

Chapter 1702: NONPROFIT CORPORATION LAW

1702.01 Nonprofit corporation law definitions.

As used in this chapter, unless the context otherwise requires:

(A) "Corporation" or "domestic corporation" means a nonprofit corporation formed under the laws of this state, or a business corporation formed under the laws of this state that, by amendment to its articles as provided by law, becomes a nonprofit corporation.

(B) "Foreign corporation" means a nonprofit corporation formed under the laws of another state.

(C) "Nonprofit corporation" means a domestic or foreign corporation that is formed otherwise than for the pecuniary gain or profit of, and whose net earnings or any part of them is not distributable to, its members, directors, officers, or other private persons, except that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution as permitted by section [1702.49](#) of the Revised Code is not pecuniary gain or profit or distribution of net earnings. In a corporation all of whose members are nonprofit corporations, distribution to members does not deprive it of the status of a nonprofit corporation.

(D) "State" means the United States; any state, territory, insular possession, or other political subdivision of the United States, including the District of Columbia; any foreign country or nation; and any province, territory, or other political subdivision of a foreign country or nation.

(E) "Articles" includes original articles of incorporation, agreements of merger or consolidation if and only to the extent that articles of incorporation are adopted or amended in the agreements, amended articles, and amendments to any of these, and, in the case of a corporation created before September 1, 1851, the special charter and any amendments to it made by special act of the general assembly or pursuant to general law.

(F) "Incorporator" means a person who signed the original articles of incorporation.

(G) "Member" means one having membership rights and privileges in a corporation in accordance with its articles or regulations.

(H) "Voting member" means a member possessing voting rights, either generally or in respect of the particular question involved, as the case may be.

(I) "Person" includes, but is not limited to, a nonprofit corporation, a business corporation, a partnership, an unincorporated society or association, and two or more persons having a joint or common interest.

(J) The location of the "principal office" of a corporation is the place named as such in its articles.

(K) "Directors" means the persons vested with the authority to conduct the affairs of the corporation irrespective of the name, such as trustees, by which they are designated.

(L) "Insolvent" means that the corporation is unable to pay its obligations as they become due in the usual course of its affairs.

(M)

(1) Subject to division (M)(2) of this section, "volunteer" means a director, officer, or agent of a corporation, or another person associated with a corporation, who satisfies both of the following:

(a) Performs services for or on behalf of, and under the authority or auspices of, that corporation;

(b) Does not receive compensation, either directly or indirectly, for performing those services.

(2) For purposes of division (M)(1) of this section, "compensation" does not include any of the following:

(a) Actual and necessary expenses that are incurred by a volunteer in connection with the services performed for a corporation, and that are reimbursed to the volunteer or otherwise paid;

(b) Insurance premiums paid on behalf of a volunteer, and amounts paid or reimbursed, pursuant to division (E) of section [1702.12](#) of the Revised Code;

(c) Modest perquisites.

(N) "Business corporation" means any entity that is organized pursuant to Chapter 1701. of the Revised Code other than a public benefit entity.

(O) "Mutual benefit corporation" means any corporation organized under this chapter other than a public benefit corporation.

(P) "Public benefit corporation" means a corporation that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation, the United States, a state or any political subdivision of a state, or a person that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," as amended. "Public benefit corporation" does not include a nonprofit

corporation that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.

(Q) "Authorized communications equipment" means any communications equipment that provides a transmission, including, but not limited to, by telephone, telecopy, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention of, the member or director involved and, with respect to meetings, allows all persons participating in the meeting to contemporaneously communicate with each other.

(R) "Entity" means any of the following:

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

(2) A business corporation existing under the laws of this state or any other state;

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

(a) A common law trust;

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

(c) A limited liability company;

(d) A for profit corporation;

(e) An unincorporated nonprofit association.

(S) "Public benefit entity" means any entity that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit entity, the United States, a state or any political subdivision of a state, or a person that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. "Public benefit entity" does not include an entity that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.

(T) "Unincorporated nonprofit association" has the same meaning as in section [1745.05](#) of the Revised Code.

Amended by 129th General Assembly File No. 79, HB 267, §1, eff. 5/22/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.02 Notice requirements.

(A) Unless another form of notice is required by the articles, the regulations, the bylaws, or by applicable law, any notice required by this chapter shall be in writing and shall be delivered personally or sent by telegram, by the use of authorized communications equipment, or by United States mail, express mail, or courier service, with postage or fees prepaid.

(B) In computing the period of time for the giving of a notice required or permitted under this chapter, or under the articles, the regulations, or the bylaws of a corporation, or a resolution of its members or directors, the day on which the notice is given shall be excluded, and the day when the act for which notice is given is to be done shall be included, unless the instrument calling for the notice otherwise provides. If notice is given by personal delivery or transmitted by telegram or by the use of authorized communications equipment, the notice shall be deemed to have been given when delivered or transmitted. If notice is sent by United States mail, express mail, or courier service, the notice shall be deemed to have been given when deposited in the mail or with the courier service.

(C) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or, in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of those members at the address appearing on the corporation's current list of members.

Effective Date: 04-10-2001 .

1702.03 Purposes of corporation.

A corporation may be formed under this chapter for any purpose or purposes for which natural persons lawfully may associate themselves, except that when there is a special provision in the Revised Code for the formation thereunder of a designated class of corporations, a corporation of such class shall be formed thereunder.

Effective Date: 04-10-2001 .

1702.04 Articles of incorporation.

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

- (1) The name of the corporation;
- (2) The place in this state where the principal office of the corporation is to be located;
- (3) The purpose or purposes for which the corporation is formed.

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

- (1) The names of individuals who are to serve as the initial directors;
 - (2) The names of any persons or the designation of any group of persons who are to be the initial members;
 - (3) Any qualification of membership and the classification of members;
 - (4) A provision to the effect that the corporation shall be subordinate to and subject to the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, foundation, federation, or any other nonprofit corporation, society, organization, or association;
 - (5) Any lawful provision for the purpose of defining, limiting, or regulating the exercise of the authority of the corporation, the incorporators, the directors, the officers, the members, or any class of members, or creating or defining rights and privileges of the members among themselves or in the property of the corporation, or governing the distribution of assets on dissolution;
 - (6) Any provision that may be set forth in the regulations;
 - (7) A provision specifying the period of existence of the corporation if it is to be otherwise than perpetual;
 - (8) Any additional provision permitted by this chapter.
- (C) A written appointment of a statutory agent for the purposes set forth in section [1702.06](#) of the Revised Code shall be filed with the articles, unless the corporation belongs to one of the classes mentioned in division (N) of that section.
- (D) The legal existence of the corporation begins upon the filing of the articles or on a later date specified in the articles that is not more than ninety days after the filing, and, unless the articles otherwise provide, its period of existence shall be perpetual.

Effective Date: 05-16-2002 .

1702.05 Corporate name - transfer - reservation.

(A) Except as provided in this section and in sections [1702.41](#) and [1702.411](#) of the Revised Code, the secretary of state shall not accept for filing in the secretary of state's office any articles if the corporate name set forth in the articles is not distinguishable upon the secretary of state's records from any of the following:

(1) The name of any other corporation, whether a nonprofit corporation or a business corporation and whether that of a domestic or of a foreign corporation authorized to do business in this state;

(2) The name of any limited liability company registered in the office of the secretary of state pursuant to Chapter 1705. of the Revised Code, whether domestic or foreign;

(3) The name of any limited liability partnership registered in the office of the secretary of state pursuant to Chapter 1775. or 1776. of the Revised Code, whether domestic or foreign;

(4) The name of any limited partnership registered in the office of the secretary of state pursuant to Chapter 1782. of the Revised Code, whether domestic or foreign;

(5) Any trade name, the exclusive right to which is at the time in question registered in the office of the secretary of state pursuant to Chapter 1329. of the Revised Code.

(B) The secretary of state shall determine for purposes of this section whether a name is "distinguishable" from another name upon the secretary of state's records. Without excluding other names that may not constitute distinguishable names in this state, a name is not considered distinguishable from another name for purposes of this section solely because it differs from the other name in only one or more of the following manners:

(1) The use of the word "corporation," "company," "incorporated," "limited," or any abbreviation of any of those words;

(2) The use of any article, conjunction, contraction, abbreviation, or punctuation;

(3) The use of a different tense or number of the same word.

(C) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from the name of any other corporation, any limited liability company, limited liability partnership, or limited partnership, or from a registered trade name, if there also is filed in the office of the secretary of state, on a form prescribed by the secretary of state, the consent of the other entity, or, in the case of a registered trade name, the person in whose name is registered the exclusive right to use the name, which consent is evidenced in a writing signed by any authorized officer or authorized representative of the other entity or person.

(D) In case of judicial sale or judicial transfer, by sale or transfer of good will or otherwise, of the right to use the name of a nonprofit corporation or business corporation, whether that of a domestic corporation or of a foreign corporation authorized to exercise its corporate privileges in this state or to do business in this state, the secretary of state, at the instance of the purchaser or transferee of such right, shall accept for filing articles of a corporation with a name the same as or similar to the name of such other corporation, if there also is filed in the office of the secretary of state a certified copy of the decree or order of court confirming or otherwise evidencing the purchase or transfer.

(E) Any person who wishes to reserve a name for a proposed new corporation, or any corporation intending to change its name, may submit to the secretary of state a written application, on a form prescribed by the secretary of state, for the exclusive right to use a specified name as the name of a corporation. If the secretary of state finds that, under this section, the specified name is available for such use, the secretary of state shall file such application, and, from the date of such filing, such applicant shall have the exclusive right for one hundred eighty days to use the specified name as the name of a corporation, counting the date of such filing as the first of the one hundred eighty days. The right so obtained may be transferred by the applicant or other holder of the right by the filing in the office of the secretary of state of a written transfer, on a form prescribed by the secretary of state, stating the name and address of the transferee.

Amended by 129th General Assembly File No.79, HB 267, §1, eff. 5/22/2012.

Effective Date: 06-06-2001; 2008 HB332 08-06-2008

1702.06 Statutory agent - cancellation and reinstatement of articles.

(A) Every corporation shall have and maintain an agent, sometimes referred to as the "statutory agent," upon whom any process, notice, or demand required or permitted by statute to be served upon a corporation may be served. The agent shall be one of the following:

(1) A natural person who is a resident of this state;

(2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in this state. If the agent is an entity other than a domestic corporation, the agent shall meet the requirements of Title XVII of the Revised Code for an entity of the agent's type to transact business or exercise privileges in this state.

(B) The secretary of state shall not accept original articles for filing unless there is filed with the articles a written appointment of an agent signed by the incorporators of the

corporation or a majority of them and a written acceptance of the appointment signed by the agent. In all other cases, the corporation shall appoint the agent and shall file in the office of the secretary of state a written appointment of the agent that is signed by any authorized officer of the corporation and a written acceptance of the appointment that is either the original acceptance signed by the agent or a photocopy, facsimile, or similar reproduction of the original acceptance signed by the agent.

(C) The written appointment of an agent shall set forth the name and address in this state of the agent, including the street and number or other particular description, and shall otherwise be in such form as the secretary of state prescribes. The secretary of state shall keep a record of the names of corporations and the names and addresses of their respective agents.

(D) If any agent dies, removes from the state, or resigns, the corporation shall forthwith appoint another agent and file with the secretary of state, on a form prescribed by the secretary of state, a written appointment of that agent.

(E) If the agent changes the agent's address from that appearing upon the record in the office of the secretary of state, the corporation or the agent shall forthwith file with the secretary of state, on a form prescribed by the secretary of state, a written statement setting forth the new address.

(F) An agent may resign by filing with the secretary of state, on a form prescribed by the secretary of state, a written notice to that effect that is signed by the agent and by sending a copy of the notice to the corporation at the current or last known address of its principal office on or prior to the date that notice is filed with the secretary of state. The notice shall set forth the name of the corporation, the name and current address of the agent, the current or last known address, including the street and number or other particular description, of the corporation's principal office, the resignation of the agent, and a statement that a copy of the notice has been sent to the corporation within the time and in the manner prescribed by this division. Upon the expiration of sixty days after such filing, the authority of the agent shall terminate.

(G) A corporation may revoke the appointment of an agent by filing with the secretary of state, on a form prescribed by the secretary of state, a written appointment of another agent and a statement that the appointment of the former agent is revoked.

(H) Any process, notice, or demand required or permitted by statute to be served upon a corporation may be served upon the corporation by delivering a copy of it to its agent, if a natural person, or by delivering a copy of it at the address of its agent in this state, as such address appears upon the record in the office of the secretary of state. If (1) the agent cannot be found, or (2) the agent no longer has that address, or (3) the corporation has failed to maintain an agent as required by this section, and if in any such case the party desiring that such process, notice, or demand be served, or the agent or

representative of the party, shall have filed with the secretary of state an affidavit stating that one of the foregoing conditions exists and stating the most recent address of the corporation that the party after diligent search has been able to ascertain, then service of process, notice, or demand upon the secretary of state, as the agent of the corporation, may be initiated by delivering to the secretary of state or at the secretary of state's office triplicate copies of such process, notice, or demand and by paying to the secretary of state a fee of five dollars. The secretary of state shall forthwith give notice of such delivery to the corporation at its principal office as shown upon the record in the secretary of state's office and also to the corporation at any different address set forth in the above mentioned affidavit, and shall forward to the corporation at each of those addresses, by certified mail, with request for return receipt, a copy of such process, notice, or demand; and thereupon service upon the corporation shall be deemed to have been made.

(I) The secretary of state shall keep a record of each process, notice, and demand delivered to the secretary of state or at the secretary of state's office under this section or any other law of this state that authorizes service upon the secretary of state, and shall record the time of such delivery and the secretary of state's action thereafter with respect thereto.

(J) This section does not limit or affect the right to serve any process, notice, or demand upon a corporation in any other manner permitted by law.

(K) Except when an original appointment of an agent is filed with the original articles, a written appointment of an agent or a written statement filed by a corporation with the secretary of state shall be signed by any authorized officer of the corporation or by the incorporators of the corporation or a majority of them if no directors have been elected.

(L) For filing a written appointment of an agent other than one filed with original articles, and for filing a statement of change of address of an agent, the secretary of state shall charge and collect the fee specified in division (R) of section 111.16 of the Revised Code.

(M) Upon the failure of any corporation to appoint another agent or to file a statement of change of address of an agent, the secretary of state shall give notice thereof by certified mail to the corporation at the address set forth in the notice of resignation or on the most recent statement of continued existence filed in this state by the corporation. Unless the failure is cured within thirty days after the mailing by the secretary of state of the notice or within any further period the secretary of state grants, upon the expiration of that period, the articles of the corporation shall be canceled without further notice or action by the secretary of state. The secretary of state shall make a notation of the cancellation on the secretary of state's records. A corporation whose articles have been canceled may be reinstated by filing, on a form prescribed by the secretary of state, an application for reinstatement and the required appointment of agent or required statement, and by paying the filing fee specified in division (Q) of section 111.16 of the Revised Code. The rights, privileges, and franchises of a corporation whose articles have been reinstated are

subject to section 1702.60 of the Revised Code. The secretary of state shall furnish the tax commissioner a monthly list of all corporations canceled and reinstated under this division.

(N) This section does not apply to banks, trust companies, insurance companies, or any corporation defined under the laws of this state as a public utility for taxation purposes.

