If the declaration of conversion would have an effect or authorize any action that under any applicable provision of law or the operating agreement could be effected or authorized only by or pursuant to a specified vote or action of the members, or of any class or group of members, the declaration of conversion also must be adopted or approved by the same vote or action as would be required to effect that change or to authorize that action. (R.C. 1705.371(D), (E), and (F).)

Converting domestic partnership. When a domestic partnership converts into a domestic or foreign entity other than a domestic partnership, to effect the conversion, the partners of the converting partnership must adopt the declaration of conversion by a unanimous vote or action or by a different number or proportion as provided in writing in the partnership agreement. If the declaration of conversion would have an effect or authorize any action that under any applicable law or the partnership agreement could be effected or authorized only by or pursuant to a specified vote or action of the partners, or of any class or group of partners, the declaration of conversion also must be adopted or approved by the same vote or action as would be required to effect that change or authorize that action.

All partners, whether or not they are entitled to vote or act, must be given written notice of any meeting or proposed action of partners to adopt a declaration of conversion. The notice must be given to the partners as provided in writing in the partnership agreement, by mail at the partners' addresses as they appear on the records of the partnership, or in person. Unless the partnership agreement provides a shorter or longer period, notice must be given not less than seven and not more than 60 days before the meeting or the effective date of the action. The notice must be accompanied by a copy or a summary of the material provisions of the declaration of conversion. (R.C. 1755.54(D), (E), and (F).)

Converting domestic limited liability partnership. When a domestic limited liability partnership converts into another entity, to effect the conversion, the general partners of the converting domestic limited liability partnership and, unless otherwise provided in writing in the agreement of limited partnership, the

limited partners of the converting domestic limited liability partnership must adopt the declaration of conversion by a unanimous vote or action or by a different number or proportion as provided in writing in the partnership agreement. Even if the limited partners of a converting domestic limited liability partnership are not required to vote on a conversion, the declaration of conversion also must be adopted by the limited partners if the declaration of conversion makes any change to the partnership agreement then in effect or to the documents governing the organization of the converted entity or authorizes any action that, if it were made or authorized apart from the conversion, would require such approval or adoption.

If the declaration of conversion would have an effect or authorize any action that under any applicable provision of law or the partnership agreement could be effected or authorized only by or pursuant to a specified vote or action of the partners, or of any class or group of partners, the declaration of conversion also must be adopted or approved by the same vote or action as would be required to effect that change or authorize that action. All partners, whether or not they are entitled to vote or act, must be given written notice of any meeting of limited partners of a converting domestic limited liability partnership or of any proposed action by limited partners of a converting domestic limited liability partnership to adopt a declaration of conversion. The notice must be given to the partners as provided in writing in the limited partnership agreement, by mail at the partners' addresses as they appear on the records of the limited partnership, or in person. Unless the limited partnership agreement provides a shorter or longer period, notice must be given not less than seven nor more than 60 days before the meeting or the effective date of the action. The notice must be accompanied by a copy or a summary of the material provisions of the declaration of conversion.

Each person that will continue to be or that will become a general partner of a partnership that is a converted entity in a conversion specifically must agree to continue to be or to become a general partner of the partnership that is the converted entity. (R.C. 1782.439(D), (E), (F), and (G).)

Amendment of declaration of conversion

The act authorizes the amendment of a declaration of conversion when the converting entity is a domestic corporation, limited liability company, partnership, or limited partnership. In each case, the declaration of conversion may contain a provision authorizing the directors of a converting corporation, less than all the members of a domestic limited liability company, less than all the partners of a domestic partnership, or less than all the general partners of a domestic limited partnership to amend the declaration of conversion at any time before the filing of the certificate of conversion, except that, after the adoption of the declaration of conversion by the stockholders of the corporation, members, partners, or general partners, the directors of the corporation or less than all the members, partners, or

general partners of the limited liability company, partnership, or limited partnership may not amend the declaration of conversion to do any of the following (R.C. 1701.792(G)(2), 1705.371(G)(2), 1775.54(G)(2), and 1782.439(H)(2)):

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

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

(3) Alter any other terms and conditions of the declaration of conversion if any of the alterations or changes, alone or in the aggregate, materially and adversely would affect the holders of any class or series of shares, any class or group of members, or any class or group of partners of the converting entity.

Abandonment of conversion

At any time before the filing of the certificate of conversion, the conversion may be abandoned in the following ways (R.C. 1701.782(D), 1701.792(G)(1), 1705.361(D), 1705.371(G)(1), 1775.53(D), 1775.54(G)(1), 1782.438(D), and 1782.439(H)(1)):

(1) In all cases, by the same vote as was required to adopt the declaration of conversion. In the case of converting domestic corporation, the vote must be the same vote of *shareholders* as was required to adopt the declaration.

(2) In all cases except that of a converting domestic corporation, by any representatives authorized to do so by the declaration of conversion. In the case of converting domestic corporation, the *directors* may abandon the conversion if authorized to do so by the declaration.

(3) In the case of a domestic partnership or domestic limited partnership, by all the partners or general partners, respectively.

(4) In the case of a converting domestic limited liability company, by all members of the converting company.

Ability to pay obligations

In no case may a conversion or substitution be effected if there are reasonable grounds to believe that the conversion or substitution would render the converted entity unable to pay its obligations as they become due in the usual course of its affairs (R.C. 1701.782(B)(2), 1701.792(B)(2), 1705.361(B)(2), 1705.371(B)(2), 1775.53(B)(2), 1775.54(B)(2), 1782.438(B)(2), and 1782.439(B)(2)).

Filing of declaration of conversion

Upon the adoption of a declaration of conversion, or at a later time as authorized by the declaration of conversion, a certificate of conversion that is signed by an authorized representative of the converting entity must be filed with the Secretary of State (R.C. 1701.811(A), 1705.381(A), 1775.55(A), and 1782.4310(A)). The act creates a $125 filing fee for a certificate of conversion, including a designation of agent. The filing fee requirement takes effect on the 180th day after the effective date of the act. (R.C. 111.16(D) and Section 3.) The certificate must be on a form prescribed by the Secretary of State and set forth the following (R.C. 1701.811(B)(1), 1705.381(B)(1), 1775.55(B)(1), and 1782.4310(B)(1)):

(1) The name and the form of entity of the converting entity and the state under the laws of which the converting entity exists;

(2) A statement that the converting entity has complied with all of the laws under which it exists and that the laws permit the conversion;

(3) The name and mailing address of the person or entity that is to provide a copy of the declaration of conversion in response to any written request made by a shareholder, partner, or member of the converting entity;

(4) The effective date of the conversion, which date may be on or after the date of the filing of the certificate pursuant to this section;

(5) The signature of the representative or representatives authorized to sign the certificate on behalf of the converting entity and the office held or the capacity in which the representative is acting;

(6) A statement that the declaration of conversion is authorized on behalf of the converting entity and that each person signing the certificate on behalf of the converting entity is authorized to do so;

(7) The name and the form of the converted entity and the state under the laws of which the converted entity will exist;

(8) If the converted entity is a foreign entity that will not be licensed in Ohio, the name and address of the statutory agent upon whom any process, notice, or demand may be served.