Amended by 130th General Assembly File No. 62, SB 98, §1, eff. 2/18/2014.

Effective Date: 06-06-2001 .

1702.07 Acceptance of articles of incorporation and other certificates - filing not constructive notice of contents.

(A) When articles of incorporation and other certificates relating to the corporation are submitted to the secretary of state, the secretary of state shall, after finding that they comply with the provisions of this chapter, accept the articles and other certificates for filing and make a copy of the articles and other certificates by microfilm or by any authorized photostatic or digitized process. Evidence of the filing shall be returned to the person filing the articles or certificate.

(B) All persons shall have the opportunity of acquiring knowledge of the contents of the articles and other certificates filed and recorded in the office of the secretary of state, but no person dealing with the corporation shall be charged with constructive notice of the contents of any such articles or certificates by reason of such filing or recording.

Effective Date: 04-10-2001 .

1702.08 Incorporation of such society or association.

(A) When an unincorporated society or association, organized for any of the purposes for which a corporation could be formed under this chapter, authorizes the incorporation of that society or association, by the same procedure and affirmative vote of its voting members that the regulations, constitution, or other fundamental agreement of the society or association requires for an amendment to that fundamental agreement or, if no such vote is specified, by a majority vote of the voting members present in person , by the use of authorized communications equipment, by mail, or, if permitted, by proxy, at a duly convened meeting the purpose of which is stated in the notice of the meeting, then upon the filing of the articles under section [1702.04](#) of the Revised Code setting forth those facts and that the required vote has been obtained, that society or association shall become a corporation, and the members of the society or association shall become members of that corporation in accordance with provisions in the articles to that effect.

(B) All the rights, privileges, immunities, powers, franchises, and authority, and all the property and obligations of that unincorporated society or association, shall thereupon

pass to, vest in, and (in the case of liabilities and obligations) be obligations of the corporation so formed.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.09 Religious society.

The fact that a religious society, ecclesiastical society, or church has been continuously in existence since January 1, 1925, claiming to have been legally incorporated as such, and exercising authority and performing duties as such during such time, shall be prima-facie evidence of the due incorporation as claimed by such organization.

Effective Date: 10-11-1955 .

1702.10 Adoption of regulations.

After the articles have been filed and at any time prior to a meeting of voting members, the incorporators or a majority of them, at a meeting, may adopt regulations for the government of the corporation, the conduct of its affairs, and the management of its property, consistent with law and the articles; may elect directors in addition to any directors named in the articles; and may also elect members in addition to any named or provided for in the articles. If the incorporators fail to adopt regulations as authorized by this section within ninety days after the date of incorporation, regulations may be adopted at a meeting of voting members by the affirmative vote of a majority of the voting members.

Effective Date: 04-10-2001 .

1702.11 Contents of regulations.

(A) Without limiting the generality of such authority, the regulations, whether designated a constitution or rules, or by some other term, may include provisions with respect to the following:

- (1) The place, if any, and time for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of members, or their elected representatives or delegates;
- (2) The qualifications, admission, voluntary withdrawal, censure, and suspension of members, and the termination of membership;
- (3) The fees and dues of members;
- (4) The rights of members or classes of members, or of their elected representatives or delegates, to vote; the manner of conducting votes of members on matters, including voting by mail, by the use of authorized communications equipment, or by proxy; the

specification of the relative rights and privileges among members and in the property of the corporation; and limitations upon or regulations governing the right of members to examine the books and records of the corporation;

(5) The election of representatives or delegates of members and their authority, rights, and privileges;

(6) The number, classification, manner of fixing or changing the number, qualifications, term of office, voting rights, compensation or manner of fixing compensation, and the removal of directors;

(7) The place, if any, and time for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of the directors;

(8) The appointment of an executive and other committees of the directors or of members, their authority, and the method by which they take action;

(9) The titles, qualifications, duties, term of office, compensation or manner of fixing compensation, and the removal, of officers;

(10) Defining, limiting, or regulating the exercise of the authority of the corporation, the directors, the officers, the members, or any class of members;

(11) The method by which voting members may change the regulations;

(12) Providing for the use of authorized communications equipment.

(B)

(1) In the absence of provisions in the articles or the regulations with respect to the method of changing the regulations, the regulations may be amended, or new regulations may be adopted, by the voting members at a meeting held for such purpose, if a quorum is present, by the affirmative vote of a majority of the voting members present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy.

(2) For purposes of division (B)(1) of this section, participation by a member in a meeting through the use of any of the means of communication described in that division constitutes presence in person of that member at the meeting for purposes of determining a quorum.

(C) The members of a nonprofit corporation may adopt or authorize the directors to adopt, either before or during an emergency, as defined in division (U) of section [1701.01](#) of the Revised Code, emergency regulations operative only during an emergency. The emergency regulations may include those provisions that are authorized to be included in regulations by divisions (A) and (B) of this section. In addition, unless expressly prohibited by the

articles or regulations, and notwithstanding any different provisions in this chapter and any different provision in the articles or regulations that are not expressly stated to be operative during an emergency, the emergency regulations may make any provision that may be practical or necessary with respect to meetings, committees, vacancies, and temporary appointments of the directors, and the rank and succession of officers, the same as may be done by corporations for profit under division (C) of section [1701.11](#) of the Revised Code.

(D) Any change in the regulations made in accordance with their provisions or pursuant to division (B) of this section shall be binding on all members.

(E) If the regulations are amended or new regulations adopted without a meeting of the voting members, the secretary of the corporation shall send by mail, overnight delivery service, or authorized communications equipment a copy of the amendment or the new regulations to each voting member who would have been entitled to vote on the amendment or new regulations and did not participate in the adoption of the amendment or new regulations. If the secretary of the corporation mails the copy or sends it by overnight delivery service, the secretary shall send the copy of the amendment or the new regulations to the voting member at the voting member's address as it appears on the records of the corporation. If the secretary sends the copy by means of authorized communications equipment, the secretary shall send the copy of the amendment or the new regulations to the address provided by the voting member for transmissions by authorized communications equipment.

(F) No person dealing with the corporation shall be charged with constructive notice of the regulations.

(G) Unless expressly prohibited by the articles or regulations, or unless otherwise provided by the emergency regulations, and notwithstanding any different provision in this chapter, the special rules provided for corporations for profit under division (F) of section [1701.11](#) of the Revised Code are applicable to a nonprofit corporation during an emergency, as defined in division (U) of section [1701.01](#) of the Revised Code.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.12 Authority of nonprofit corporation.

(A) A corporation may sue and be sued.

(B) A corporation may adopt and alter a corporate seal and use it or a facsimile of it, but failure to affix the corporate seal shall not affect the validity of any instrument.

(C) Unless otherwise provided in the articles, a corporation may take property of any description, or any interest in property, by gift, devise, or bequest.

(D) Subject to limitations prescribed by law or in its articles, a corporation may make donations for the public welfare, for religious, charitable, scientific, literary, or educational purposes, or in furtherance of any of its purposes.

(E)

(1) A corporation may indemnify or agree to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of or a volunteer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, member, manager, or agent of or a volunteer of another domestic or foreign nonprofit corporation or business corporation, a limited liability company, or a partnership, joint venture, trust, or other enterprise, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not create, of itself, a presumption that the person did not act in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, a presumption that the person had reasonable cause to believe that the person's conduct was unlawful.

(2) A corporation may indemnify or agree to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor, by reason of the fact that the person is or was a director, officer, employee, or agent of or a volunteer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, member, manager, or agent of or a volunteer of another domestic or foreign nonprofit corporation or business corporation, a limited liability company, or a partnership, joint venture, trust, or other enterprise against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any of the following:

(a) Any claim, issue, or matter as to which the person is adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless, and only to the extent that, the court of common pleas or the court in which the

action or suit was brought determines, upon application, that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court considers proper;

(b) Any action or suit in which liability is asserted against a director and that liability is asserted only pursuant to section [1702.55](#) of the Revised Code.

(3) To the extent that a director, officer, employee, member, manager, agent, or volunteer has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in division (E)(1) or (2) of this section, or in defense of any claim, issue, or matter in such an action, suit, or proceeding, the person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with that action, suit, or proceeding.

(4) Unless ordered by a court and subject to division (E)(3) of this section, any indemnification under division (E)(1) or (2) of this section shall be made by the corporation only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee, member, manager, agent, or volunteer is proper in the circumstances because the person has met the applicable standard of conduct set forth in division (E)(1) or (2) of this section. Such determination shall be made in any of the following manners:

(a) By a majority vote of a quorum consisting of directors of the indemnifying corporation who were not and are not parties to or threatened with the action, suit, or proceeding referred to in division (E)(1) or (2) of this section;

(b) Whether or not a quorum as described in division (E)(4)(a) of this section is obtainable, and if a majority of a quorum of disinterested directors so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the corporation or any person to be indemnified within the past five years;

(c) By the members;

(d) By the court of common pleas or the court in which the action, suit, or proceeding referred to in division (E)(1) or (2) of this section was brought.

If an action or suit by or in the right of the corporation is involved, any determination made by the disinterested directors under division (E)(4)(a) of this section or by independent legal counsel under division (E)(4)(b) of this section shall be communicated promptly to the person who threatened or brought the action or suit under division (E)(2) of this section, and, within ten days after receipt of that notification, the person shall have the right to petition the court of common pleas or the court in which the action or suit was brought to review the reasonableness of that determination.

(5)

(a)

(i) Unless, at the time of a director's or volunteer's act or omission that is the subject of an action, suit, or proceeding referred to in division (E)(1) or (2) of this section, the articles or regulations of the corporation state, by specific reference to this division, that its provisions do not apply to the corporation, or unless the only liability asserted against a director in an action, suit, or proceeding referred to in division (E)(1) or (2) of this section is pursuant to section [1702.55](#) of the Revised Code, or unless division (E)(5)(a)(ii) of this section applies, the expenses incurred by the director or volunteer in defending the action, suit, or proceeding, including attorney's fees, shall be paid by the corporation. Upon the request of the director or volunteer and in accordance with division (E)(5)(b) of this section, those expenses shall be paid as they are incurred, in advance of the final disposition of the action, suit, or proceeding.

(ii) Notwithstanding division (E)(5)(a)(i) of this section, the expenses incurred by a director or volunteer in defending an action, suit, or proceeding referred to in division (E)(1) or (2) of this section, including attorney's fees, shall not be paid by the corporation upon the final disposition of the action, suit, or proceeding, or, if paid in advance of the final disposition of the action, suit, or proceeding, shall be repaid to the corporation by the director or volunteer, if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the director or volunteer was one undertaken with a deliberate intent to cause injury to the corporation or was one undertaken with a reckless disregard for the best interests of the corporation.

(b) Expenses, including attorney's fees, incurred by a director, officer, employee, member, manager, agent, or volunteer in defending any action, suit, or proceeding referred to in division (E)(1) or (2) of this section may be paid by the corporation as they are incurred, in advance of the final disposition of the action, suit, or proceeding, as authorized by the directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee, member, manager, agent, or volunteer to repay the amount if it ultimately is determined that the person is not entitled to be indemnified by the corporation.

(6) The indemnification or advancement of expenses authorized by this section is not exclusive of, and shall be in addition to, any other rights granted to those seeking indemnification or advancement of expenses, pursuant to the articles, the regulations, any agreement, a vote of members or disinterested directors, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions, and shall continue as to a person who has ceased to be a director, officer, employee, member, manager, agent, or volunteer and shall inure to the benefit of the heirs, executors, and administrators of that person. A right to indemnification or to advancement of expenses arising under a provision of the articles or the regulations shall

not be eliminated or impaired by an amendment to that provision after the occurrence of the act or omission that becomes the subject of the civil, criminal, administrative, or investigative action, suit, or proceeding for which the indemnification or advancement of expenses is sought, unless the provision in effect at the time of that act or omission explicitly authorizes that elimination or impairment after the act or omission has occurred.

(7) A corporation may purchase and maintain insurance, or furnish similar protection, including, but not limited to, trust funds, letters of credit, or self-insurance, for or on behalf of any person who is or was a director, officer, employee, agent, or volunteer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, member, manager, agent, or volunteer of another domestic or foreign nonprofit corporation or business corporation, a limited liability company, or a partnership, joint venture, trust, or other enterprise, against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against that liability under this section. Insurance may be so purchased from or so maintained with a person in which the corporation has a financial interest.

(8) The authority of a corporation to indemnify persons pursuant to division (E)(1) or (2) of this section does not limit the payment of expenses as they are incurred, in advance of the final disposition of an action, suit, or proceeding, pursuant to division (E)(5) of this section or the payment of indemnification, insurance, or other protection that may be provided pursuant to division (E)(6) or (7) of this section. Divisions (E)(1) and (2) of this section do not create any obligation to repay or return payments made by a corporation pursuant to division (E)(5), (6), or (7) of this section.

(9) As used in division (E) of this section, "corporation" includes all constituent corporations in a consolidation or merger, and the new or surviving corporation, so that any person who is or was a director, officer, employee, agent, or volunteer of a constituent corporation or is or was serving at the request of a constituent corporation as a director, officer, employee, member, manager, agent, or volunteer of another domestic or foreign nonprofit corporation or business corporation, a limited liability company, or a partnership, joint venture, trust, or other enterprise, shall stand in the same position under this section with respect to the new or surviving corporation as the person would if the person had served the new or surviving corporation in the same capacity.

(F) In carrying out the purposes stated in its articles and subject to limitations prescribed by law or in its articles, a corporation may do the following:

(1) Purchase or otherwise acquire, lease as lessee, invest in, hold, use, lease as lessor, encumber, sell, exchange, transfer, and dispose of property of any description or any interest in property of any description;

(2) Make contracts;

- (3) Form or acquire the control of other domestic or foreign nonprofit corporations or business corporations;
 - (4) Be a partner, member, associate, or participant in other enterprises or ventures, whether profit or nonprofit;
 - (5) Borrow money, and issue, sell, and pledge its notes, bonds, and other evidences of indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust, of all or any of its property, and guarantee or secure obligations of any person;
 - (6) Become a member of another corporation;
 - (7) Conduct its affairs in this state and elsewhere;
 - (8) Resist a change or potential change in control of the corporation, if the directors, by a majority vote of a quorum, determine that the change or potential change is opposed to or not in the best interests of the corporation, upon consideration of any of the matters set forth in division (F) of section [1702.30](#) of the Revised Code;
 - (9) Do all things permitted by law and exercise all authority within the purposes stated in its articles or incidental to those purposes.
- (G) Irrespective of the purposes stated in its articles, but subject to limitations or prohibitions stated in its articles, a corporation, in addition to the authority conferred by division (F) of this section, may invest its funds not currently needed in carrying out its purposes in any shares or other securities of another nonprofit corporation or business corporation, or another business or undertaking.
- (H)
- (1) Notwithstanding any other provision of this section to the contrary, no corporation that is a "private foundation," as defined in section 509 of the Internal Revenue Code, shall do the following:
 - (a) Engage in any act of "self-dealing," as defined in section 4941 (d) of the Internal Revenue Code, that would give rise to any liability for any tax imposed by section 4941 of the Internal Revenue Code;
 - (b) Retain any "excess business holdings," as defined in section 4943 (c) of the Internal Revenue Code, that would give rise to any liability for any tax imposed by section 4943 of the Internal Revenue Code;
 - (c) Make any investment that would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for any tax imposed by that section;

(d) Make any "taxable expenditures," as defined in section 4945 (d) of the Internal Revenue Code, that would give rise to any liability for any tax imposed by section 4945 of the Internal Revenue Code.

(2) Each corporation that is a "private foundation," as defined in section 509 of the Internal Revenue Code, shall, for the purposes specified in its articles, distribute at such time and in such manner, for each taxable year, amounts at least sufficient to avoid liability for any tax imposed by section 4942 of the Internal Revenue Code.

(3) Divisions (H)(1) and (2) of this section apply to all corporations described in them, whether or not contrary to the provisions of the articles or regulations of such a corporation, except that divisions (H)(1) and (2) of this section do not apply to a corporation in existence on September 17, 1971, to the extent that such corporation provides to the contrary by amendment to its articles adopted after that date.

(4) Violation of a provision of division (H)(1) or (2) of this section by a corporation to which the provisions of those divisions are applicable is not cause for cancellation of its articles. No director or officer of a corporation to which the provisions of division (H)(1) or (2) of this section are applicable is personally liable for a violation of a prohibition or requirement of those provisions, unless the director or officer participated in such violation knowing that it was a violation, and no director or officer is personally liable if such violation was not willful and was due to reasonable cause, except that this division does not exonerate a director or officer from any responsibility or liability to which the director or officer is subject under any other rule of law, whether or not duplicated in division (H) (1) or (2) of this section.

(5) Except as provided in division (H)(4) of this section, nothing in division (H) of this section impairs the rights and powers of the courts or the attorney general of this state with respect to any corporation.

(6) As used in division (H) of this section, "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(I)

(1) No lack of, or limitation upon, the authority of a corporation shall be asserted in any action except as follows:

(a) By the state in an action by it against the corporation;

(b) By or on behalf of the corporation against a director, an officer, or a member as such;

(c) By a member as such or by or on behalf of the members against the corporation, a director, an officer, or a member as such.

(2) Division (I)(1) of this section shall apply to any action brought in this state upon any contract made in this state by a foreign corporation.

Amended by 129th General Assembly File No.72, HB 48, §1, eff. 5/4/2012.

Effective Date: 04-10-2001 .

1702.13 Membership.

(A) The corporation shall maintain a record of its members containing the name and address of each member, the date of admission to membership, and, if members are classified, the class to which the member belongs.

(B) A corporation may issue certificates evidencing membership in it, but a corporation incorporated on or after June 9, 1927, shall not issue certificates for shares.

(C) Membership in a corporation may be terminated in the manner provided by law, the articles, or the regulations, and upon the termination of membership for any cause, such fact and the date of termination shall be recorded in the corporation's membership records.

(D) Unless the articles or the regulations otherwise provide, all the rights and privileges of a member in the corporation and its property shall cease on termination of membership.

(E) If permitted by the articles or the regulations of a corporation, another nonprofit corporation, a business corporation, a limited liability company, or any partnership, may become a member of the first mentioned corporation.

(F) Whenever the number of members of a corporation that, under the law, the articles, or the regulations, must have a specified number of members, is reduced below the specified number, the corporation shall not be required because of that reduction to cease carrying on its activities, but the continuing members may fill all vacancies.

(G) Unless otherwise provided in the articles or regulations of a corporation, all members have the same membership rights and privileges.

Effective Date: 04-10-2001 .

1702.14 Absence of provision for members.

Where neither the articles nor the regulations provide for members thereof as such, or where a corporation has in fact no members other than the directors, the directors shall, for the purposes of any statute or rule of law relating to corporations, be taken to be the members of such corporation, and they shall have all the rights and privileges of members; except that where the provisions in this chapter relating to meetings of directors differ, it shall be sufficient to comply with the provisions relating to directors.

Effective Date: 04-10-2001 .

1702.15 Corporation to keep books and records of account and minutes of proceedings.

Each corporation shall keep correct and complete books and records of account, together with minutes of the proceedings of its incorporators, members, directors, and committees of the directors or members. Subject to limitations prescribed in the articles or the regulations upon the right of members of a corporation to examine the books and records, all books and records of a corporation, including the membership records prescribed by section [1702.13](#) of the Revised Code, may be examined by any member or director or the agent or attorney of either, for any reasonable and proper purpose and at any reasonable time.

Effective Date: 04-10-2001 .

1702.16 Annual meeting.

An annual meeting of voting members for the election of directors and the consideration of reports to be laid before such meeting shall be held on a date designated by or in the manner provided for in the articles or the regulations. In the absence of such a designation, the annual meeting shall be held on the first Monday of the fourth month following the close of each fiscal year of the corporation. When the annual meeting is not held or directors are not elected thereat, they may be elected at a special meeting called for that purpose.

Effective Date: 04-10-2001 .

1702.17 Meetings of voting members - calling and place of meeting.

(A) Meetings of voting members may be called by any of the following:

- (1) The chairperson of the board, the president, or, in case of the president's absence, death, or disability, the vice-president authorized to exercise the authority of the president;
- (2) The directors by action at a meeting, or a majority of the directors acting without a meeting;
- (3) The lesser of (a) ten per cent of the voting members or (b) twenty-five of the voting members, unless the articles or the regulations specify for such purpose a smaller or larger proportion or number, but not in excess of fifty per cent of the voting members;
- (4) Any other officers or persons that the articles or the regulations authorize to call such meetings.

(B) If so provided in the articles or the regulations, meetings of voting members may be held either within or without this state or solely by means of authorized communications equipment.

(C) Unless the articles or regulations provide otherwise, the voting members and proxyholders who are not physically present at a meeting of voting members may attend the meeting by the use of authorized communications equipment that enables the voting members and proxyholders an opportunity to participate in the meeting and to vote on matters submitted to the voting members, including an opportunity to read or hear the proceedings of the meeting, participate in the proceedings, and contemporaneously communicate with the persons who are physically present at the meeting. Any voting member who uses authorized communications equipment under this division is deemed to be present in person at the meeting whether the meeting is held at a designated place or solely by means of authorized communications equipment. The directors may adopt procedures and guidelines for the use of authorized communications equipment in connection with a meeting of voting members to permit the corporation to verify that a person is a voting member or proxyholder and to maintain a record of any vote or other action taken at the meeting.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.18 Notice of meeting.

Unless the articles or the regulations provide for notice of meetings otherwise than as provided in this section, written notice stating the place, if any, and the time of a meeting and the means, if any, by which the voting members can be present and vote at the meeting through the use of authorized communications equipment, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given in the manner described in section [1702.02](#) of the Revised Code, not less than ten or not more than sixty days before the date of the meeting: (A) to each member entitled to notice of the meeting; (B) by or at the direction of the president or the secretary or any other person required or permitted by the regulations to give notice or the officers or persons calling the meeting. If mailed or sent by overnight delivery service, that notice shall be addressed to the member at the member's address as it appears on the records of the corporation. If sent by means of authorized communications equipment, that notice shall be sent to the address furnished by the voting member for transmissions by authorized communications equipment. Notice of adjournment of a meeting need not be given if the place, if any, and the time to which it is adjourned and the procedure by which the voting members can be present and vote at the adjourned meeting through the use of authorized communications equipment are fixed and announced at the meeting.

Effective Date: 04-10-2001; 08-19-2005 .

1702.19 Waiver of notice.

(A) Notice of the place, if any, the time, and the purposes of any meeting of voting members or directors, as the case may be, whether required by law, the articles, the regulations, or (in the case of directors) the bylaws, may be waived in writing, either before or after the holding of such meeting, by any member, or by any director, which writing shall be filed with or entered upon the records of the meeting. A transmission by authorized communications equipment that contains a waiver is a writing for purposes of this division.

(B) If a member or director attends a meeting described in division (A) of this section without protesting prior to or at the commencement of the meeting, then the lack of proper notice shall be deemed to be a waiver by the member or director of notice of the meeting.

(C) Unless the articles or regulations provide otherwise, a member shall be considered in attendance at a meeting described in division (A) of this section if the member is present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy. Unless the articles or regulations provide otherwise, a director shall be considered in attendance at a meeting described in division (A) of this section if the director is present in person or by the use of authorized communications equipment.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.20 Voting.

(A) Except as otherwise provided in the articles or the regulations, each member, regardless of class, shall be entitled to one vote on each matter properly submitted to the members for their vote, consent, waiver, release, or other action.

(B) Unless the articles or the regulations provide otherwise, voting at elections and votes on other matters may be conducted by mail or by the use of authorized communications equipment.

(C) Participation by a member in a meeting through the use of any of the means of communication described in division (B) of this section constitutes presence in person of that member at the meeting. The directors may adopt procedures and guidelines for the use of authorized communications equipment to permit the corporation to verify that a person is a voting member and to maintain a record of any vote.

(D) Unless the articles or the regulations otherwise provide, no member who is a natural person shall vote or act by proxy.

Effective Date: 10-11-1955; 08-19-2005; 2006 HB699 03-29-2007 .

1702.21 Voting of membership in corporation.

(A) When any domestic corporation or domestic business corporation holds membership in a domestic or foreign corporation, the chairperson of the board, the president, any vice-president, the secretary, or the treasurer of the corporation or business corporation holding such membership, and any such officer or cashier or trust officer of a banking or trust corporation holding such membership, and any like officer of a foreign corporation or foreign business corporation, or of a foreign banking or trust corporation, holding membership in a domestic corporation, shall conclusively be deemed to have authority to vote on behalf of that corporation or business corporation, and to appoint proxies and execute written consents, waivers, and releases on its behalf, unless, before a vote is taken or a consent, waiver, or release is acted upon, it appears by a certified copy of the regulations, the bylaws, or a resolution of the directors, or executive committee of that corporation or business corporation that such authority does not exist or is vested in some other officer or person.

(B) When any domestic or foreign limited liability company holds membership in a domestic or foreign corporation, any manager or member of the limited liability company holding that membership shall conclusively be deemed to have authority to vote on behalf of that limited liability company and to appoint proxies and execute written consents, waivers, and releases on its behalf, unless before a vote is taken or a consent, waiver, or release is acted upon, it appears by a certified copy of the articles of organization, operating agreement, or a resolution of the managers or the members of that limited liability company that such authority does not exist or is vested in some other representative or person.

(C) For the purpose of this section, a person exercising authority as an officer, representative, or other person entitled to vote and acting in that capacity is prima-facie deemed to be duly elected, qualified, and acting as that officer, representative, or other person entitled to vote and acting in that capacity.

Effective Date: 04-10-2001 .

1702.22 Quorum of voting members.

Unless the articles or the regulations otherwise provide:

(A)

(1) The voting members present in person , by the use of authorized communications equipment, by mail, or, if permitted, by proxy at any meeting of voting members shall constitute a quorum for the meeting.

(2) The affirmative vote of a majority of the voting members present at a meeting at which a quorum is present as provided in division (A)(1) of this section shall be necessary for the authorization or taking of any action voted upon by the members, except that no action required by law, the articles, or the regulations to be authorized or taken by a

specified proportion or number of the voting members or of any class of voting members may be authorized or taken by a lesser proportion or number.

(B) A majority of the voting members present at a meeting, whether or not a quorum is present, may adjourn the meeting from time to time.

Effective Date: 04-10-2001; 2006 HB699 03-29-2007 .

1702.23 Controlling provisions of articles or regulations.

Whenever, with respect to the authorization or taking of any action by the members or the directors, the articles or the regulations require the vote, consent, waiver, or release of a greater proportion or number of the members or the directors than that otherwise required by law with respect thereto, the provisions of the articles or the regulations shall control.

Effective Date: 04-10-2001 .

1702.24 Vote of members required for rescission or revocation.

The authorization or taking of any action by vote, consent, waiver, or release of the members may be rescinded or revoked by the same vote, consent, waiver, or release as at the time of rescission or revocation would be required to authorize or take such action in the first instance, subject to the contract rights of other persons.

Effective Date: 10-11-1955 .

1702.25 Action by members or directors without a meeting.

(A) Unless the articles or the regulations prohibit the authorization or taking of any action of the incorporators, the members, or the directors without a meeting, any action that may be authorized or taken at a meeting of the incorporators, the members, or the directors, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, all of the incorporators, all of the members, or all of the directors, as the case may be, who would be entitled to notice of a meeting for that purpose, or, in the case of members, any other proportion or number of voting members, not less than a majority, that the articles or the regulations permit. Any such writing shall be filed with or entered upon the records of the corporation. Any certificate with respect to the authorization or taking of any action described in this division that is required to be filed in the office of the secretary of state shall recite that the authorization or taking of that action was in a writing or writings approved and signed as specified in this section.

(B) Any transmission by authorized communications equipment that contains an affirmative vote or approval of the person described in division (A) of this section is a

signed writing for purposes of this section. The date on which that transmission by authorized communications equipment is sent is the date on which the writing is signed.

Effective Date: 04-10-2001; 08-19-2005 .

1702.26 Election of directors.

(A) At a meeting of members at which directors are to be elected, only persons nominated as candidates shall be eligible for election as directors.

(B) At all elections of directors the candidates receiving the greatest number of votes shall be elected.

Effective Date: 04-10-2001 .

1702.27 Number and qualifications of directors - ex officio directors - provisional director.

(A) Except as provided in division (B) of this section and section [1702.521](#) of the Revised Code:

(1) The number of directors as fixed by the articles or the regulations shall be not less than three or, if not so fixed, the number shall be three, except that if there are only one or two members of the corporation, the number of directors may be less than three but not less than the number of members.

(2)

(a) Subject to division (A)(2)(c) of this section, unless the articles or the regulations fix the number of directors or provide the manner in which that number may be fixed or changed by the voting members, the number may be fixed or changed at a meeting of the voting members called for the purpose of electing directors, if a quorum is present, by the affirmative vote of a majority of the voting members present in person , by the use of authorized communications equipment, by mail, or, if permitted, by proxy.

(b) For purposes of division (A)(2)(a) of this section, participation by a voting member in a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(c) No reduction in the number of directors shall of itself have the effect of shortening the term of any incumbent director.

(3) The director shall have the qualifications, if any, that are stated in the articles or the regulations.

(4) The articles or the regulations may provide that persons occupying certain positions within or without the corporation shall be ex officio directors, but, unless otherwise provided in the articles or the regulations, such ex officio directors shall not be considered for quorum purposes and shall have no vote.

(B) The court of common pleas of the county in which the corporation maintains its principal office may, pursuant to division (A) of section [1702.521](#) of the Revised Code, order the appointment of a provisional director for the corporation without regard to the number or qualifications of directors stated in the articles or regulations of the corporation.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.28 Term and classification of directors.

(A) Unless the articles or the regulations provide for a different term, each director shall hold office until the next annual meeting of voting members and until the director's successor is elected, or until the director's earlier resignation, removal from office, or death.

(B) The articles or the regulations may provide for the classification of directors into classes and that the terms of office of the several classes need not be uniform.

Effective Date: 04-10-2001 .

1702.29 Removal of directors and filling vacancies.

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

(B) A director may be removed from office pursuant to any procedure therefor provided in the articles or in the regulations and such removal shall create a vacancy in the board.

(C) Unless the articles or the regulations otherwise provide, the remaining directors, though less than a majority of the whole authorized number of directors, may, by the vote of a majority of their number, fill any vacancy in the board for the unexpired term. Within the meaning of this section, a vacancy exists in case the voting members increase the authorized number of directors but fail at the meeting at which such increase is authorized, or an adjournment thereof, to elect the additional directors provided for, or in case the voting members fail at any time to elect the whole authorized number of directors.