If the converting entity is converted into a new domestic corporation, limited liability company, limited partnership, or other partnership, any organizational document, including a designation of agent, that would be filed upon the creation of the new entity must be filed with the certificate of conversion. If the converted entity is a foreign entity that desires to transact business in Ohio, the certificate of conversion must be accompanied by certain information required by other provisions of the Revised Code when a merger or consolidation results in a surviving or new foreign entity. (See **COMMENT** 1.) If the converting entity is a domestic or foreign corporation licensed to transact business in Ohio, the certificate of conversion must be accompanied by certain affidavits, receipts, certificates, or other evidence required when a domestic corporation is dissolved or a foreign corporation surrenders its license. (See **COMMENT** 2.)

If either the converting entity or the converted entity is organized or formed under the laws of a state other than Ohio or under any chapter of the Revised Code other than the chapter in which the applicable filing section is located (Chapter 1701., 1705., 1775., or 1782.), all documents required to be filed in connection with the conversion by the laws of the other state or chapter must be filed in the proper office.

A conversion is effective upon the filing of a certificate of conversion and other filings required by the preceding paragraph or at any later date that the certificate of conversion specifies. However, no conversion will be effective if there are reasonable grounds to believe that the conversion would render the converted entity unable to pay its obligations as they become due in the usual course of its affairs (R.C. 1701.811(B)(2), (3), and (4), (C), and (D), 1705.381(B)(2), (3), and (4), (C), and (D), 1775.55(B)(2), (3), and (4), (C), and (D), and 1782.4310(B)(2), (3), and (4), (C), and (D)).

Upon request and payment of the fee charged by the Secretary of State for certificates of merger or consolidation,[3] the Secretary of State must furnish a certificate setting forth all of the following (R.C. 1701.811(E), 1705.381(E), 1775.55(E), and 1782.4310(E)):

(1) The name and form of entity of the converting entity and the state under the laws of which it existed prior to the conversion;

[3] *R.C. 111.16(K)(2) authorizes the Secretary of State to charge fees for certificates of merger or consolidation.*

(2) The name and the form of entity of the converted entity and the state under the laws of which it will exist;

(3) The date of filing of the certificate of conversion with the Secretary of State and the effective date of the conversion.

The Secretary of State's certificate, or a copy of the certificate of conversion certified by the Secretary of State, may be filed in the office of the recorder of any county in Ohio and recorded in the records of deeds for that county. For the recording, the county recorder must charge and collect the same fee as in the case of deeds. (R.C. 1701.811(F), 1705.381(F), 1775.55(F), and 1782.4310(F).)

Legal effect of conversion

A conversion has the following legal consequences when it becomes effective (R.C. 1701.821(A), 1705.391(A), 1775.56(A), and 1782.4311):

(1) The converting entity is continued in the converted entity.

(2) The converted entity exists and the converting entity ceases to exist.

(3) The converted entity possesses both of the following, which continue in the converted entity without any further act or deed:

(a) Except to the extent limited by the requirements of applicable law, both of the following:

(i) All assets and property and every interest in the assets and property of the converted entity. Title to any real estate or any interest in real estate that was vested in the converting entity does not revert and is not in any way impaired because of the conversion.

(ii) The rights, privileges, immunities, powers, franchises, and authority, whether of a public or a private nature, of the converting entity.

(b) All obligations belonging or due to the converting entity.

(4) All the rights of creditors and all liens upon the property of the converting entity are preserved unimpaired. If a general partner of a converting partnership is not a general partner of the entity resulting from the conversion, then the former general partner has no liability for any obligation incurred after the conversion except to the extent that a former creditor of the converting partnership in which the former general partner was a general partner extends credit to the

converted entity reasonably believing that the former general partner continues as a general partner of the converted entity.

If an entity that is converted into a foreign corporation, limited liability company, or partnership that is not licensed or registered to transact business in Ohio intends to transact business in Ohio and the certificate of conversion is accompanied by certain information required by other provisions of the Revised Code when a merger or consolidation results in a surviving or new foreign entity, then on the effective date of the conversion, the converted entity is considered to have complied with the requirements for procuring a license or for registration to transact business in Ohio as a foreign corporation, limited liability company, limited partnership, or limited liability partnership. A copy of the certificate of conversion certified by the Secretary of State constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company, foreign limited partnership, or foreign limited liability partnership. (See **COMMENT** 3.) (R.C. 1701.821(B), 1705.391(B), 1775.56(C), and 1782.4311(C).)

An action to set aside a conversion because of failure to comply with a requirement of the Revised Code relating to the conversion must be brought within 90 days after the effective date of the conversion. With regard to a converting or converted entity that is organized or exists under the laws of a state other than Ohio, R.C. 1701.821, 1705.381, 1775.56, and 1782.4311, which set forth the legal consequences of a conversion, are subject to the laws of the state under which the entity exists or in which it has property. (R.C. 1701.821(C) and (D), 1705.391(C) and (D), 1775.56(D) and (E), and 1782.4311(D) and (E).)

In addition to all of the foregoing legal consequences of a conversion, if a general partner of a converting partnership or converting limited partnership is not a general partner of the entity resulting from the conversion, then unless that general partner agrees otherwise in writing, the converted entity must indemnify the general partner against all present or future liabilities of the converting partnership or converting limited partnership of which the general partner was a general partner. Liabilities of the converting partnership or converting limited partnership include any amount payable pursuant to R.C. 1775.50 or 1782.435 to a partner of the converting partnership. (R.C. 1775.56(B) and 1782.4311(B).)

Rights of shareholders, members, or partners who dissent from a conversion

Continuing law provides relief to shareholders, members, and partners of domestic entities who dissent from a merger or consolidation. The procedure set forth in the statutes covers the demand of the dissenter for payment of the fair cash value of the dissenter's shares or interest, service of the demand on the converting

entity, the surrender of certificates representing the dissenter's shares or interest, determination of the value of the dissenter's interest, and related matters. The act extends these procedures to shareholders, members, and partners who dissent from the conversion of a domestic entity into a converted entity pursuant to R.C. 1701.792, 1705.371, 1775.53, and 1782.439. (R.C. 1701.84(F), 1701.85(A), (B), and (D)(2), 1705.40(C), 1705.41, 1705.42, 1775.49(A)(3) and (B), 1775.50, 1775.51, 1782.435(A)(3), 1782.436, and 1782.437.)