Effective Date: 04-10-2001 .

1702.30 Authority of directors.

(A) Except where the law, the articles, or the regulations require that action be otherwise authorized or taken, all of the authority of a corporation shall be exercised by or under the

direction of its directors. For their own government, the directors may adopt bylaws that are not inconsistent with the articles or the regulations.

(B) A director shall perform the duties of a director, including the duties as a member of any committee of the directors upon which the director may serve, in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. A director serving on a committee of directors is acting as a director.

(C) In performing the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by the following:

- (1) One or more directors, officers, or employees of the corporation who the director reasonably believes are reliable and competent in the matters prepared or presented;
- (2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence;
- (3) A committee of the directors upon which the director does not serve, duly established in accordance with a provision of the articles or the regulations, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(D) For purposes of division (B) of this section:

(1) A director shall not be found to have failed to perform the director's duties in accordance with that division, unless it is proved, by clear and convincing evidence, in an action brought against the director that the director has not acted in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, or with the care that an ordinarily prudent person in a like position would use under similar circumstances. Such an action includes, but is not limited to, an action that involves or affects any of the following:

- (a) A change or potential change in control of the corporation;
- (b) A termination or potential termination of the director's service to the corporation as a director;
- (c) The director's service in any other position or relationship with the corporation.

(2) A director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by the persons described in divisions (C)(1) to (3) of this section, to be unwarranted.

(3) The provisions of this division do not limit relief available under section [1702.301](#) of the Revised Code.

(E)

(1) Subject to divisions (E)(2) and (3) of this section, a director is liable in damages for any act that the director takes or fails to take as director only if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the director was one undertaken with a deliberate intent to cause injury to the corporation or was one undertaken with a reckless disregard for the best interests of the corporation.

(2) Division (E)(1) of this section does not affect the liability of a director under section [1702.55](#) of the Revised Code.

(3) Subject to division (E)(2) of this section, division (E)(1) of this section does not apply if, and only to the extent that, at the time of an act or omission of a director that is the subject of complaint, the articles or the regulations of the corporation state, by specific reference to that division, that its provisions do not apply to the corporation.

(F) For purposes of this section, in determining what a director reasonably believes to be in or not opposed to the best interests of the corporation, a director shall consider the purposes of the corporation and may consider any of the following:

(1) The interests of the employees, suppliers, creditors, and customers of the corporation;

(2) The economy of this state and of the nation;

(3) Community and societal considerations;

(4) The long-term and short-term best interests of the corporation, including, but not limited to, the possibility that those interests may be best served by the continued independence of the corporation.

(G) Divisions (D) and (E) of this section do not affect the duties of a director who acts in any capacity other than in the capacity as a director.

Amended by 129th General Assembly File No. 72, HB 48, §1, eff. 5/4/2012.

Effective Date: 04-10-2001 .

[1702.301 Interest of director or officer in contract.](#)

(A) Unless otherwise provided in the articles or the regulations:

(1) No contract, action, or transaction is void or voidable with respect to a corporation because the contract, action, or transaction is between or affects the corporation and one or more of its directors or officers, or is between or affects the corporation and any other

person in which one or more of the corporation's directors or officers are directors or officers, or in which one or more of the corporation's directors or officers have a financial or personal interest, or because one or more interested directors or officers participate in or vote at the meeting of the directors or a committee of the directors that authorizes the contract, action, or transaction, if any of the following applies:

- (a) The material facts as to the director's relationship or interest and as to the contract, action, or transaction are disclosed or are known to the directors or the committee, and the directors or committee, in good faith reasonably justified by the material facts, authorizes the contract, action, or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors constitute less than a quorum of the directors or the committee;
 - (b) The material facts as to the director's relationship or interest and as to the contract, action, or transaction are disclosed or are known to the members entitled to vote on the contract, action, or transaction, and the contract, action, or transaction is specifically approved at a meeting of the members held for the purpose of voting on the contract, action, or transaction, by the affirmative vote of a majority of the voting members of the corporation who are not interested in the contract, action, or transaction;
 - (c) The contract, action, or transaction is fair as to the corporation as of the time it is authorized or approved by the directors, a committee of the directors, or the members.
- (2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the directors, or of a committee of the directors, that authorizes such a contract, action, or transaction.
- (3) The directors, by the affirmative vote of a majority of those in office, and irrespective of any financial or personal interest of any of the directors, shall have authority to establish reasonable compensation, which may include pension, disability, and death benefits, for services to the corporation by directors and officers, or to delegate that authority to establish reasonable compensation to one or more officers or directors.
- (B) Divisions (A)(1) and (2) of this section do not limit or otherwise affect the liability of directors under section [1702.55](#) of the Revised Code.
- (C) For purposes of division (A) of this section, a director is not an interested director solely because the subject of a contract, action, or transaction may involve or effect a change in control of the corporation or the director's continuation in office as a director of the corporation.
- (D) For purposes of this section, "action" means a resolution that is adopted by the directors or a committee of the directors.

Effective Date: 04-10-2001 .

1702.31 Meetings of directors - notice.

Unless otherwise provided in the articles, regulations, or bylaws, and subject to the exceptions applicable during an emergency for which provision is made in division (G) of section [1702.11](#) of the Revised Code:

(A) Meetings of the directors may be called by the chairperson of the board, the president, any vice-president, or any two directors.

(B) Meetings of the directors may be held at any place within or without the state, including by means of authorized communications equipment, unless the articles or regulations prohibit participation by directors at a meeting by means of authorized communications equipment. Participation in a meeting pursuant to this division constitutes presence at that meeting.

(C) Notice of the place, if any, and time of each meeting of the directors shall be given to each director either by personal delivery or by mail, by overnight delivery service, or by means of authorized communications equipment at least two days before the meeting. That notice need not specify the purposes of the meeting.

(D) Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at that meeting.

Effective Date: 04-10-2001; 08-19-2005 .

1702.32 Quorum for directors' meeting.

Unless the articles or the regulations otherwise provide, and subject to the exceptions applicable during an emergency for which provision is made in division (G) of section [1702.11](#) of the Revised Code, a majority of the whole authorized number of directors is necessary to constitute a quorum for a meeting of the directors, except that a majority of the directors in office constitutes a quorum for filling a vacancy in the board. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board, unless the act of a greater number is required by the articles, the regulations, or the bylaws.

Effective Date: 04-10-2001 .

1702.33 Executive and other committees of directors.

(A) The regulations may provide for the creation by the directors of an executive committee or any other committee of the directors, to consist of one or more directors, and may authorize the delegation to any such committee of any of the authority of the directors, however conferred.

- (B) The directors may appoint one or more directors as alternate members of any committee described in division (A) of this section, who may take the place of any absent member or members at any meeting of the particular committee.
- (C) Each committee described in division (A) of this section shall serve at the pleasure of the directors, shall act only in the intervals between meetings of the directors, and shall be subject to the control and direction of the directors.
- (D) Unless otherwise provided in the regulations or ordered by the directors, any committee described in division (A) of this section may act by a majority of its members at a meeting or by a writing or writings signed by all of its members.
- (E) Meetings of committees described in division (A) of this section may be held by any means of authorized communications equipment, unless participation by members of the committee at a meeting by means of authorized communications equipment is prohibited by the articles, the regulations, or an order of the directors. Participation in a meeting pursuant to this division constitutes presence at the meeting.
- (F) An act or authorization of an act by any committee described in division (A) of this section within the authority delegated to it shall be as effective for all purposes as the act or authorization of the directors.

Effective Date: 04-10-2001; 08-19-2005 .

1702.34 Officers - authority and removal.

- (A) The officers of a corporation shall consist of a president, a secretary, a treasurer, and, if desired, a chairperson of the board, one or more vice-presidents, and such other officers and assistant officers as may be deemed necessary, each of whom may be designated by such other titles as may be provided in the articles, the regulations, the bylaws, or resolutions of the directors. Unless the articles or the regulations otherwise provide, none of the officers need be a director. Any two or more offices may be held by the same person. The officers shall be elected or appointed at such time, in such manner, and for such terms as may be prescribed in the articles or the regulations. In the absence of any such provision, all officers shall be elected annually by the directors.
- (B) Unless the articles or the regulations otherwise provide, and subject to the exceptions applicable during an emergency for which provision is made in division (G) of section [1702.11](#) of the Revised Code:
- (1) All officers, as between themselves and the corporation, shall respectively have such authority and perform such duties as are determined by the persons authorized to elect or appoint them;

(2) Any officer may be removed, with or without cause, by the persons authorized to elect or appoint the officer without prejudice to the contract rights of such officer. The election or appointment of an officer for a given term, or a general provision in the articles, the regulations, or the bylaws with respect to term of office, shall not be deemed to create contract rights;

(3) The persons authorized to elect or appoint officers may fill any vacancy in any office occurring from whatever reason.

Effective Date: 04-10-2001 .

1702.35 Corporate property.

All property acquired by a corporation by purchase, gift, devise, bequest, or otherwise shall be the absolute property of the corporation, unless at the time of acquiring such property it is otherwise in writing specified.

Effective Date: 10-11-1955 .

1702.36 Corporate mortgages.

The directors may authorize any mortgage, pledge, or deed of trust of all or any of the property of the corporation of any description, or any interest therein, for the purpose of securing the payment or performance of any obligation or contract. Unless the articles or the regulations, or the terms of any trust on which the corporation holds any particular property, otherwise provide, no vote or consent of members or authorization from the court under section [1715.39](#) of the Revised Code is necessary for such action.

Effective Date: 04-10-2001 .

1702.37 Usury.

No domestic or foreign corporation, or any one on its behalf, shall interpose the defense or make the claim of usury in any proceeding upon or with reference to any obligation of such corporation; nor shall any corporate note, bond, or other evidence of indebtedness, mortgage, pledge, or deed of trust, be set aside, impaired, or adjudged invalid by reason of anything contained in laws prohibiting usury or regulating interest rates.

Effective Date: 10-11-1955 .

1702.38 Amendments to articles.

(A) The articles may be amended from time to time in any respect if the articles as amended set forth all the provisions that are required in, and only those provisions that may properly be in, original articles filed at the time of adopting the amendment, other

than with respect to the initial directors, except that a public benefit corporation shall not amend its articles in such manner that it will cease to be a public benefit corporation.

(B) Without limiting the generality of the authority described in division (A) of this section, the articles may be amended to:

(1) Change the name of the corporation;

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

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

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

(C)

(1) The voting members present in person, by use of authorized communications equipment, by mail, or, if permitted, by proxy at a meeting held for that purpose, may adopt an amendment by the affirmative vote of a majority of the voting members present if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations.

(2) For purposes of division (C)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(D) In addition to or in lieu of adopting an amendment to the articles, the voting members may adopt amended articles by the same action or vote as that required to adopt the amendment.

(E) The directors may adopt amended articles to consolidate the original articles and all previously adopted amendments to the articles that are in force at the time, or the voting members at a meeting held for that purpose may adopt the amended articles by the same vote as that required to adopt an amendment.

(F) Amended articles shall set forth all the provisions that are required in, and only the provisions that may properly be in, original articles filed at the time of adopting the amended articles, other than with respect to the initial directors, and shall contain a statement that they supersede the existing articles.

(G) Upon the adoption of any amendment or amended articles, a certificate containing a copy of the resolution adopting the amendment or amended articles, a statement of the

manner of its adoption, and, in the case of adoption of the resolution by the directors, a statement of the basis for such adoption, shall be filed with the secretary of state, and upon that filing the articles shall be amended accordingly, and the amended articles shall supersede the existing articles. The certificate shall be signed by any authorized officer of the corporation.

(H) A copy of an amendment or amended articles changing the name of a corporation or its principal office in this state, certified by the secretary of state, may be filed for record in the office of the county recorder of any county in this state, and for that recording the county recorder shall charge and collect the same fee as provided for in division (A)(1) of section 317.32 of the Revised Code. That copy shall be recorded in the official records of the county recorder.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 129th General Assembly File No. 201, HB 479, §1, eff. 3/27/2013.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.39 Mutual benefit corporation - disposition of assets.

(A)

(1) Unless the articles or the regulations, or the terms of any trust on which the corporation holds any particular property, otherwise provide, a lease, sale, exchange, transfer, or other disposition of any assets of a mutual benefit corporation may be made without the necessity of procuring authorization from the court under section [1715.39](#) of the Revised Code, upon the terms and for the consideration, which may consist, in whole or in part, of money or other property, including shares or other securities or promissory obligations of any business corporation, domestic or foreign, that may be authorized by the directors, except that a lease, sale, exchange, transfer, or other disposition of all, or substantially all, the assets may be made only when that transaction is also authorized (either before or after authorization by the directors) by the voting members present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present as described in this division, if a quorum is present, or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations. Notice of the meeting of the members shall be given to all members entitled to vote at the meeting. Such notice shall be accompanied by a copy or summary of the terms of that transaction.

(2) For purposes of division (A)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division

constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(B)

(1) A public benefit corporation may not dispose of its assets with value equal to more than fifty per cent of the fair market value of the net tangible and intangible assets, including goodwill, of the corporation over a period of thirty-six consecutive months in a transaction or series of transactions, including the lease, sale, exchange, transfer, or other disposition of those assets, that are outside the ordinary course of its business or that are not in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds such assets, unless one or more of the following apply:

(a) The transaction has received the prior approval of the court of common pleas of the county in this state in which the principal office of the corporation is located, in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right.

(b)

(i) The corporation has provided written notice of the proposed transaction, including a copy or summary of the terms of such transaction, at least twenty days before consummation of the lease, sale, exchange, transfer, or other disposition of the assets, to the attorney general's charitable law section and to the members of the corporation, and the proposed transaction has been approved by the voting members present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present as described in this division, if a quorum is present, or, if the articles or regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and if the articles or regulations require, by the affirmative vote of the voting members of any particular class.

(ii) For purposes of division (B)(1)(b)(i) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(c) The transaction is in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds the assets, and the lessee, purchaser, or transferee of the assets is also a public benefit corporation or a foreign corporation that would qualify under the Revised Code as a public benefit corporation.

(2) The attorney general may require, pursuant to section [109.24](#) of the Revised Code, the production of the documents necessary for review of a proposed transaction under division (B)(1) of this section. The attorney general may retain, at the expense of the public benefit corporation, one or more experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed transaction under division (B)(1) of this section.

(C) The attorney general may institute a civil action to enforce the requirements of division (B)(1) of this section in the court of common pleas of the county in this state in which the principal office of the corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.

(D) The corporation by its directors may abandon the proposed lease, sale, exchange, transfer, or other disposition of the assets of the corporation pursuant to division (A) or (B) of this section, subject to the contract rights of other persons, if that power of abandonment is conferred upon the directors either by the terms of the transaction or by the same vote of voting members and at the same meeting of members as that referred to in division (A) or (B) of this section, as applicable, or at any subsequent meeting.

(E) An action to set aside a conveyance by a corporation, on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of the assets of such corporation has not been complied with, shall be brought within one year after that transaction, or the action shall be forever barred.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.40 Judicial sale of property.

Property of any description, and any interest therein, of a corporation, domestic or foreign, may be sold under the judgment or decree of a court, as provided in the Revised Code with respect to similar property of natural persons, at public or private sale, in such manner, at such time and place, on such notice by publication or otherwise, and on such terms, as the court adjudging or decreeing such sale deems equitable and proper, but it shall not be necessary to appraise such property or to advertise the sale thereof otherwise than as the court adjudges or decrees.

Effective Date: 10-11-1955 .

1702.41 Merger or consolidation into domestic corporation.

(A)

(1) Pursuant to an agreement of merger, a domestic corporation and one or more additional domestic or foreign entities may be merged into a surviving domestic corporation. Pursuant to an agreement of consolidation, one or more domestic or foreign entities may be consolidated into a new domestic corporation. If any constituent entity is formed or organized under the laws of any state other than this state or under any chapter of the Revised Code other than this chapter, the merger or consolidation also must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(2) To effect a merger or consolidation under this section, the directors of each constituent domestic corporation shall approve an agreement of merger or consolidation to be signed by the chairperson of the board of directors, the president, or a vice-president and by the secretary or an assistant secretary. The agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

(3) The agreement of merger or consolidation shall set forth all of the following:

(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(b) That the named constituent entities have agreed to merge into a specified constituent corporation, designated in this section as the surviving corporation, or that the named constituent entities have agreed to consolidate into a new corporation to be formed by the consolidation, designated in this section as the new corporation;

(c) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists;

(d) The name of the surviving or new corporation, which may be the same as or similar to that of any constituent corporation;

(e) The place in this state where the principal office of the surviving or new corporation is to be located;

(f) The names and addresses of the first directors and officers of the surviving or new corporation, and, if desired, their term or terms of office;

(g) The name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the surviving or new corporation may be served;

(h) The terms of the merger or consolidation and the mode of carrying those terms into effect;

(i) The regulations of the surviving or new corporation or a provision to the effect that the regulations of a specified constituent corporation shall be the regulations of the surviving

or new corporation or to the effect that the voting members or the directors of the surviving or new corporation may adopt regulations, or any combination of them.

(4) The agreement of merger or consolidation may also set forth any of the following:

(a) The specification of a date, which may be the date of the filing of the agreement or a date subsequent to that date of filing, upon which the merger or consolidation shall become effective;

(b) A provision conferring upon the directors of one or more of the constituent corporations or the comparable representatives of any other constituent entity the power to abandon the merger or consolidation prior to the filing of the agreement;

(c) Any additional provision permitted to be included in the articles of a newly formed corporation;

(d) Any additional provision considered necessary or desirable with respect to the proposed merger or consolidation.

(B)

(1) A merger or consolidation in which a domestic public benefit corporation is one of the constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the public benefit corporation is located, in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right. No approval by the court under division (B)(1) of this section is required if either of the following applies:

(a) A domestic public benefit corporation is the surviving entity in the case of a merger and continues to be a public benefit corporation or is the new corporation in the case of a consolidation and continues to be a public benefit corporation.

(b)

A domestic public benefit corporation is not the surviving entity in the case of a merger or is not the new corporation in the case of a consolidation

, and all of the following apply:

(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the domestic public benefit corporation or the fair market value of the domestic public benefit corporation if it is to be operated as a business concern, are transferred or conveyed to one or more persons that would have received its assets under section [1702.49](#) of the Revised Code had it voluntarily dissolved.

(ii) The domestic public benefit corporation returns, transfers, or conveys any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger or consolidation, in accordance with that condition.

(iii) The merger or consolidation is approved by a majority of directors of the domestic public benefit corporation who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, directors, officers, managers, employees, agents, or other representatives of, or consultants to, the surviving or new entity.

(2) At least twenty days before consummation of any merger or consolidation of a domestic public benefit corporation pursuant to division (B)(1)(b) of this section, written notice, including a copy of the proposed plan of merger or consolidation, shall be delivered to the attorney general's charitable law section. The attorney general's charitable law section may review a proposed merger or consolidation of a domestic public benefit corporation under division (B)(1)(b) of this section. The attorney general may require, pursuant to section [109.24](#) of the Revised Code, the production of the documents necessary for review of a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may retain, at the expense of the domestic public benefit corporation, one or more experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may extend the date of any merger or consolidation of a domestic public benefit corporation under division (B)(1)(b) of this section for a period not to exceed sixty days and shall provide notice of that extension to the domestic public benefit corporation. The notice shall set forth the reasons necessitating the extension.

(3) No member, other than a member that is a public benefit entity, or director of a domestic public benefit corporation in that person's capacity as a member or director may receive or keep anything as a result of a merger or consolidation other than membership or directorship in the surviving or new public benefit corporation, without the prior written consent of the attorney general or of the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located, in a proceeding in which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right . The court shall approve the transaction if it is in the public interest.

(4) The attorney general may institute a civil action to enforce the requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in

this state in which the principal office of the domestic public benefit corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.

Amended by 129th General Assembly File No.79, HB 267, §1, eff. 5/22/2012.

Effective Date: 04-10-2001 .

1702.411 Merger or consolidation into entity other than domestic corporation.

(A)

(1) Pursuant to an agreement of merger between the constituent entities as provided in this section, a domestic corporation and, if so provided, one or more additional domestic or foreign entities, may be merged into a surviving entity other than a domestic corporation. Pursuant to an agreement of consolidation, a domestic corporation together with one or more additional domestic or foreign entities may be consolidated into a new entity other than a domestic corporation, to be formed by that consolidation. The merger or consolidation must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists. The name of the surviving or new entity may be the same as or similar to that of any constituent entity.

(2) To effect a merger or consolidation under this section, the directors of each constituent domestic corporation shall approve an agreement of merger or consolidation to be signed by the chairperson of the board of directors, the president, or a vice-president and by the secretary or an assistant secretary. The agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

(3) The agreement of merger or consolidation shall set forth all of the following:

(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(b) In the case of a merger, that one or more specified constituent entities will be merged into a specified surviving foreign entity or surviving domestic entity other than a domestic corporation or, in the case of a consolidation, that the constituent entities will be consolidated into a new foreign entity or domestic entity other than a domestic corporation.

(c) The terms of the merger or consolidation and the mode of carrying those terms into effect;

(d) If the surviving or new entity is a foreign corporation, all additional statements and matters, other than the name and address of the statutory agent, that would be required by section [1702.41](#) of the Revised Code if the surviving or new corporation were a domestic corporation;

(e) The name and the form of entity of the surviving or new entity, the state under the laws of which the surviving entity exists or the new entity is to exist, and the location of the principal office of the surviving or new entity in that state;

(f) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists and, in the case of a consolidation, the new entity is to exist;

(g) The consent of the surviving or the new entity to be sued and served with process in this state and the irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding in this state to enforce against the surviving or new entity any obligation of any domestic constituent corporation;

(h) 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;

(i) 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;

(j) 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;

(k) If the surviving or new entity is a foreign unincorporated association that desires to transact business in this state as a foreign unincorporated association, a statement to that effect, together with all of the information required under section [1745.461](#) of the Revised Code when a foreign unincorporated association registers to transact business in this state.

(4) The agreement of merger or consolidation also may set forth any additional provision permitted by the laws of any state under the laws of which any constituent entity exists, consistent with the laws under which the surviving entity exists or the new entity is to exist.

(B)

(1) A merger or consolidation in which a domestic public benefit corporation is one of the constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding and in which proceeding the attorney general may intervene as of right. No approval by the court under division (B)(1) of this section is required if either of the following applies:

(a) A public benefit entity is the surviving entity in the case of a merger and continues to be a public benefit entity or is the new entity in the case of a consolidation and continues to be a public benefit entity.

(b) A public benefit entity is not the surviving entity in the case of a merger or is not the new entity in the case of a consolidation, and all of the following apply:

(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the domestic public benefit corporation or the fair market value of the domestic public benefit corporation if it is to be operated as a business concern are transferred or conveyed to one or more persons that would have received its assets under section [1702.49](#) of the Revised Code had it voluntarily dissolved.

(ii) The domestic public benefit corporation returns, transfers, or conveys any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger or consolidation, in accordance with that condition.

(iii) The merger or consolidation is approved by a majority of directors of the domestic public benefit corporation who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, directors, officers, managers, employees, agents, or other representatives of, or consultants to, the surviving or new entity.

(2) At least twenty days before consummation of any merger or consolidation of a domestic public benefit corporation pursuant to division (B)(1)(b) of this section, written notice, including a copy of the proposed plan of merger or consolidation, shall be delivered to the attorney general's charitable law section. The attorney general's charitable law section may review a proposed merger or consolidation of a domestic public benefit corporation under division (B)(1)(b) of this section. The attorney general may require pursuant to section [109.24](#) of the Revised Code the production of the documents necessary for review of a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may retain at the expense of the domestic public benefit corporation one or more experts, including an investment banker, actuary, appraiser,

certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may extend the date of any merger or consolidation of a domestic public benefit corporation under division (B)(1)(b) of this section for a period not to exceed sixty days and shall provide notice of that extension to the domestic public benefit corporation. The notice shall set forth the reasons necessitating the extension.

(3) No member, other than a member that is a public benefit entity, or director of a domestic public benefit corporation in that person's capacity as a member or director may receive or keep anything as a result of a merger or consolidation other than membership or directorship in the surviving or new public benefit entity without the prior written consent of the attorney general or of the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located that is obtained in a proceeding in which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding and in which proceeding the attorney general may intervene as of right. The court shall approve the transaction if it is in the public interest.

(4) The attorney general may institute a civil action to enforce the requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.

Added by 129th General Assembly File No.79, HB 267, §1, eff. 5/22/2012.

1702.42 Agreement of merger or consolidation - vote by members.

(A) The directors of each constituent domestic corporation, upon approving an agreement of merger or consolidation, shall direct that the agreement be submitted to the voting members entitled to vote on it at a meeting of voting members of that corporation held for that purpose. Notice of the meeting shall be given to all members of the constituent domestic corporation entitled to vote at the meeting. The notice shall be accompanied by a copy or summary of the material terms of the agreement.

(B)

(1) At each meeting described in division (A) of this section, a vote of the members shall be taken on the proposed agreement. In order to be adopted, the agreement, including any amendments or additions to the agreement proposed at each such meeting, shall receive the affirmative vote of a majority of the voting members of each constituent domestic corporation present at that meeting in person, by the use of authorized

communications equipment, by mail, or, if permitted, by proxy if a quorum is present, or, if the articles or the regulations of that corporation provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and the affirmative vote of the voting members of any particular class that is required by the articles or the regulations of that corporation. If the agreement would effect or authorize any particular corporate action that, under any applicable provision of law or under the articles , could be effected or authorized only by or pursuant to a specified vote of the members, the agreement , including any amendments or additions to the agreement proposed at each such meeting, shall be adopted by the same affirmative vote as would be required for that action.

(2) For purposes of division (B)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(C) At any time prior to the filing of the agreement, the merger or consolidation may be abandoned by the directors of one or more of the constituent domestic corporations or the comparable representatives of any other constituent entity, if the power of abandonment is conferred either by the agreement or by the same vote or action as is required to adopt that agreement.

Amended by 129th General Assembly File No.79, HB 267, §1, eff. 5/22/2012.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.43 Certificate of merger or consolidation.

(A) Upon adoption by each constituent entity of an agreement of merger or consolidation pursuant to section 1702.41 or 1702.411 of the Revised Code, a certificate of merger or consolidation signed by any authorized representative of each constituent entity, shall be filed with the secretary of state. The certificate shall be on a form prescribed by the secretary of state and shall set forth only the information required by this section.

(1) The certificate of merger or consolidation shall set forth all of the following:

(a) The name of each constituent entity and the state under whose laws each constituent entity exists;

(b) A statement that each constituent entity has complied with all of the laws under which it exists and that the laws permit the merger or consolidation;

(c) The name and mailing address of the person or entity that is to provide, in response to any written request made by a member or other person, a copy of the agreement of merger or consolidation;

- (d) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate;
 - (e) The signature of each representative authorized to sign the certificate on behalf of each constituent entity and the office each representative authorized to sign holds or the capacity in which the representative is acting;
 - (f) A statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that each person who signed the certificate on behalf of each entity is authorized to do so;
 - (g) In the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity;
 - (h) In the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in this state, the name and address of the statutory agent upon whom any process, notice, or demand may be served;
 - (i) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served.
- (2) In the case of a consolidation into a new domestic corporation, the articles of incorporation of the new domestic corporation shall be filed with the certificate of consolidation.
- (3) In the case of a merger into a domestic corporation, any amendments to the articles of incorporation of the surviving domestic corporation shall be filed with the certificate of merger. Filing requirements with respect to mergers and consolidations in which a domestic corporation is not the surviving or resulting entity shall be subject to division (B) of section 1702.43 of the Revised Code.
- (4) If the surviving or new entity is a foreign entity that desires to transact business in this state as a foreign corporation, limited liability company, limited partnership, or unincorporated association, the certificate of merger or consolidation shall be accompanied by the information required by division (A)(3)(h), (i), (j), or (k) of section 1702.411 of the Revised Code, whichever is applicable.
- (5) If a domestic or foreign corporation licensed to transact business in this state is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a domestic or foreign corporation that is to be licensed to transact business in this state, the certificate of merger or consolidation shall be accompanied by the affidavits, receipts, certificates, or other evidence required by division (G) of section 1702.47 of the Revised Code, with respect to each domestic corporation, and by the

affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code, with respect to each foreign constituent corporation licensed to transact business in this state.

(B) If any constituent entity in a merger or consolidation is organized or formed under the laws of a state other than this state or under any chapter of the Revised Code other than this chapter, there also shall be filed in the proper office all documents that are required to be filed in connection with the merger or consolidation by the laws of that state or by that chapter.

(C) Upon the filing of a certificate of merger or consolidation and other filings as described in division (B) of this section, or at a later date that the certificate of merger or consolidation specifies, the merger or consolidation shall become effective.

(D) The secretary of state shall furnish, upon request and payment of the fee specified in division (D) of section 111.16 of the Revised Code, a certificate setting forth the name and form of each constituent entity and the state under whose laws each constituent entity existed prior to the merger or consolidation, the name and form of the surviving or new entity and the state under whose laws the surviving entity exists or the new entity is to exist, the date of filing of the certificate of merger or consolidation with the secretary of state, and the effective date of the merger or consolidation. The certificate of the secretary of state or a copy of the merger or consolidation certified by the secretary of state may be filed for record in the office of the county recorder of any county in this state and, if filed, shall be recorded in the official records of that county. For that recording, the county recorder shall charge and collect the same fee as in the case of deeds.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 129th General Assembly File No. 79, HB 267, §1, eff. 5/22/2012.

Effective Date: 06-06-2001 .

1702.44 Effect of merger or consolidation.

(A) When a merger or consolidation becomes effective, all of the following apply:

(1) The separate existence of each constituent entity other than the surviving entity in a merger shall cease, except that whenever a conveyance, assignment, transfer, deed, or other instrument or act is necessary to vest property or rights in the surviving or new entity, the officers, general partners, or other authorized representatives of the respective constituent entities shall execute, acknowledge, and deliver those instruments and do those acts. For these purposes, the existence of the constituent entities and the authority of their respective officers , directors , general partners, or other authorized representatives is continued notwithstanding the merger or consolidation

(2) In the case of a merger in which the surviving entity is a domestic corporation, the articles of the domestic surviving corporation in effect immediately prior to the time the merger becomes effective shall continue as its articles after the merger except as otherwise provided in the agreement of merger. In the case of a consolidation, the new entity exists when the consolidation becomes effective, and, if it is a domestic corporation, the articles contained in or provided for in the agreement of consolidation shall be its original articles.