Judgment creditors of a partner of a converting domestic partnership

Under continuing law, if a domestic general partnership is a constituent entity to a merger or consolidation that has become effective and the domestic general partnership is not the surviving or resulting entity of the merger or consolidation, a judgment creditor of a partner of the domestic general partnership may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger or consolidation unless any of the following applies:

(1) The claim is for an obligation of the domestic general partnership for which the partner is liable under R.C. Chapter 1775., and one of the following applies:

(a) A judgment based on the same claim has been obtained against the surviving or resulting entity and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

(b) The surviving or resulting entity is a debtor in bankruptcy.

(c) The partner has agreed that the creditor need not exhaust the assets of the domestic general partnership that was not the surviving or resulting entity.

(d) The partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity.

(2) A court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

(3) Liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

The act extends the foregoing rights of and restrictions on a judgment creditor of a partner of a domestic partnership that is a constituent entity to a merger or consolidation to a judgment creditor of a partner of a domestic partnership (the act changes all references to domestic general partnership to domestic partnership) that is a converting entity in a conversion. The judgment creditor has the same rights against an entity resulting from the conversion as against an entity resulting from a merger or consolidation. (R.C. 1775.52.)

Mergers and consolidations

Merger of a domestic parent corporation and domestic subsidiary

Authority to merge. The act authorizes the merger of a domestic parent corporation and a domestic subsidiary corporation that it wholly owns, directly or indirectly, so that the parent corporation becomes the direct or indirect wholly owned subsidiary and the subsidiary becomes the parent. The act refers to the former subsidiary as a holding company, which it defines as a domestic corporation that, from its formation until consummation of a merger governed by R.C. 1701.802 was at all times a direct or indirect wholly owned subsidiary of the parent corporation and whose shares are issued in that merger solely to the shareholders of the parent corporation. (R.C. 1701.802(A).) The act authorizes the corporations to merge pursuant to an agreement of merger if nothing in R.C. Chapter 1704.[4] prevents the merger and if all of the following apply (R.C. 1701.802(B)):

(1) The parent company and the subsidiary are the only constituent entities to the merger.

(2) Each share or fraction of a share of the parent corporation that is outstanding immediately before the time at which the merger becomes effective is converted in the merger into a share or fraction of a share of a holding company having express terms identical in all material respects to those that were converted in the merger.

(3) The articles and regulations of the holding company immediately following the time at which the merger becomes effective contain provisions identical in all material respects to those contained in the articles and regulations

[4] *Chapter 1704. regulates mergers, consolidations, combinations, and majority share acquisitions that involve shareholders who effectively control 10% or more of the voting stock of a domestic corporation with 50 or more shareholders and having its principal place of business, its principal executive offices, assets having substantial value, or a substantial percentage of its assets in Ohio and as to which no valid close corporation agreement exists.*

of the parent corporation immediately before the time at which the merger becomes effective.

(4) As a result of the merger, the parent corporation becomes a direct or indirect wholly owned subsidiary of the holding company.

(5) The directors of the parent corporation become or remain the directors of the holding company immediately following the time at which the merger becomes effective.

Merger agreement. The agreement of merger between the parent and subsidiary corporations must set forth the designation and the number of the outstanding shares of each class of the subsidiary corporation and the number of shares of each such class owned by the surviving corporation. It must set forth any statements and matters that are required, and may set forth any provision that is permitted, in a merger under R.C. 1701.78. (R.C. 1701.802(E).)

Unless the surviving corporation files periodic reports with the U.S. Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act, within 20 days after the approval of the agreement of merger by the directors of each merging corporation, the surviving corporation must deliver or send notice of the approval of the agreement of merger by the directors of each constituent corporation and a copy or summary of the agreement to each shareholder of each domestic constituent corporation, other than the surviving corporation, of record as of the date on which the directors of the surviving corporation approved the agreement. The notice and copy or summary may be delivered or sent by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent. If the surviving corporation files periodic reports with the SEC under section 13 or 15(d) of the Securities Exchange Act, it may satisfy the notice requirement by including a copy of the agreement of merger in a report filed within 20 days after the approval of the agreement of merger by the directors of the corporation. (R.C. 1701.802(F).)

Adoption of merger without a vote of the shareholders. A parent corporation, by action of its board of directors, may adopt a merger of the type described above without a vote of its shareholders. From and after the effective time of a merger adopted in this manner, all of the following apply (R.C. 1701.802(C)):

(1) The restrictions of R.C. Chapter 1704. apply immediately after the effective date of the merger to the holding company and its shareholders to the same extent they applied to the parent corporation and its shareholders. For purposes of Chapter 1704., all shares of stock of the holding company acquired in

the merger are deemed to have been acquired at the time that the shares of stock of the parent corporation converted in the merger were acquired. A shareholder that immediately before the effective time of the merger was not an interested shareholder of the parent corporation within the meaning of Chapter 1704. does not become an interested shareholder of the holding company solely by reason of the merger.

(2) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the parent corporation immediately before the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the parent corporation are converted in the merger are represented by the stock certificates that previously represented shares of capital stock of the parent corporation.

(3) Nothing in R.C. 1701.802 limits or extinguishes the standing of a person who was a shareholder of the parent corporation immediately before the effective time of the merger to institute or maintain litigation by or in the right of the parent corporation.

The approval of the agreement of merger by the directors of a domestic constituent corporation under R.C. 1701.802 constitutes adoption by that corporation (R.C. 1701.802(G)). If the agreement of merger is adopted by the directors without a vote of the shareholders, the secretary or assistant secretary of the parent corporation must certify on the agreement that the agreement has been adopted pursuant to R.C. 1701.802 and that the conditions specified in R.C. 1701.802(B) (see "***Authority to merge***," above) have been satisfied (R.C. 1701.802(D)).

Miscellaneous merger provisions. The act adds references to mergers under R.C. 1701.802 in the following provisions of existing law:

(1) Continuing law provides that an acquisition of shares of an issuing public corporation does not constitute a control share acquisition under certain enumerated circumstances, including mergers or consolidations that occur in compliance with specified sections of the Revised Code. The act adds a merger pursuant to R.C. 1701.802 to those circumstances. (R.C. 1701.01(Z)(2)(e).)

(2) Continuing law requires that upon adoption by each constituent entity of an agreement of merger or consolidation pursuant to specified sections of the Revised Code, a certificate of merger or consolidation must be filed with the Secretary of State. The act adds a merger pursuant to R.C. 1701.802 to the mergers for which a certificate must be filed. (R.C. 1701.81(A).)

(3) Continuing law prohibits an issuing public corporation from engaging in a Chapter 1704. transaction for three years after an interested shareholder's share acquisition date, subject to certain exceptions. If the Chapter 1704. transaction is of a type described in one of several listed sections of the Revised Code, there also must be compliance with the provisions of that section. The act adds R.C. 1701.802 to that list of sections. (R.C. 1704.02(B).)

(4) Under continuing law, at any time after the three-year period described in the preceding paragraph, the issuing public corporation may engage in a Chapter 1704. transaction, provided that if the Chapter 1704. transaction is of a type described in R.C. 1701.76, 1701.78, 1701.79, 1701.80, 1701.801, or 1701.86, (1) there also must be compliance with the provisions of that section and (2) at least one of several specified statutory conditions must be met. The act adds R.C. 1701.802 to that list of sections. (R.C. 1704.03(A).)

Mergers and consolidations involving domestic partnerships

Terminology. Prior R.C. 1775.45 through 1775.52 provided for mergers and consolidations involving domestic general partnerships. The Revised Code defined "partnership," but it did not define "general partnership." The act eliminates "general" wherever it is used in these sections as an adjective for "partnership."

Written agreement when surviving entity is not a domestic partnership. Continuing law provides for the merger or consolidation, pursuant to a written agreement between the constituent entities, of a domestic partnership and one or more additional domestic or foreign entities into a surviving or new entity other than a domestic partnership. In addition to the other mandatory existing provisions of the agreement, the act requires that if the surviving or new entity is a foreign limited liability partnership that desires to transact business in Ohio as a foreign limited liability partnership, the agreement must include a statement to that effect, together with all of the information required under R.C. 1775.64 when a foreign limited liability partnership registers to transact business in Ohio. (R.C. 1775.46(B)(10) and 1775.48(A)(4).)

Certificate of merger or consolidation. Continuing law requires that upon the adoption by each constituent entity of an agreement of merger or consolidation pursuant to R.C. 1775.45 or 1775.46 a certificate of merger or consolidation be filed with the Secretary of State. In addition to the other existing mandatory provisions of the certificate, the act requires that if the surviving or new entity is a foreign entity that desires to transact business in Ohio as a foreign corporation, limited liability company, or limited partnership, the certificate must include the information required by the act to be in the agreement (see preceding paragraph). (R.C. 1775.47(B)(4).)

Continuing law provides that in the case of a merger of a constituent domestic partnership into a foreign surviving corporation, limited liability company, or partnership that is not licensed or registered to transact business in Ohio or a consolidation of a constituent domestic limited partnership into a new foreign corporation, limited liability company, or limited partnership, if the surviving or new entity intends to transact business in Ohio and the certificate of merger or consolidation is accompanied by the information described in R.C. 1775.47(B)(4), then on the effective date of the merger or consolidation the surviving or new entity is considered to have complied with the requirements for procuring a license or for registration to transact business in Ohio as a foreign corporation, limited liability company, or limited partnership. In such a case, a copy of the certificate of merger or consolidation certified by the Secretary of State constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company or foreign limited partnership. The act adds to the list of new foreign entities covered by this section a limited liability partnership formed by a consolidation involving a domestic limited partnership. (R.C. 1775.48(C).)

Corporate regulations

Adoption, amendment, or repeal of corporate regulations

Under continuing law, after a corporation has been incorporated, the initial directors or, under certain circumstances, the shareholders if the initial directors are not named in the articles of incorporation, are required to complete the organization of the corporation by appointing officers, adopting regulations, and transacting other business (R.C. 1701.10(A)(1) and (2)). Under prior law, if regulations were adopted within 90 days after the formation of the corporation, regulations could be adopted only by the shareholders in one of the following ways (R.C. 1701.10(A)(3)):

(1) At a meeting of shareholders called for that purpose by the directors or, if no directors were named in the articles or elected, at a meeting of shareholders called for that purpose by at least a majority of the incorporators. The directors or incorporators had to give at least seven days' written notice to the shareholders, unless the shareholders waived written notice, to meet at a specified time and place for the purposes of adopting regulations and transacting any other business.

(2) Without a meeting, by the written consent of the holders of shares entitling them to exercise two-thirds of the voting power on the proposal.

The act eliminates the above described restriction upon the adoption of regulations and instead requires that, if regulations have not been adopted within

90 days after formation of the corporation, regulations may be adopted only as provided in R.C. 1701.11 as amended by the act (see below) (R.C. 1701.10(A)(3)).

Prior law also prohibited the directors of a corporation from adopting or amending regulations after the shareholders adopted regulations. The act eliminates this prohibition. (R.C. 1701.10(A)(4).)

Under prior law, regulations for the government of a corporation, the conduct of its affairs, and the management of its property could be adopted in any of the following ways: (1) within 90 days after formation, by the directors in accordance with R.C. 1701.10 (see above), (2) by the shareholders at a shareholders' meeting held for the purpose by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal, or (3) without a meeting, by the written consent of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal. Prior law also provided that except as provided in the next paragraph, the regulations could be amended or new regulations could be adopted as provided in clause (2) or (3) of the prior sentence. (R.C. 1701.11(A)(1) and (2).) Prior law also provided that except as provided in the next paragraph, if the articles or regulations so provided or permitted, regulations could be adopted or amended or new regulations could be adopted by the affirmative vote or written consent of the holders of shares entitling them to exercise a greater or lesser proportion but not less than a majority of the voting power of the corporation (R.C. 1701.11(A)(3)). The act consolidates the above provisions and provides that regulations may be adopted, amended, or repealed in any of the following ways:

(1) Within 90 days after the corporation is formed, by the directors in accordance with R.C. 1701.10(A)(1) (same as prior law except for the more specific reference to the applicable division of R.C. 1701.10);

(2) By the shareholders at a meeting held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal (same as prior law), *or if the articles or regulations that have been adopted so provide, by the affirmative vote of the holders entitling them to exercise a greater proportion than a majority of the voting power of the corporation on the proposal* (added by the act);

(3) Without a meeting, by the written consent 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 or regulations that have been adopted so provide or permit, by the written consent of the holders of shares entitling them to exercise a greater or lesser proportion but not less than a majority of the voting power of the corporation *on the proposal* (combination of existing R.C. 1711.11(A)(1)(c) and (3) with changes and deletion of R.C. 1711.11(A)(2));

(4) If and to the extent that the articles or regulations so provide or permit and unless a provision of the Revised Code reserves such authority to shareholders, by the directors, provided that no provision or permission in the articles or regulations may divest shareholders of the power, or limit the shareholders' power, to adopt, amend, or repeal regulations (added by the act).