(3) The surviving or new entity possesses all assets and property of every description and every interest in the assets and property, wherever located, the rights, privileges, immunities, powers, franchises, and authority, of a public as well as of a private nature, of each constituent entity, and all obligations belonging to or due to each constituent entity, all of which are vested in the surviving or new entity without further act or deed. Any right or interest in respect to any past or future devise, bequest, conditional gift, or trust, property, or fund restricted to particular uses, when vested in or claimed by the surviving or new entity as a result of the merger or consolidation, shall belong to it as a continuation without interruption of the existence and identity of the constituent entity originally named as taker or beneficiary. The surviving or new entity possesses title to any real estate or any interest in the real estate vested in any of the constituent entities. Title to any real estate or any interest in the real estate vested in any constituent entity shall not revert or in any way be impaired by reason of the merger or consolidation.

(4) The surviving or new entity is liable for all of the obligations of each constituent entity. Any claim existing or any action or proceeding pending by or against any constituent entity may be prosecuted to judgment, with right of appeal, as if the merger or consolidation had not taken place, or the surviving or new entity may be substituted in its place.

(5) All of the rights of creditors of each constituent entity are preserved unimpaired, and all liens upon the property of any constituent entity are preserved unimpaired on only the property affected by those liens immediately prior to the effective date of the merger or consolidation

. If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, the former general partner has no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a partner extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity.

(B) If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, division (B)

of section [1782.434](#) of the Revised Code applies.

(C) In the case of a merger of a domestic constituent corporation into a foreign surviving corporation, limited liability company, limited partnership, or unincorporated association that is not licensed or registered to transact business in this state or in the case of a consolidation of a domestic constituent corporation into a new foreign corporation, limited liability company, limited partnership, or unincorporated association, if the surviving or new entity intends to transact business in this state and the certificate of merger or consolidation is accompanied by the information described in division (A)(4) of section [1702.43](#) of the Revised Code, the surviving or new entity shall be considered on the effective date of the merger or consolidation to have complied with the requirements for procuring a license or for registering to transact business in this state as a foreign corporation, limited liability company, limited partnership, or unincorporated association, as the case may be. In that case, a copy of the certificate of merger or consolidation certified by the secretary of state constitutes the license certificate prescribed by the laws of this state for a foreign corporation transacting business in this state or the application for registration prescribed for a foreign limited partnership, limited liability company, or unincorporated association.

(D) Any action to set aside any merger or consolidation on the ground that any section of the Revised Code applicable to the merger or consolidation has not been complied with shall be brought within ninety days after the effective date of that merger or consolidation or be forever barred.

(E) As used in this section, "corporation" or "entity" applies to both domestic and foreign corporations or entities if the context so permits. In the case of a foreign constituent entity or a foreign new entity, this section is subject to the laws of the state under the laws of which the entity exists or in which it has property.

Amended by 129th General Assembly File No. 79, HB 267, §1, eff. 5/22/2012.

Effective Date: 04-10-2001 .

[1702.45 \[Repealed\]](#)

Repealed by 129th General Assembly File No. 79, HB 267, §2, eff. 5/22/2012.

Effective Date: 04-10-2001 .

[1702.46 Effective date of merger or consolidation.](#)

Upon the filing of the certificate of merger or consolidation in compliance with the laws of each state under the laws of which any constituent entity exists, or at any later date that the certificate specifies, the merger or consolidation shall become effective.

Amended by 129th General Assembly File No. 79, HB 267, §1, eff. 5/22/2012.

Effective Date: 07-29-1998 .

1702.461 Conversion to domestic or foreign entity other than a for profit corporation or domestic corporation; written declaration of conversion.

(A) Subject to division (B)(2) of this section and pursuant to a written declaration of conversion as provided in this section, a domestic corporation may be converted into a domestic or foreign entity other than a for profit corporation or a domestic corporation. The conversion also must be permitted by the laws under which the converted entity will exist.

(B)

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

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

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

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

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

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

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

(d) 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;

(e) The terms of the conversion, the mode of carrying them into effect, and the manner and basis of converting the interests of the converting corporation into, or substituting the interests in the converting corporation for, interests in the converted entity.

(2) No conversion or substitution described in this section shall 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.

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

(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, prior to the filing of the certificate of conversion pursuant to section [1702.462](#) of the Revised Code, the converting corporation to abandon the proposed conversion by action of the trustees of the converting corporation or by the same vote as was required to adopt the declaration 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 corporation 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.

(D) The trustees 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 members of the domestic converting corporation, at a meeting held for the purpose.

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

(F) The vote required to adopt a declaration of conversion at a meeting of the members of a domestic converting corporation is the affirmative vote of the members 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 members of any particular class as required by the articles of the converting corporation.

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 members, the declaration of conversion also must be adopted by the same affirmative vote as required for such action.

(G)

(1) At any time before the filing of the certificate of conversion pursuant to section [1702.462](#) of the Revised Code, the conversion may be abandoned by the trustees of the converting corporation, if the trustees are authorized to do so by the declaration of conversion, or by the same vote of the members as was required to adopt the declaration of conversion.

(2) The declaration of conversion may contain a provision authorizing the trustees of the converting corporation to amend the declaration of conversion at any time before the filing of the certificate of conversion pursuant to section [1702.462](#) of the Revised Code, except that, after the adoption of the declaration of conversion by the members of the converting corporation, the trustees may not amend the declaration of conversion to do any of the following:

(a) Alter or change 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;

(b) Alter or change 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 members of the converting corporation.

Added by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

1702.462 Form of certificate of conversion.

(A) Upon the adoption of a declaration of conversion pursuant to section 1702.461 of the Revised Code, 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 shall be filed with the secretary of state. The certificate shall be on a form prescribed by the secretary of state and shall set forth only the information required under division (B) of this section.

(B)

(1) The certificate of conversion shall set forth all of the following:

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

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

(c) 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 member of the

converting entity;

(d) 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;

(e) 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;

(f) 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;

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

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

(2) In the case of a conversion into a 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 shall be filed with the certificate of conversion.

(3) If the converted entity is a foreign entity that desires to transact business in this state, the certificate of conversion shall be accompanied by the information required by divisions (B)(1)(c)(ii) and (iii) of section 1702.461 of the Revised Code.

(4) If a foreign or domestic corporation licensed to transact business in this state is the converting entity, the certificate of conversion shall be accompanied by the affidavits, receipts, certificates, or other evidence required by division (G) of section 1702.47 of the Revised Code, with respect to a converting domestic corporation, or by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code with respect to a foreign corporation.

(C) If the converting entity or the converted entity is organized or formed under the laws of a state other than this state or under any chapter of the Revised Code other than this chapter, all documents required to be filed in connection with the conversion by the laws of that state or that chapter shall be filed in the proper office.

(D) Upon the filing of a certificate of conversion and other filings required by division (C) of this section or at any later date that the certificate of conversion specifies, the conversion is effective, subject to the limitation that no conversion shall 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.

(E) The secretary of state shall furnish, upon request and payment of the fee specified in division (K)(2) of section 111.16 of the Revised Code, the secretary of state's certificate setting forth all of the following:

(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;

(2) The name and 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.

(F) The certificate of the secretary of state, or a copy of the certificate of conversion certified by the secretary of state, may be filed for record in the office of the county recorder of any county in this state and, if filed, shall be recorded in the official records of that county. For the recording, the county recorder shall charge and collect the same fee as in the case of deeds.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 129th General Assembly File No. 79, HB 267, §1, eff. 5/22/2012.

Added by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

1702.47 Voluntary dissolution.

(A) A corporation may be dissolved voluntarily in the manner provided in this section.

(B) A resolution of dissolution for a corporation shall set forth:

(1) That the corporation elects to be dissolved;

(2) Any additional provision deemed necessary with respect to the proposed dissolution and winding up.

(C) The directors may adopt a resolution of dissolution in the following cases:

(1) When the corporation has been adjudged bankrupt or has made a general assignment for the benefit of creditors;

(2) By leave of the court, when a receiver has been appointed in a general creditors' suit or in any suit in which the affairs of the corporation are to be wound up;

- (3) When substantially all of the assets have been sold at judicial sale or otherwise;
- (4) When the period of existence of the corporation specified in its articles has expired.

(D)

(1) The voting members at a meeting held for that purpose may adopt a resolution of dissolution by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail, by proxy, or by the use of authorized communications equipment, if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members or the affirmative vote of the voting members of any particular class that is required by the articles or the regulations. Notice of the meeting of the members shall be sent to all the members who would be entitled to vote at the meeting by mail, overnight delivery service, or any authorized communications equipment.

(2) For purposes of division (D)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(E) Upon the adoption of a resolution of dissolution, a certificate shall be prepared, on a form prescribed by the secretary of state, setting forth the following:

- (1) The name of the corporation;
- (2) A statement that a resolution of dissolution has been adopted;
- (3) A statement of the manner of adoption of that resolution, and, in the case of its adoption by the directors, a statement of the basis for the adoption;
- (4) The place in this state where its principal office is or is to be located;
- (5) The names and addresses of its directors and officers;
- (6) The name and address of its statutory agent;
- (7) The date of dissolution, if other than the filing date.

(F) The certificate described in division (E) of this section shall be signed by any authorized officer, unless the officer fails to execute and file the certificate within thirty days after the adoption of the resolution, or upon any date specified in the resolution as the date upon which the certificate is to be filed, or upon the expiration of any period specified in the resolution as the period within which the certificate is to be filed, whichever is latest, in which event the certificate of dissolution may be signed by any three voting members and

shall set forth a statement that the persons signing the certificate are voting members and are filing the certificate because of the failure of the officers to do so.

(G) A certificate of dissolution, filed with the secretary of state, shall be accompanied by:

(1)

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, that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(2) A receipt, certificate, or other evidence showing that the corporation has paid all taxes imposed under the laws of this state that are or will be due from the corporation on the date of the dissolution , or that such payment has been adequately guaranteed;

(3) In lieu of the receipt, certificate, or other evidence described in division (G)(1) or (2) of this section, 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 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 acknowledgement by the corporation of the applicability of section [1702.55](#) of the Revised Code.

(H) Upon the filing of a certificate of dissolution and those accompanying documents or on a later date specified in the certificate that is not more than ninety days after the filing, the corporation shall be dissolved.

Amended by 129th General Assembly File No.117, HB 508, §1, eff. 9/6/2012.

Effective Date: 05-16-2002 .

1702.48 Public notice of voluntary dissolution.

Following the filing of the certificate of dissolution, the directors shall forthwith cause a notice of voluntary dissolution to be published once a week on the same day of each week for two successive weeks, in a newspaper published and of general circulation in the county in which the principal office of the corporation was to be or is located, and shall forthwith cause written notice of dissolution to be given either personally or by mail to all known creditors of, and to all known claimants against, the dissolved corporation.

Effective Date: 04-10-2001 .

1702.49 Winding up or obtaining reinstatement - powers and duties of directors.

(A) When a corporation is dissolved voluntarily or when the articles of a corporation have been canceled or when the period of existence of a corporation specified in its articles has expired, the corporation shall cease to carry on its activities and shall do only such acts as are required to wind up its affairs, or to obtain reinstatement of the articles in accordance with section [1702.06](#), [1702.59](#), or [1724.06](#) of the Revised Code, or are permitted upon reinstatement by division (C) of section [1702.60](#) of the Revised Code, and for such purposes it shall continue as a corporation.

(B) Any claim existing or action or proceeding pending by or against the corporation or that would have accrued against it may be prosecuted to judgment, with right of appeal as in other cases, but any proceeding, execution, or process, or the satisfaction or performance of any order, judgment, or decree, may be stayed as provided in section [1702.50](#) of the Revised Code.

(C) Any process, notice, or demand against the corporation may be served by delivering a copy to an officer, director, liquidator, or person having charge of its assets or, if no such person can be found, to the statutory agent.

(D) The directors of the corporation and their survivors or successors shall act as a board of directors in accordance with the regulations and bylaws until the affairs of the corporation are completely wound up. Subject to the orders of courts of this state having jurisdiction over the corporation, the directors shall proceed as speedily as is practicable to a complete winding up of the affairs of the corporation and, to the extent necessary or expedient to that end, shall exercise all the authority of the corporation. Without limiting the generality of such authority, they may fill vacancies, elect officers, carry out contracts of the corporation, make new contracts, borrow money, mortgage or pledge the property of the corporation as security, sell its assets at public or private sale, make conveyances in the corporate name, lease real estate for any term, including ninety-nine years renewable forever, settle or compromise claims in favor of or against the corporation, employ one or more persons as liquidators to wind up the affairs of the corporation with such authority as the directors see fit to grant, cause the title to any of the assets of the corporation to be conveyed to such liquidators for that purpose, apply assets to the payment of obligations, perform all other acts necessary or expedient to the winding up of the affairs of the corporation, and, after paying or adequately providing for the payment of all known obligations of the corporation, distribute the remainder of the assets as follows:

(1) Assets held upon condition requiring return, transfer, or conveyance, which condition shall have occurred by reason of the dissolution or otherwise, shall be returned, transferred, or conveyed in accordance with such requirements;

(2) In the case of a public benefit corporation: (a) assets held by it in trust for specified purposes shall be applied so far as is feasible in accordance with the terms of the trust, (b) the remaining assets not held in trust shall be applied so far as is feasible towards carrying out the purposes stated in its articles, (c) in the event and to the extent that, in the

judgment of the directors, it is not feasible to apply the assets as provided in above clauses (a) and (b), the assets shall be applied as may be directed by the court of common pleas of the county in this state in which the principal office of the corporation is located, in an action brought for that purpose by the corporation or by the directors or any thereof, to which action the attorney general of the state shall be a party, or in an action brought by the attorney general in a court of competent jurisdiction, or in an action brought as provided in section [1702.50](#) of the Revised Code for the purpose of winding up the affairs of the corporation under the supervision of the court;

(3) In the case of a mutual benefit corporation, any remaining assets shall be distributed in accordance with the applicable provisions of the articles or the regulations or, to the extent that no such provision is made, the assets shall be distributed pursuant to a plan of distribution adopted by the voting members at a meeting held for the purpose of voting on dissolution, or any adjournment thereof, by the same affirmative vote as that required for the adoption of a resolution of dissolution. If no plan of distribution is so adopted by the voting members, then said remaining assets shall be distributed pursuant to a plan of distribution adopted by the directors. If no plan of distribution is so adopted by the voting members or directors, then the remaining assets shall be applied as may be directed by the court of common pleas of the county in this state in which the principal office of the corporation is located, in an action brought for that purpose by the mutual benefit corporation or by the directors or any thereof, or by the attorney general in a court of competent jurisdiction, or in an action brought as provided in section [1702.50](#) of the Revised Code for the purpose of winding up the affairs of the corporation under the supervision of the court.

(E) Without limiting the authority of the directors, any action within the purview of this section that is authorized or approved by the voting members at a meeting held for such purpose, by the same affirmative vote as that required for the adoption of a resolution of dissolution, shall be conclusive for all purposes upon all members of the corporation, except that nothing herein set forth shall impair the jurisdiction of courts of competent jurisdiction to enforce the duties of a public benefit corporation in respect of the application of its assets towards its public or charitable purposes, or impair the power of the state, acting through the attorney general, to require such assets to be applied, as nearly as may be, towards its public or charitable purposes.