Continuing law includes an exception to the foregoing rules concerning the adoption or amendment of regulations. In the case of a public corporation, if the directors are classified, any amendment or adoption of regulations that would change or eliminate the classification of directors must be adopted by the shareholders at a meeting held for that purpose, by the affirmative vote of both (1) the holders of shares entitling them to exercise a majority of the voting power of the corporation or a higher proportion if provided for in the articles or regulations and (2) the holders of a majority of disinterested shares voted on the proposal determined as specified in R.C. 1704.01(C)(9). The act retains this provision. (R.C. 1701.11(A)(4).)

Content of corporate regulations

Continuing law contains a nonexclusive list of provisions that a corporation's regulations may include. These provisions cover topics such as the place, time, manner of, and authority for calling, giving notice of, conducting, and the quorum requirements for shareholder and directors meetings; the number, classification, qualifications, term of office and compensation of directors; the titles, qualifications, duties, terms of office, compensation, and removal of officers; and other matters relating to the organization and operation of the corporation. Continuing law authorizes the adoption of regulations defining, limiting, or regulating the exercise of the authority of the corporation, the directors, the officers, or all the shareholders. The act provides that any amendment of the regulations that would change or eliminate a provision defining, limiting, or regulating the exercise of the authority of the shareholders may be adopted only by the shareholders. (R.C. 1701.11(B)(10) and (11).)

Notice of adoption or amendment of regulations

Under prior law, if regulations were adopted or amended without a meeting of the shareholder, the secretary of the corporation had to send a copy of the new or amended regulations by mail, overnight delivery service, or any other means of communications authorized by the shareholder to every shareholder who would have been entitled to vote on the adoption of the amendment or the new regulations and did not participate in the adoption of the amendment or the new regulations. Under the act, unless the corporation complies with the new provisions discussed in the next sentence, if the regulations are amended or adopted other than by the shareholders at a meeting held for that purpose, the

secretary of the corporation must send the copy of the amendment or new regulations to every shareholder of record as of the date of the adoption of the amendment or the new regulations. If a corporation files periodic reports with the Securities and Exchange Commission under federal law (section 13 or 15(d) of the Securities Exchange Act of 1934), the corporation may satisfy the notice to shareholders of record requirement by including a copy of the amendment or the new regulations in a report filed in accordance with those sections of federal law within 20 days after the adoption of the amendment or the new regulations. (R.C. 1701.11(D).)

Changes in statutory requirements by regulations

The Revised Code defines certain terms that are used in provisions that are related to corporations, regulates how certain corporate actions may be taken, and specifies certain conditions about corporate officers. Under prior law, in many of those provisions, the definition, statutory regulation, or condition was subject to the exception of *unless the articles or the regulations* specify otherwise. In the definitions and statutory regulations and conditions that use the italicized language, the act changes the italicized language to *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* specify otherwise. The definitions and actions in relation to which the act makes this change are the following:

(1) The definition of shareholder. Continuing language in this section, unchanged by the act, also allows the general rule to be altered by the contract of subscription for shares. (R.C. 1701.01(F).)

(2) The power of persons who hold 25% of all shares outstanding and entitled to vote at a shareholders' meeting to call a shareholders' meeting (R.C. 1701.40(A)(3));

(3) The time within which notice of a shareholders' meeting must be given to shareholders, which time period may be specified in the regulations as being longer or shorter than the statutory time period (R.C. 1701.41(A) and (B));

(4) The right to vote shares that have not been fully paid. Continuing language in this section, unchanged by the act, also allows the general rule to be altered by the contract of subscription for shares. (R.C. 1701.44(B).)

(5) The shareholders present by any means constitutes a quorum at shareholders' meetings unless the articles or regulations otherwise provide. Continuing law authorizes the holders of a majority of the voting shares represented at a meeting to adjourn from time to time, whether or not a quorum is

present. The act retains the authorization but subjects the authorization to the condition of *unless the articles or regulations otherwise provide*. (R.C. 1701.51(A) and (B).)

(6) The power of shareholders or directors to act without a meeting with the written approval of the shareholders or directors (R.C. 1701.54(A));

(7) Continuing law specifies directors' terms of office unless the articles or regulations provide a different term. The act makes a similar change in the language authorizing the articles or regulations to provide for the classification of directors. (R.C. 1701.57(A) and (B).)

(8) Unless the articles or regulations provide otherwise, directors may be removed in accordance with a specified procedure (R.C. 1701.58(C) and (D));

(9) Unless the articles or regulations otherwise provide, a majority of the directors in office constitutes a quorum at a director's meeting, and an act of that majority is an act of the board (R.C. 1701.62);

(10) Unless the articles or regulations otherwise provide, any control share acquisition of an issuing public corporation may be made only in accordance with R.C. 1701.831 (R.C. 1701.831(A)).

Committees and subcommittees

Under continuing law, the regulations may provide for the creation by the directors of an executive committee or any other committee of the directors consisting of one or more directors. The regulations may authorize the delegation to a committee of any of the directors' authority other than the authority to fill vacancies among the directors or in any committee of the directors. The act adds that the directors may not delegate to a committee the authority to adopt, amend, or repeal regulations. The act also states that unless the articles, the regulations, or the resolution of the directors creating a committee provides otherwise, a committee created by the directors may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to a subcommittee any or all of the powers and authority of the committee. (R.C. 1701.63(A) and (G).)

Other provisions relating to corporations

Certificate of good standing

The act provides that a certificate issued by the Secretary of State confirming that a corporation is in good standing is, for seven days after the date on the certificate, conclusive evidence that (1) the authority of a domestic

corporation has not been limited, provided that the person relying on the certificate had no knowledge that the corporation's articles had been canceled and that the certificate is not presented as evidence against the state and (2) the license authorizing a foreign corporation to transact business in Ohio has not expired, been cancelled, or been surrendered. "Good standing" means that the authority of the corporation to carry on business is not limited by R.C. 1701.88, which prohibits corporations that are going out of existence from carrying on business except to wind up their affairs or seeking reinstatement of their articles of incorporation. (R.C. 1701.92(D) and (E).)

Stock options

Under continuing law, the directors of a corporation may provide and carry out plans for the offering, sale, or the grant of options to employees of the corporation or of subsidiary corporations or to a trustee on their behalf. The act provides that the directors, or a committee of the directors, may delegate this authority (including the authority to issue, which is added by the act, as well as to offer, sell, or grant options) to one or more officers if the resolution authorizing the delegation specifies the total number of shares or options that the officer or officers may award and the terms on which any shares may be issued, offered, or sold or the terms of any options. The directors may not authorize any such officer to designate himself or herself as a recipient of any shares or options with respect to shares. (R.C. 1701.17.)

Payment for shares

Under prior law, payment for shares had to be made with money or other property of any description, or any interest in property, actually transferred to the corporation, or labor or services actually rendered to the corporation. The act modifies this requirement and provides that payment *of consideration* for shares *may include* cash, property, services rendered, a promissory note, or any other binding obligation to contribute cash or property or to perform services; the provision of any other benefit to the corporation; or any combination of these. Prior law provided that an agreement by a person to perform services as the consideration for shares did not, of itself, constitute *the person a shareholder and does not, by itself, constitute* payment for the shares prior to the performance of the services. The act removes the italicized language. Prior law provided that a person who subscribed for or purchased shares was liable to the corporation to pay or deliver to the corporation the agreed upon consideration and to pay to the corporation *for the shares in money or other property or services* the *full* par value of the shares. The act removes the italicized language and provides that the person is obligated to pay to the corporation consideration not less than the shares par value. (R.C. 1701.18(A)(1), (C), and (F).)

Determination of value of property

Under continuing law, with the modifications in terminology noted in the next paragraph, when a determination of the fair value to a corporation of *property other than money or of services* is made by the incorporators, directors, or shareholders with respect to *property transferred or to be transferred, or services rendered or to be rendered* to the corporation *as consideration* for shares, the determination is conclusive in any action or proceeding in which it is claimed that the fair value to the corporation of the property or services is or was less than the value so determined, unless the party asserting the claim affirmatively proves by clear and convincing evidence, and otherwise than by proving the difference between the value of the property or services and the fair value so determined, that the determination was knowingly and intentionally made at a value greater than the fair value of the property or services to the corporation. The determinations governed by this provision are of the value of property or services given as payment for shares or voluntarily contributed, of physical assets reckoned by the directors to have a fair value exceeding the value stated on the corporation's books, or provided for in a *plan of reorganization* confirmed as provided in R.C. 1701.75 (see "***Reorganization under federal law***" below) or in a merger or consolidation agreement. The making of an agreement to issue or dispose of shares for property *other than money or for services* or the issuance or disposition of shares in consummation of any agreement or transaction referred to in the preceding sentence is held to be a determination that the property or *the services* involved have a fair value to the corporation not less than the value required to justify the issuance or disposition of such shares.

The act provides that when a determination of the fair value to a corporation is made by the incorporators, directors, or shareholders with respect to *consideration, other than cash, paid or to be paid* to the corporation for shares, the determination is conclusive in any action or proceeding in which it is claimed that the fair value of the consideration or property is or was less than the value so determined subject to the condition in continuing law. The act also refers generally to *consideration* rather than to *services* and changes *plan of reorganization* to *decree or order*. (R.C. 1701.19.)

Reorganization under federal law

Under prior law, if a court, by decree or order, confirmed a plan or reorganization under federal law, a corporation could put into effect and carry out the plan and any related decrees or orders without further action of the directors or shareholders. This authority could be exercised by the trustee or trustees appointed in the reorganization proceedings, by designated officers of the corporation if no trustees have been appointed, or by a master or other representative appointed by the court. If a plan of reorganization provided for or

effected an amendment to the articles or the merger, consolidation, or dissolution of a corporation, or if a plan having such a result was modified in respect of an amendment, merger, consolidation, or dissolution, a certificate of reorganization or an amended certificate of reorganization had to be filed with the Secretary of State. If, after the filing, another decree or order of court had the effect of vacating the plan, the corporation had to file a certified copy of the decree or order with the Secretary of State.

The act retains most of the provisions of prior law, but the provisions take effect if a court *enters an order of relief under the federal Bankruptcy Code* or by decree or order confirms a plan of reorganization under any other federal statute. *Decrees and orders* may be carried out by the trustee or trustees appointed *or elected* in the *bankruptcy* or reorganization proceedings. If *a decree or order by the court in a bankruptcy or reorganization proceeding provides for or effects an amendment to the articles or the merger, consolidation, or dissolution of a corporation, or* if, after the filing of a certificate or amended certificate of reorganization, a court decree or order has the effect of vacating the plan, the corporation must file a certified copy of the decree or order with the Secretary of State. The act replaces other references to the *plan of reorganization* with references to the *decree or order* confirming the plan. (R.C. 1701.75.)

Disposition of substantially all assets

Continuing law allows a corporation to dispose of all or substantially all of the corporation's assets (with or without the good will of the corporation) with the direct or indirect approval of the shareholders if certain conditions are met and subject to specified limitations. Under the act, however, the conditions and limitations do not apply to the distribution under R.C. 1701.33[5] to the shareholders of an issuing public corporation of shares owned by that corporation in one or more of its domestic or foreign subsidiaries, unless either of the following applies (R.C. 1701.76(G)):

(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 before the time at which the distribution becomes effective, the issuing public corporation has more than one class of shares outstanding.

[5] *R.C. 1701.33 governs dividends and distributions to shareholders.*

Notice to shareholders of amendment of articles

Under continuing law, when the directors of a corporation adopt an amendment to the articles of incorporation or amended articles, the corporation must file a copy of the resolution adopting the amendment or amended articles, a statement of the manner of its adoption, and a statement of the basis of the adoption of any resolution by the incorporators or directors with the Secretary of State. Subject to an exception added by the act, within 20 days after the filing, the corporation must send notice and a copy or summary of the amendment or amended articles by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent, to each shareholder of record as of the date on which the directors approved the amendment or amended articles. The act provides that any corporation that files periodic reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the notice to shareholders requirement by including a copy or summary of the amendment or amended articles in a report filed in accordance with section 13 or 15(d) within 20 days after the filing of the certificate with the Secretary of State. (R.C. 1701.73(A)(3).)

Securities law

References to federal law

The act replaces the statement that certain citations to federal statutes in R.C. Chapter 1707. mean those federal statutes as amended before or after March 18, 1999, with the statement that a reference to a statute of the United States or to a rule, regulation, or form promulgated by the Securities and Exchange Commission (hereafter SEC) or by another federal agency means the statute, rule, regulation, or form as it exists at the time of the act, omission, event, or transaction to which it is applied under R.C. Chapter 1707. (R.C. 1707.01(T)).