(F) All deeds and other instruments of the corporation shall be in the name of the corporation and shall be executed, acknowledged, and delivered by the officers appointed by the directors.

(G) At any time during the winding up of its affairs, the corporation by its directors may make application to the court of common pleas of the county in this state in which the principal office of the corporation is located to have the winding up continued under supervision of the court, as provided in section [1702.50](#) of the Revised Code.

Effective Date: 04-10-2001 .

1702.50 Jurisdiction of court over winding up of affairs of voluntarily dissolved corporation.

(A) Without limiting the generality of its authority, the court of common pleas of the county in this state in which is located the principal office of a voluntarily dissolved corporation or of a corporation whose articles have been canceled or whose period of existence has expired, upon the complaint of the corporation, a majority of the directors, or a creditor or member, and upon such notice to all the directors and such other persons interested as the court considers proper, at any time may order and adjudge in respect to the following matters:

(1) The presentation and proof of all claims and demands against the corporation and of all rights, interests, or liens in or on any of its property; the fixing of the time within which and the manner in which such proof shall be made and the person to whom such presentation shall be made; and the barring from participation in any distribution of assets of all persons failing to make and present proofs as required by the order of the court;

(2) The stay of the prosecution of any proceeding against the corporation or involving any of its property, and the requirement that the parties to it present and prove their claims, demands, rights, interests, or liens at the time and in the manner required of creditors or others; or the grant of leave to bring or maintain an independent proceeding to enforce liens;

(3) The settlement or determination of all claims of every nature against the corporation or any of its property; the determination of the assets required to be retained to pay or provide for the payment of such claims or any claim; the determination of the assets available for distribution among members and others; and the making of new parties to the proceeding so far as the court considers proper for the determination of all matters;

(4) The determination of the rights of members or others in and to the assets of the corporation;

(5) The presentation and the filing of intermediate and final accounts of the directors or of the liquidators and hearings on them; the allowance, disallowance, or settlement of such accounts; and the discharge of the directors, the liquidators, or any of them from their duties and liabilities;

(6) The appointment of a special master commissioner to hear and determine any such matters with such authority as the court considers proper;

(7) The filling of any vacancies in the number of directors or liquidators when the directors are unable to act on the vacancies for want of a quorum or for any other reason;

- (8) The appointment of a receiver, in accordance with the usages of a court in equitable matters, to wind up the affairs of the corporation, to take custody of any of its property, or for any other purpose;
- (9) The issuance or entry of any injunction or any other order that the court considers proper in the administration of the trust involved in the winding up of the affairs of the corporation and the giving of notice of it;
- (10) The allowance and payment of compensation to the directors or any of them, to liquidators, to a receiver, to the attorney for the complainant, or to any person properly rendering services beneficial to the corporation or to those interested in it;
- (11) The entry of a judgment or decree that, if it so provides, may operate as the deed or other instrument ordered to be executed, or the appointment of a master to execute such deed or instrument in the name of the corporation with the same effect as if executed by an authorized officer pursuant to authority conferred by the directors or the voting members of the corporation, whenever there is no officer or agent competent to execute such deed or instrument, whenever the corporation or its officers do not perform or comply with a judgment or decree of court, or whenever the court considers it proper.
- (B) A judicial proceeding under this section concerning the winding up of the affairs of a corporation is a special proceeding, and final orders in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Effective Date: 04-10-2001 .

1702.51 Receiver for winding up affairs of corporation.

- (A) Whenever, after a corporation is dissolved voluntarily or the articles of a corporation have been canceled or the period of existence of a corporation has expired, a receiver is appointed to wind up the affairs of the corporation, all the claims, demands, rights, interests, or liens of creditors, claimants, and members shall be determined as of the day on which the receiver was appointed. Unless it is otherwise ordered, such appointment vests in the receiver and the receiver's successors the right to the immediate possession of all the property of the corporation, which shall, if so ordered, execute and deliver conveyances of such property to the receiver or the receiver's nominee.
- (B) Any officer, director, member, or other person, whether a resident of the state or a nonresident and however interested, may be appointed as receiver.
- (C) The receiver shall have all the authority vested in the directors and officers of the corporation, shall exercise such authority subject to such orders as are made by the court, and may be required to qualify by giving bond to the state in such amount as the court fixes, with surety to the satisfaction of the clerk of the court, conditioned for the faithful

discharge of the receiver's duties and for a due accounting for all money or property received by the receiver.

Effective Date: 04-10-2001 .

1702.52 Judicial dissolution.

(A) A corporation may be dissolved judicially and its affairs wound up:

(1) By an order of the supreme court or of a court of appeals in an action in quo warranto brought as provided by sections [2733.02](#) to [2733.39](#) of the Revised Code, in which event the court may order the affairs of the corporation to be wound up by its directors as in the case of voluntary dissolution, or by proceedings in, and under the order of, the court of common pleas of the county in this state in which the corporation has its principal office;

(2) By an order of the court of common pleas of the county in this state in which such corporation has its principal office, in an action brought by voting members entitled to dissolve the corporation voluntarily, when it is established:

(a) That its articles have been canceled or its period of existence has expired and that it is necessary in order to protect the members that the corporation be judicially dissolved;

(b) That the corporation is insolvent or is unable to afford reasonable security to those who may deal with it and that it is necessary in order to protect the creditors of the corporation that the corporation be judicially dissolved;

(c) That the objects of the corporation have wholly failed or are entirely abandoned or that their accomplishment is impracticable;

(3) By an order of the court of common pleas of the county in this state in which the corporation has its principal office, in an action brought by a majority of the voting members, or such lesser proportion or number of voting members as are entitled by the articles to dissolve the corporation voluntarily, when it is established that it is beneficial to the members that the corporation be judicially dissolved;

(4) By an order of the court of common pleas of the county in this state in which the corporation has its principal office, in an action brought by one-half of the directors when there is an even number of directors or by one-half of the voting members, when it is established that the corporation has an even number of directors who are deadlocked in the management of the corporate affairs and the voting members are unable to break the deadlock, or when it is established that the corporation has an uneven number of directors and that the voting members are deadlocked in voting power and unable to agree upon or vote for the election of directors as successors to directors whose terms normally would expire upon the election of their successors.

(B) A complaint for judicial dissolution shall be verified by any of the complainants and shall set forth facts showing that the case is one of those specified in this section. Unless the complainants set forth in the complaint that they are unable to annex a list of members, a schedule shall be annexed to the complaint setting forth the name of each member and the member's address if it is known.

(C) Upon the filing of a complaint for judicial dissolution, the court with which it is filed shall have power to issue injunctions, to appoint a receiver with such authority and duties as the court from time to time may direct, to take such other proceedings as may be necessary to protect the property or the rights of the complainants or of the persons interested, and to carry on the activities of the corporation until a full hearing can be had. Upon or after the filing of a complaint for judicial dissolution, the court, by injunction or order, may stay the prosecution of any proceeding against the corporation or involving any of its property and require the parties to it to present and prove their claims, demands, rights, interests, or liens, at the time and in the manner required of creditors or others. The court may refer the complaint to a special master commissioner.

(D) After a hearing had upon such notice as the court may direct to be given to all parties to the proceeding and to any other parties in interest designated by the court, a final order based either upon the evidence, or upon the report of the special master commissioner if one has been appointed, shall be made dissolving the corporation or dismissing the complaint. An order or judgment for the judicial dissolution of a corporation shall contain a concise statement of the proceedings leading up to the order or judgment; the name of the corporation; the place in this state where its principal office is located; the names and addresses of its directors and officers; the name and address of a statutory agent; and, if desired, such other provisions with respect to the judicial dissolution and winding up as are considered necessary or desirable. A certified copy of such order forthwith shall be filed in the office of the secretary of state, whereupon the corporation shall be dissolved. To the extent consistent with orders entered in such proceeding, the effect of such judicial dissolution shall be the same as in the case of voluntary dissolution, and the provisions of sections [1702.49](#), [1702.50](#), and [1702.51](#) of the Revised Code relating to the authority and duties of directors during the winding up of the affairs of a corporation dissolved voluntarily, with respect to the jurisdiction of courts over the winding up of the affairs of a corporation, and with respect to receivers for winding up the affairs of a corporation shall be applicable to corporations judicially dissolved.

(E) A judicial proceeding under this section concerning the judicial dissolution of a corporation is a special proceeding, and final orders in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court, whichever are applicable, and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Effective Date: 04-10-2001 .

1702.521 Provisional director - appointment, duties, qualifications.

(A) Upon the complaint of not less than one-fourth of the directors of the corporation, the court of common pleas of the county in which the corporation maintains its principal office may order the appointment of a provisional director for that corporation if the articles or regulations of the corporation expressly provide for such an appointment. No appointment shall be made until a hearing is held by the court. Notice of the hearing shall be given to each director and the secretary of the corporation in any manner that the court directs. The complainants shall establish at the hearing that, because of irreconcilable differences among the existing directors, the continued operation of the corporation has been substantially impeded or made impossible.

(B) A provisional director shall have the same rights and duties as other directors and shall serve until removed by the appointing court or by the members of the corporation entitled to exercise a majority of the voting power of the corporation in the election of directors or until the provisional director's earlier resignation or death. If the provisional director dies or resigns, the court, pursuant to division (A) of this section, may appoint a replacement provisional director, upon its own motion and without the filing of a complaint for the appointment of a provisional director. If the appointing court finds that the irreconcilable differences no longer exist, it shall order the removal of the provisional director.

(C) No person shall be appointed as a provisional director unless the person is generally conversant with corporate affairs, has no legal or equitable interest in the obligations of the corporation of which the person is to be appointed a director, and is not indebted to such corporation. The compensation of a provisional director shall be determined by agreement with the corporation for which the provisional director is serving, subject to the approval of the appointing court, except that the appointing court may fix the provisional director's compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

(D) A proceeding concerning the appointment of a provisional director of a corporation is a special proceeding, and final orders issued in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Effective Date: 04-10-2001 .

1702.53 Certified copies as evidence.

(A) A copy of the articles or amended articles filed in the office of the secretary of state, certified by the secretary of state, shall be conclusive evidence, except as against the state, that the corporation has been incorporated under the laws of this state; and a copy duly certified by the secretary of state of any certificate of amendment or other certificate filed in the secretary of state's office shall be prima-facie evidence of such amendment or

of the facts stated in any such certificate, and of the observance and performance of all antecedent conditions necessary to the action which such certificate purports to evidence.

(B) A copy of amended articles filed in the office of the secretary of state, certified by the secretary of state, shall be accepted in this state and other jurisdictions in lieu of the original articles, amendments thereto, and prior amended articles.

(C) The original or a copy of the record of minutes of the proceedings of the incorporators of a corporation, or of the proceedings or meetings of the members or any class of members, or of the directors, or of any committee thereof, including any written consent, waiver, release, or agreement entered in such record or minutes, or the original or a copy of a statement that no specified proceeding was had or that no specified consent, waiver, release, or agreement exists, shall, when certified to be true by the secretary or an assistant secretary of a corporation, be received in the courts as prima-facie evidence of the facts stated therein. Every meeting referred to in such certified original or copy shall be deemed duly called and held, and all motions and resolutions adopted and proceedings had at such meeting shall be deemed duly adopted and had, and all elections of directors and all elections or appointments of officers chosen at such meeting shall be deemed valid, until the contrary is proved; and whenever a person who is not a member of a corporation has acted in good faith in reliance upon any such certified original or copy, it is conclusive in the person's favor.

Effective Date: 04-10-2001 .

1702.54 False statement or entry.

(A) No officer, director, employee, or agent of a corporation shall, either alone or with another or others, with intent to deceive:

(1) Make, issue, deliver, transmit by mail, or publish any prospectus, report, circular, certificate, statement, balance sheet, exhibit, or document, respecting membership rights in, or the activities, assets, liabilities, earnings, or accounts of, a corporation, that is false in any material respect, knowing the same to be false;

(2) Having charge of any books, minutes, records, or accounts of a corporation, make therein any entry that is false in any material respect, knowing such entry to be false, or remove, erase, alter, or cancel any entry therein, knowing that the entries resulting therefrom will be false.

(B) Whoever violates this section shall be personally liable, jointly and severally, with all other persons participating with the person in any such act, to any person for any damage actually suffered and proximately resulting from such act.

(C) No action to enforce a liability under this section shall be brought after four years from the time of the act complained of.

(D) Remedies under this section are not exclusive of other remedies at common law or under other statutes.

Effective Date: 04-10-2001 .

1702.55 Liability of members, directors and officers of corporation.

(A) The members, the directors, and the officers of a corporation shall not be personally liable for any obligation of the corporation.

(B) Directors who vote for or assent to:

(1) A distribution of assets to members contrary to law or the articles;

(2) A distribution of assets to persons other than creditors during the winding up of the affairs of the corporation, on dissolution or otherwise, without the payment of all known obligations of the corporation, or without making adequate provision therefor;

(3) The making of loans, other than in the usual conduct of its affairs or in accordance with provisions therefor in the articles, to an officer, director, or member of the corporation; shall be jointly and severally liable to the corporation as follows: in cases under division (B)(1) of this section up to the amount of such distribution in excess of the amount that could have been distributed without violation of law or the articles, but not in excess of the amount that would inure to the benefit of the creditors of the corporation if it was insolvent at the time of the distribution or there was reasonable ground to believe that by such action it would be rendered insolvent, or to the benefit of the members other than members of the class in respect of which the distribution was made; and in cases under division (B)(2) of this section, to the extent that such obligations (not otherwise barred by statute) are not paid, or for the payment of which adequate provision has not been made; and in cases under division (B)(3) of this section, for the amount of the loan with interest thereon at the rate of six per cent per annum until such amount has been paid, except that a director shall not be liable under division (B)(1) or (2) of this section if in determining the amount available for any such distribution, the director in good faith relied on a financial statement of the corporation prepared by an officer or employee of the corporation in charge of its accounts or certified by a public accountant or firm of public accountants, or in good faith the director considered the assets to be of their book value, or the director followed what the director believed to be sound accounting and business practice.

(C) A director who is present at a meeting of the directors or a committee thereof at which action on any matter is authorized or taken and who has not voted for or against such action shall be presumed to have voted for the action unless the director's written dissent therefrom is filed either during the meeting or within a reasonable time after the adjournment thereof, with the person acting as secretary of the meeting or with the secretary of the corporation.

(D) A member who knowingly receives any distribution made contrary to law or the articles shall be liable to the corporation for the amount received by the member that is in excess of the amount that could have been distributed without violation of law or the articles.

(E) A director against whom a claim is asserted under or pursuant to this section and who is held liable thereon shall be entitled to contribution, on equitable principles, from other directors who also are liable; and in addition, any director against whom a claim is asserted under or pursuant to this section or who is held liable shall have a right of contribution from the members who knowingly received any distribution made contrary to law or the articles, and such members as among themselves shall also be entitled to contribution in proportion to the amounts received by them respectively.

(F) No action shall be brought by or on behalf of a corporation upon any cause of action arising under division (B)(1) or (2) of this section at any time after two years from the day on which the violation occurs.

(G) Nothing contained in this section shall preclude any creditor whose claim is unpaid from exercising such rights as the creditor otherwise would have by law to enforce the creditor's claim against assets of the corporation distributed to members or other persons.

Effective Date: 04-10-2001 .