The act allows the Division of Securities, notwithstanding R.C. 121.71 to 121.76, to incorporate by reference into its rules any federal statute or rule, regulation, or form promulgated by the SEC or other federal agency in a manner that also incorporates all future amendments to the statute, rule, regulation, or form.[6] The act provides that no liability, penalty, sanction, or disqualification

[6] *R.C. 121.71 through 121.76 establish methods for incorporating text and other material into agency rules by reference. These provisions do not apply to internal management rules as defined in R.C. 111.15 or to any rule that (1) incorporates a text or other material by reference and (2) is necessary to obtain or maintain authorization of a federally delegated program in Ohio or to maintain compliance with federal requirements in order to receive federal funds for a federally funded program.*

imposed by R.C. 1707.01 to 1707.45 (securities regulation) applies to an act done or omitted in good faith in conformity with any provision of those sections that incorporates by reference a federal statute, rule, regulation, or form or any rule, form, or order of the Division of Securities that incorporates by reference a federal statute, rule, regulation, or form. The exemption from liability applies notwithstanding that the incorporation by reference, or any application of the incorporated provision, is later determined by judicial or other authority to be unconstitutional or invalid for any reason. (R.C. 1707.20(A)(2) and (E)(2).)

Changes in control bids for securities of a subject company

Under continuing law, "control bid," with certain exceptions, means a purchase of or offer to purchase any equity security of a subject company from a resident of Ohio if either (1) after the purchase, the offeror would be directly or indirectly the beneficial owner of more than 10% of any class of the issued and outstanding equity securities of the issuer or (2) the offeror is the subject company, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the subject company would be reduced by more than 10%. "Subject company" means an issuer of securities that satisfies both of the following: (1) it has its principal place of business or its principal executive office in Ohio or owns or controls assets located in Ohio that have a fair market value of at least $1 million, and (2) more than 10% of its beneficial or record equity security holders reside in Ohio, more than 10% of its equity securities are owned beneficially or of record by Ohio residents, or more than 1,000 of its beneficial or record equity security holders are Ohio residents. (R.C. 1707.01(V) and (Y)--not changed by the act.)

Continuing law regulates control bids by requiring the filing of detailed information relating to the offer with the Division of Securities (R.C. 1707.041). The act adds to the filing requirements in the event the offeror makes changes in the offer. Under the act, if an offeror increases or decreases the percentage of the class of securities being sought, the consideration offered, or the dealer's soliciting fee in connection with a control bid for any securities of a subject company pursuant to a tender offer or request or invitation for tenders, or makes any other change in the terms or conditions of the tender offer or request or invitation for tenders that requires the offeror to hold the tender offer or request or invitation for tenders open for at least ten business days from the date that notice of the change is first published or sent to security holders in Ohio, the offeror must file with the Division of Securities both of the following: (1) all material information, including all information sent or otherwise provided to offerees in Ohio, pertaining to the increase, decrease, or other change, and (2) all material information required to update the information originally filed with the Division in connection with the offer.

The offeror must file the information not later than the date on which the information regarding the increase, decrease, or other change first is published or sent to offerees in Ohio. The offeror must deliver a copy of the information, by personal services, to the subject company at its principal office not later than the time of the filing with the Division.

Within three calendar days of the date of filing of the information specified in the preceding two paragraphs, the Division of Securities, by order, may summarily suspend the continuation of the control bid if it determines that all of the information specified has not been provided by the offeror or that the information provided to offerees does not provide full disclosure to offerees of all material information concerning the increase, decrease, or other change. The suspension may remain in effect only until the Division makes a final determination following a hearing.

The Division must schedule and hold the hearing within three calendar days after imposing a suspension. The hearing is not subject to R.C. Chapter 119. The Division may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the Division.

The Division must make a determination within three calendar days after the hearing has been completed and not later than nine calendar days after the date on which the information regarding the increase, decrease, or other change first is published or sent to offerees in Ohio unless the Division, by rule or order, prescribes shorter time limits for conducting the hearing and making the determination (the act specifically authorizes the Division to do so). If the Division determines at the hearing that the offeror has not provided all of the required information pertaining to a change in the control bid, that the information provided to offerees does not provide full disclosure of all material information concerning the increase, decrease, or other change, or that the control bid is in material violation of any provision of Chapter 1707., the Division must maintain the suspension of the continuation of the control bid, subject to the right of the offeror to correct disclosure and other deficiencies identified by the Division and to reinstate the control bid by filing new or amended information. (R.C. 1707.041(A)(5).)

Regulation of dealers in securities

Continuing law provides for the licensing of dealers in securities (R.C. 1707.14--not in the act). The act requires that every dealer required to be licensed under that section comply with all broker and dealer capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting, and operational reporting requirements contained in sections 15 and 17 of the federal Securities Exchange Act of 1934 and the rules of the Securities and

Exchange Commission (SEC) promulgated under those sections. Every dealer required to be so licensed must file with the Division of Securities any report or document that those rules require federally registered brokers or dealers to file with the SEC. Any such report or document that a dealer has filed with the SEC is deemed to also have been filed with the Division unless a rule or order of the Division provides otherwise.[7]

The act authorizes the Division by order or rule to permit, but not require, a dealer that is not required by federal or Ohio law to register as a broker or dealer with the SEC to do both of the following: (1) elect one or more alternative financial and reporting provisions that are acceptable to the Division ("alternative financial and reporting provision" means any capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting, or operational reporting provision that differs from those established by the SEC) and (2) elect an exemption, the scope of which is acceptable to the Division, from all or a specified part of the capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting, or operational reporting requirements contained in section 15 or 17 of the Securities Exchange Act of 1934 or in SEC rules promulgated under those sections. In determining an acceptable alternative financial and reporting provision and in determining the acceptable scope of any exemption that is elected, the Division must consider the size, scope, and type of business of the dealers who will be permitted to elect the provision or exemption and must consider the protection of investors and customers of the electing dealers. (R.C. 1707.142.)

Continuing law prohibits a dealer in securities from engaging in any act that violates the provisions of section 15(c) or 15(g) of the Securities Exchange Act of 1934 or any rule or regulation promulgated under those sections by the SEC. Under prior law, the prohibition continued: "If, subsequent to October 11, 1994, additional amendments to section 15(c) or 15(g) are adopted, or additional rules or regulations are promulgated pursuant to such sections, the division of securities shall, by rule, adopt the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest." The act removes the quoted sentence from the statute. (R.C. 1707.44(L).)

[7] *R.C. 1707.142(B)(1) describes reports and documents that must be filed pursuant to SEC rules.*

Liability provisions relating to limited liability companies, limited partnerships, or corporations

Judgment creditors of limited liability companies

Under continuing law, a court may grant the application of a judgment creditor of a limited liability company to charge the membership interest of a member of the company with payment of the unsatisfied amount of the judgment with interest. To the extent that the court so charges the membership interest, the judgment creditor has the rights of an assignee of the membership interest. The act specifies that the judgment creditor has *only* the rights of an assignee. (R.C. 1705.19.)

Partners of registered limited liability partnerships

Prior law provided that, subject to exceptions set forth in the Revised Code or in a written agreement between the partners, a partner in a registered limited liability partnership was not liable for debts, obligations, or other liabilities of or chargeable to the partnership or another partner that arise from negligence or from wrongful acts, errors, omissions, or misconduct committed or occurring while the partnership was a registered limited liability partnership *and* committed or occurring in the course of the partnership business by another partner or an employee, agent, or representative of the partnership. The act retains the protection against liability but states that a partner is not *personally* liable for such debts, obligations, or other liabilities *solely by reason of being a partner; acting or failing to act as a partner; or participating as an employee, consultant, contractor, or otherwise in the conduct of the business or activities of the partnership while it is a registered limited liability partnership.* The act also changes the italicized *and* above to *or*. (R.C. 1775.14(B).)

Suppliers of limited partnerships, limited liability companies, and corporations

The act provides that in the absence of an express agreement to the contrary, a person who provides goods to or performs services for a domestic or foreign corporation, domestic or foreign limited partnership, or liability company owes no duty to, incurs no liability or obligation to, and is not in privity with the shareholders, general partners, limited partners, members, or creditors of the entity by reason of providing the goods to or performing the services for the entity. Absent an express agreement to the contrary, a person providing goods to or performing services for a shareholder, member, or partner of such an entity, or a group of them, is not in privity with, owes no duty to, and incurs no liability or obligation to the entity or to other shareholders, members, or partners by reason of

providing the goods or performing the services. (R.C. 1701.921, 1705.61, and 1782.65.)

Contributions of members of limited liability companies

Under continuing law, a member of a limited liability company may make contributions to the company in cash, property, services rendered, a promissory note, or any other binding obligation to contribute cash or property or to perform services. The act adds that a member may also make contributions by providing any other benefit to the limited liability company or by any combination of the stated forms of contribution. (R.C. 1705.09(A).)

Fee for creating and affixing the seal of the office of the Secretary of State

Continuing law requires the Secretary of State to charge and collect, for the benefit of the state, a fee of $25 for creating and affixing the seal of the office of the Secretary of State to a certificate of merger or consolidation for various types of entities. The act requires that the Secretary of State charge and collect a $25 fee for creating and affixing that seal to a certificate of conversion for various types of entities. (R.C. 111.16(K)(2).)

COMMENT

1. The act's filing requirements are set forth in R.C. 1701.811, 1705.381, 1775.55, and 1782.4310. These sections require that converted entities that are foreign entities desiring to transact business in Ohio submit with their certificates of conversion the information required, respectively, by R.C. 1701.791(B)(8), (9), or (10); R.C. 1705.37(B)(8), (9), or (10); R.C. 1775.46(B)(7), (8), (9), or (10); and R.C. 1782.432(B)(7), (8), or (9). The information that the act requires is the following, which is taken from R.C. 1701.791(B)(8), (9), and (10) but is the same in all four sections:

If the surviving or new entity is a foreign corporation that desires to transact business in this state as a foreign corporation, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the secretary of state, as required when a foreign corporation applies for a license to transact business in this state;

If the surviving or new entity is a foreign limited partnership that desires to transact business in this state as a foreign limited partnership, a statement to that effect, together with all of the information required under section 1782.49 of the Revised Code when a foreign limited partnership registers to transact business in this state;

If the surviving or new entity is a foreign limited liability company that desires to transact business in this state as a foreign limited liability company, a statement to that effect, together with all of the information required under section 1705.54 of the Revised Code when a foreign limited liability company registers to transact business in this state.

2. If the converting entity is a domestic corporation, the required information is that specified in R.C. 1701.86(H). If the converting entity is a foreign corporation, the required information is that specified in R.C. 1703.17(C) or (D). These provisions read as follows:

Sec. 1703.17. (H) A certificate of dissolution, filed with the secretary of state, shall be accompanied by:

(1) An affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the counties, if any, in this state in which the corporation has personal property or a statement that the corporation is of a type required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing or, if applicable, to the later date specified in the certificate of dissolution in accordance with division (F) of this section, or that such payment has been adequately guaranteed;

(3) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing or, if applicable, to the later date specified in the certificate of dissolution in accordance with division (F) of this section, or that such payment has been adequately guaranteed;

(4) A receipt, certificate, or other evidence from the director of job and family services showing that all contributions due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(5) A receipt, certificate, or other evidence from the bureau of workers' compensation showing that all premiums due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such premium payments;

(6) In lieu of the receipt, certificate, or other evidence described in division (H)(2), (3), (4), or (5) of this section, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a

statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled effective date of the dissolution and was advised in writing of the acknowledgment by the corporation of the applicability of the provisions of section 1701.95 of the Revised Code.

Sec. 1703.17. (C) A certificate of surrender, filed with the secretary of state, on a form prescribed by the secretary of state, shall be accompanied by:

(1) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing, or that such payment has been adequately guaranteed;

(2) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing;

(3) A receipt, certificate, or other evidence from the director of job and family services showing that all contributions due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(4) An affidavit of the officer, or other person permitted by law, executing the certificate of surrender, containing a statement of the counties, if any, in this state in which the corporation has personal property or a statement that the corporation is of a type required to pay personal property taxes to state authorities only.

(D) In lieu of the receipt, certificate, or other evidence described in divisions (C)(1), (2), and (3) of this section, a certificate of surrender may be accompanied by an affidavit of the person executing the certificate of surrender, or of an officer of the corporation, that contains a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled date of filing the certificate of surrender and was advised in writing of the acknowledgement by the corporation that the surrender of its license does not relieve it of liability, if any, for payment of the taxes and contributions described in divisions (C)(1), (2), and (3) of this section.

3. R.C. 1701.821(B), 1775.56(C), 1705.391(B), and 1782.441(C) refer to information required by R.C. 1701.81(B)(4), 1775.47(B)(4), 1705.38(B)(4), and 1782.443(B)(4), respectively, that accompany the certificate of conversion. The information that the latter sections require is the same information described in **COMMENT** 1.

HISTORY

ACTION	DATE
Introduced	06-15-05
Reported, H. Judiciary	01-26-06
Passed House (96-0)	02-07-06
Reported, S. Judiciary - Civil Justice	03-30-06
Passed Senate (31-0)	05-09-06
House concurred in Senate amendments (89-1)	05-16-06

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