1702.56 [Repealed].

Effective Date: 01-01-1974 .

1702.57 Exercise of expired powers.

No person shall exercise or attempt to exercise any rights, privileges, immunities, powers, franchises, or authority under the articles of a domestic corporation after such articles have been canceled or after such corporation has been dissolved or after the period of existence of the corporation specified in its articles has expired, except such acts as are incident to the winding up of the affairs of such corporation, or are required to obtain reinstatement of the articles in accordance with section [1702.06](#), [1702.59](#), or [1724.06](#) of the Revised Code, or are permitted upon reinstatement by division (C) of section [1702.60](#) of the Revised Code.

Effective Date: 07-01-1994 .

1702.58 Applicability of chapter.

(A) Except as provided in sections [1702.01](#) to 1702.58 of the Revised Code, the provisions of those sections shall apply only to domestic corporations, and except as otherwise provided in this section, the provisions of those sections shall apply to all domestic corporations, whether formed under those sections or under previous laws of this state.

(B) Special provisions in the Revised Code for the organization, conduct, or government of designated classes of corporations shall govern to the exclusion of the provisions of sections [1702.01](#) to 1702.58 of the Revised Code on the same subject, except where it clearly appears that a special provision is cumulative, in which case, that provision and the provisions of those sections on the same subject shall apply.

(C) A corporation incorporated prior to June 9, 1927, with authority to issue shares may continue to issue and reissue shares in accordance with its articles, but shall be without authority to amend its articles in order to increase the authorized number of shares.

(D) A corporation created before September 1, 1851, that (1) has expressly elected to be governed by the laws passed since that date; (2) subsequent to that date has taken such action under laws then in effect as to make it subject, as a matter of law, to the Constitution of 1851 and laws passed under the Constitution of 1851; or (3) subsequent to October 1, 1955, takes any action under sections [1702.01](#) to 1702.58 of the Revised Code that but for those sections it would not be authorized to take, shall be deemed to be a corporation exercising its corporate privileges under the Constitution of this state and the laws passed in pursuance of the Constitution of this state, and not otherwise.

(E)

(1) A corporation created before September 1, 1851, and actually carrying on its activities in this state, and which prior to October 11, 1955, has not taken action described in division (D) of this section, may accept the provisions of sections [1702.01](#) to 1702.58 of the Revised Code at a meeting of voting members held for that purpose, by a resolution to that effect adopted by the affirmative vote of a majority of the voting members present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy if a quorum is present, and by filing in the office of the secretary of state a copy of the resolution certified by any authorized officer of the corporation, for which filing the secretary of state shall charge and collect a fee of five dollars. Thereafter the corporation shall be deemed to exercise its corporate privileges under the Constitution of this state and the laws passed in pursuance of the Constitution of this state, and not otherwise.

(2) For purposes of division (E)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(F) Except as provided in divisions (D) and (E) of this section, a corporation created before September 1, 1851, shall be governed by the laws in force on that date as modified since that date.

(G) A domestic business corporation, upon compliance with the provision of the Revised Code that is in effect from time to time relating to that business corporation's becoming a

nonprofit corporation upon amendment to its articles or upon adoption of amended articles, as provided by law, shall, upon filing the prescribed certificate in the office of the secretary of state, become a corporation subject to the provisions of, and entitled to all the rights, privileges, immunities, powers, franchises, and authority granted by, this chapter.

Effective Date: 04-10-2001; 08-19-2005; 2006 HB699 03-29-2007 .

1702.59 Filing of verified statement of continued existence.

(A) Every nonprofit corporation, incorporated under the general corporation laws of this state, or previous laws, or under special provisions of the Revised Code, or created before September 1, 1851, which corporation has expressly or impliedly elected to be governed by the laws passed since that date, and whose articles or other documents are filed with the secretary of state, shall file with the secretary of state a verified statement of continued existence, signed by a director, officer, or three members in good standing, setting forth the corporate name, the place where the principal office of the corporation is located, the date of incorporation, the fact that the corporation is still actively engaged in exercising its corporate privileges, and the name and address of its agent appointed pursuant to section [1702.06](#) of the Revised Code.

(B) Each corporation required to file a statement of continued existence shall file it with the secretary of state within each five years after the date of incorporation or of the last corporate filing.

(C) Corporations specifically exempted by division (N) of section [1702.06](#) of the Revised Code, or whose activities are regulated or supervised by another state official, agency, bureau, department, or commission are exempted from this section.

(D) The secretary of state shall give notice by ordinary or electronic mail and provide a form for compliance with this section to each corporation required by this section to file the statement of continued existence, such notice and form to be mailed to the last known physical or electronic mail address of the corporation as it appears on the records of the secretary of state or which the secretary of state may ascertain upon a reasonable search.

(E) If any nonprofit corporation required by this section to file a statement of continued existence fails to file the statement required every fifth year, then the secretary of state shall cancel the articles of such corporation, make a notation of the cancellation on the records, and mail to the corporation a certificate of the action so taken.

(F) A corporation whose articles have been canceled may be reinstated by filing an application for reinstatement and paying to the secretary of state the fee specified in division (Q) of section [111.16](#) of the Revised Code. The name of a corporation whose articles have been canceled shall be reserved for a period of one year after the date of cancellation. If the reinstatement is not made within one year from the date of the cancellation of its articles of incorporation and it appears that a corporate name, limited

liability company name, limited liability partnership name, limited partnership name, or trade name has been filed, the name of which is not distinguishable upon the record as provided in section [1702.06](#) of the Revised Code, the applicant for reinstatement shall be required by the secretary of state, as a condition prerequisite to such reinstatement, to amend its articles by changing its name. A certificate of reinstatement may be filed in the recorder's office of any county in the state, for which the recorder shall charge and collect a base fee of one dollar for services and a housing trust fund fee of one dollar pursuant to section [317.36](#) of the Revised Code. The rights, privileges, and franchises of a corporation whose articles have been reinstated are subject to section [1702.60](#) of the Revised Code.

(G) The secretary of state shall furnish the tax commissioner a list of all corporations failing to file the required statement of continued existence.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 6/30/2011.

Effective Date: 08-01-2003 .

[1702.60 Restoring rights, privileges, and franchises upon reinstatement.](#)

(A) Except as otherwise provided in this division, upon reinstatement of a corporation's articles of incorporation in accordance with section [1702.06](#), [1702.59](#), or [1724.06](#) of the Revised Code, the rights, privileges, and franchises, including all real or personal property rights and credits and all contract and other rights, of the corporation existing at the time its articles of incorporation were canceled shall be fully vested in the corporation as if the articles had not been canceled, and the corporation shall again be entitled to exercise the rights, privileges, and franchises authorized by its articles of incorporation. The name of a corporation whose articles have been canceled shall be reserved for a period of one year after the date of cancellation. If the reinstatement is not made within one year after the date of the cancellation of its articles of incorporation and it appears that a corporate name, limited liability name, limited liability partnership name, limited partnership name, or trade name has been filed, the name of which is not distinguishable upon the record as provided in section [1702.05](#) of the Revised Code, the secretary of state shall require the applicant for reinstatement, as a condition prerequisite to such reinstatement, to amend its articles by changing its name.

(B) Upon reinstatement of a corporation's articles in accordance with section [1702.06](#), [1702.59](#), or [1724.06](#) of the Revised Code, both of the following apply to the exercise of or an attempt to exercise any rights, privileges, or franchises, including entering into or performing any contracts, on behalf of the corporation by an officer, agent, or employee of the corporation, after cancellation and prior to reinstatement of the articles of incorporation:

(1) The exercise of or an attempt to exercise any rights, privileges, or franchises on behalf of the corporation by the officer, agent, or employee of the corporation has the same force

and effect that the exercise of or an attempt to exercise the right, privilege, or franchise would have had if the corporation's articles had not been canceled, if both of the following apply:

(a) The exercise of or an attempt to exercise the right, privilege, or franchise was within the scope of the corporation's articles of incorporation that existed prior to cancellation;

(b) The officer, agent, or employee had no knowledge that the corporation's articles of incorporation had been canceled.

(2) The corporation is liable exclusively for the exercise of or an attempt to exercise any rights, privileges, or franchises on behalf of the corporation by an officer, agent, or employee of the corporation, if the conditions set forth in divisions (B)(1)(a) and (b) of this section are met.

(C) Upon reinstatement of a corporation's articles of incorporation in accordance with section [1702.06](#), [1702.59](#), or [1724.06](#) of the Revised Code, the exercise of or an attempt to exercise any rights, privileges, or franchises on behalf of the corporation by an officer, agent, or employee of the corporation, after cancellation and prior to reinstatement of the articles of incorporation does not constitute a failure to comply with division (A) of section [1702.49](#) or a violation of section [1702.57](#) of the Revised Code, if the conditions set forth in divisions (B)(1)(a) and (b) of this section are met.

(D) This section is remedial in nature and is to be construed liberally to accomplish the purpose of providing full reinstatement of a corporation's articles of incorporation retroactive, in accordance with this section, to the time of the cancellation of the articles.

Effective Date: 07-29-1998 .

1702.80 Qualified nonprofit corporation may establish police department.

(A) As used in this section:

(1) "Qualified nonprofit corporation" means a nonprofit corporation that is established under this chapter and to which all of the following apply:

(a) The nonprofit corporation is a tax-exempt charitable organization;

(b) The nonprofit corporation has other organizations as members, and at least twenty of its members are tax-exempt charitable organizations;

(c) The nonprofit corporation, together with its members that are organizations, owns, leases, occupies, or uses an area of not less than three hundred acres within which its police department established under division (B) of this section will provide police services;

(d) The chief of police of each municipal corporation within which the police department of the nonprofit corporation will be eligible to provide police services has given approval for persons who are appointed as police officers of that department to carry out their powers and duties as police officers.

(2) "Authorizing agreement" means the written agreement entered into between a qualified nonprofit corporation and a municipal corporation pursuant to division (B) of this section for the provision of police services within the municipal corporation by the police department of the nonprofit corporation established under division (B) of this section.

(3) "Tax exempt" means that a corporation or organization is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3) of the Internal Revenue Code, and that the corporation or organization has received from the internal revenue service a determination letter that currently is in effect stating that the corporation or organization is exempt from federal income taxation under that subsection and is described in that subsection.

(4) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(5) "Felony" has the same meaning as in section [109.511](#) of the Revised Code.

(B) A qualified nonprofit corporation may establish a police department to provide police services, subject to the requirements and limitations set forth in this division and divisions (C) and (D) of this section, within one or more municipal corporations. Subject to division (E) of this section, the board of trustees of a qualified nonprofit corporation that establishes a police department may appoint persons as police officers of the department, and the corporation may employ the persons so appointed as police officers.

A person so appointed and employed as a police officer is authorized to act as a police officer only to the extent and in the manner described in this section and only when directly engaged in the discharge of that person's duties as a police officer for the qualified nonprofit corporation. No person so appointed and employed as a police officer shall engage in any duties or activities as a police officer for a police department established by a qualified nonprofit corporation unless both of the following apply:

(1) The person successfully has completed a training program approved by the Ohio peace officer training commission and has been certified by the commission as having successfully completed the training program, or the person previously has successfully completed a police officer basic training program certified by the commission and has been awarded a certificate to that effect by the commission.

(2) The qualified nonprofit corporation has entered into a written authorizing agreement, as described in division (C) of this section, with the chief of police of each municipal

corporation within which the police department of the qualified nonprofit corporation will provide police services.

(C) An authorizing agreement entered into between a qualified nonprofit corporation and a chief of police of a municipal corporation shall apply only to the agreeing municipal corporation, and a separate authorizing agreement shall be entered into for each municipal corporation within which the police department of the qualified nonprofit corporation will provide police services. An authorizing agreement shall not require, or contain any provision granting authority to, the chief of police or any other officer, official, or employee of the municipal corporation that enters into the agreement, to appoint or to approve or disapprove the appointment of any police officer appointed and employed by the qualified nonprofit corporation police department under division (B) of this section. An authorizing agreement shall comply with any statutes and with any municipal charter provisions, ordinances, or resolutions that may apply to it. An authorizing agreement may prescribe, but is not limited to, any of the following:

(1) The geographical territory within the municipal corporation in which the police department established by the qualified nonprofit corporation under division (B) of this section may provide police services;

(2) The standards and criteria to govern the interaction between the police officers employed by the police department established by the qualified nonprofit corporation under division (B) of this section and the law enforcement officers employed by the municipal corporation, which standards and criteria may include, but are not limited to, either of the following:

(a) Provisions governing the reporting of offenses discovered by the police officers employed by the qualified nonprofit corporation police department to the police department of the municipal corporation;

(b) Provisions governing the processing and confinement of persons arrested by police officers of the qualified nonprofit corporation police department.

(3) Any limitation on the qualified nonprofit corporation police department's enforcement of municipal traffic ordinances and regulations;

(4) The duration, if any, of the agreement.

(D) If a qualified nonprofit corporation establishes a police department under this section, the qualified nonprofit corporation, within the geographical territory specified for each municipal corporation that has entered into an authorizing agreement with it, concurrently with the municipal corporation, shall preserve the peace, protect persons and property, enforce the laws of the state, and enforce the charter provisions, ordinances, and regulations of the political subdivisions of the state that apply within that territory. Except as limited by the terms of any applicable authorizing agreement, each police officer who is

employed by a police department established by a qualified nonprofit corporation and who satisfies the requirement set forth in division (B)(1) of this section is vested, while directly in the discharge of that police officer's duties as a police officer, with the same powers and authority as are vested in a police officer of a municipal corporation under Title XXIX of the Revised Code and the Rules of Criminal Procedure, and with the same powers and authority, including the operation of a public safety vehicle, as are vested in a police officer of a municipal corporation under Chapter 4511. of the Revised Code.

(E)

(1) The board of trustees of a qualified nonprofit corporation that establishes a police department shall not appoint a person as a police officer of the department pursuant to division (B) of this section on a permanent basis, on a temporary basis, for a probationary term, or on other than a permanent basis if the person previously has been convicted of or has pleaded guilty to a felony.

(2)

(a) The board of trustees of a qualified nonprofit corporation shall terminate the employment of a police officer of its police department appointed under division (B) of this section if the police officer does either of the following:

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section [2929.43](#) of the Revised Code in which the police officer agrees to surrender the certificate awarded to the police officer under section [109.77](#) of the Revised Code.

(b) The board of trustees of a qualified nonprofit corporation shall suspend from employment a police officer of its police department appointed under division (B) of this section if the police officer is convicted, after trial, of a felony. If the police officer files an appeal from that conviction and the conviction is upheld by the highest court to which the appeal is taken or if the police officer does not file a timely appeal, the board shall terminate the employment of that police officer. If the police officer files an appeal that results in the police officer's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against the police officer, the board shall reinstate that police officer. A police officer who is reinstated under division (E)(2)(b) of this section shall not receive any back pay unless that police officer's conviction of the felony was reversed on appeal, or the felony charge was dismissed, because the court found insufficient evidence to convict the police officer of the felony.

(3) Division (E) of this section does not apply regarding an offense that was committed prior to January 1, 1997.

(4) The suspension from employment, or the termination of the employment, of a police officer under division (E)(2) of this section shall be in accordance with Chapter 119. of the Revised Code.

Effective Date: 01-01-2004 .

1702.99 Penalty.

Whoever violates section [1702.57](#) of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars.

Effective Date: 01-01-1974 .