

AN ACT

To amend sections 1701.13, 1701.56, 1701.59, 1701.66, 1701.74, 1701.76, 1701.84, 1701.85, 1701.86, 1701.87, 1701.88, 1701.89, 1701.90, 1701.91, 1701.911, 1702.12, 1702.30, 1705.01, 1705.18, 1705.19, 1705.29, 1705.47, and 1705.61 and to enact sections 1701.881, 1701.882, 1701.883, 1705.081, 1705.161, 1705.281, and 1705.282 of the Revised Code to make changes to the law governing corporations including dissenting shareholders, the dissolution of a corporation, rights to indemnification or advancement of expenses, directors' fiduciary duties, and recording of corporate mortgages, to make changes to the law governing limited liability companies including the contents of an operating agreement of a limited liability company, the effect of a member's withdrawal from a limited liability company, the standards of conduct and duties of a member of a limited liability company, and the judicial dissolution of a limited liability company, and to specify the rights of an assignee of a member of a limited liability company.

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

SECTION 1. That sections 1701.13, 1701.56, 1701.59, 1701.66, 1701.74, 1701.76, 1701.84, 1701.85, 1701.86, 1701.87, 1701.88, 1701.89, 1701.90, 1701.91, 1701.911, 1702.12, 1702.30, 1705.01, 1705.18, 1705.19, 1705.29, 1705.47, and 1705.61 be amended and sections 1701.881, 1701.882, 1701.883, 1705.081, 1705.161, 1705.281, and 1705.282 of the Revised Code be enacted to read as follows:

Sec. 1701.13. (A) A corporation may sue and be sued.

(B) A corporation may adopt and alter a corporate seal and use the same

or a facsimile of the corporate seal, but failure to affix the corporate seal shall not affect the validity of any instrument.

(C) At the request or direction of the United States government or any agency of the United States government, a corporation may transact any lawful business in aid of national defense or in the prosecution of any war in which the nation is engaged.

(D) Unless otherwise provided in the articles, a corporation may take property of any description, or any interest in property, by gift, devise, or bequest, and may make donations for the public welfare or for charitable, scientific, or educational 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 action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that ~~he~~ the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager, or agent of another corporation, domestic or foreign, nonprofit or for profit, 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 ~~him~~ the person in connection with such action, suit, or proceeding, if ~~he~~ the person acted in good faith and in a manner ~~he~~ 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 ~~he~~ the person had no reasonable cause to believe ~~his~~ 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, of itself, create a presumption that the person did not act in good faith and in a manner ~~he~~ 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, ~~he~~ the person had reasonable cause to believe that ~~his~~ 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 ~~he~~ the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager, or agent of another corporation, domestic or

foreign, nonprofit or for profit, a limited liability company, or a partnership, joint venture, trust, or other enterprise, against expenses, including attorney's fees, actually and reasonably incurred by ~~him~~ the person in connection with the defense or settlement of such action or suit, if ~~he~~ the person acted in good faith and in a manner ~~he~~ 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 such person is adjudged to be liable for negligence or misconduct in the performance of ~~his~~ the person's duty to the corporation unless, and only to the extent that, the court of common pleas or the court in which such action or suit was brought determines, upon application, that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court shall deem proper;

(b) Any action or suit in which the only liability asserted against a director is pursuant to section 1701.95 of the Revised Code.

(3) To the extent that a director, trustee, officer, employee, member, manager, or agent 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 ~~therein~~ in the action, suit, or proceeding, ~~he~~ the person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by ~~him~~ the person in connection with the action, suit, or proceeding.

(4) Any indemnification under division (E)(1) or (2) of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case, upon a determination that indemnification of the director, trustee, officer, employee, member, manager, or agent is proper in the circumstances because ~~he~~ 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 as follows:

(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) If the quorum described in division (E)(4)(a) of this section is not obtainable or if a majority vote 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 shareholders;

(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.

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

(5)(a) Unless at the time of a director'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 the regulations of a corporation state, by specific reference to this division, that the provisions of this division do not apply to the corporation and 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 1701.95 of the Revised Code, expenses, including attorney's fees, incurred by a director in defending the action, suit, or proceeding shall be paid by the corporation as they are incurred, in advance of the final disposition of the action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the director in which ~~he~~ the director agrees to do both of the following:

(i) Repay ~~such~~ that amount if it is proved by clear and convincing evidence in a court of competent jurisdiction that ~~his~~ the director's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation or undertaken with reckless disregard for the best interests of the corporation;

(ii) Reasonably cooperate with the corporation concerning the action, suit, or proceeding.

(b) Expenses, including attorney's fees, incurred by a director, trustee, officer, employee, member, manager, or agent 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, trustee, officer, employee, member, manager, or agent to repay

~~such~~ that amount, if it ultimately is determined that ~~he~~ the person is not entitled to be indemnified by the corporation.

(6) The indemnification or advancement of expenses authorized by this section shall not be exclusive of, and shall be in addition to, any other rights granted to those seeking indemnification or advancement of expenses under the articles, the regulations, any agreement, a vote of shareholders 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, trustee, officer, employee, member, manager, or agent and shall inure to the benefit of the heirs, executors, and administrators of ~~such a~~ 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, on behalf of or for any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager, or agent of another corporation, domestic or foreign, nonprofit or for profit, a limited liability company, or a partnership, joint venture, trust, or other enterprise, against any liability asserted against ~~him~~ the person and incurred by ~~him~~ the person in any such capacity, or arising out of ~~his~~ the person's status as such, whether or not the corporation would have the power to indemnify ~~him~~ the person against ~~such~~ that liability under this section. Insurance may be purchased from or 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, indemnification, insurance, or other protection that may be provided pursuant to divisions (E)(5), (6), and (7) of this section. Divisions (E)(1) and (2) of this section do not create any obligation to repay or return payments made by the corporation pursuant to division (E)(5), (6), or (7).

(9) As used in division (E) of this section, "corporation" includes all

constituent entities in a consolidation or merger and the new or surviving corporation, so that any person who is or was a director, officer, employee, trustee, member, manager, or agent of such a constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee, member, manager, or agent of another corporation, domestic or foreign, nonprofit or for profit, 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 ~~he~~ the person would if ~~he~~ 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:

(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 such property;

(2) Make contracts;

(3) Form or acquire the control of other corporations, domestic or foreign, whether nonprofit or for profit;

(4) Be a partner, member, associate, or participant in other enterprises or ventures, whether profit or nonprofit;

(5) Conduct its affairs in this state and elsewhere;

(6) 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;

(7) 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:

(a) Upon consideration of the interests of the corporation's shareholders and any of the matters set forth in division ~~(E)~~(F) of section 1701.59 of the Revised Code; or

(b) Because the amount or nature of the indebtedness and other obligations to which the corporation or any successor or the property of either may become subject in connection with the change or potential change in control provides reasonable grounds to believe that, within a reasonable period of time, any of the following would apply:

(i) The assets of the corporation or any successor would be or become less than its liabilities plus its stated capital, if any;

(ii) The corporation or any successor would be or become insolvent;

(iii) Any voluntary or involuntary proceeding under the federal

bankruptcy laws concerning the corporation or any successor would be commenced by any person.

(8) Do all things permitted by law and exercise all authority within the purposes stated in its articles or incidental to its articles.

(G) Irrespective of the purposes stated in its articles, but subject to limitations 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 its business in any shares or other securities, to such extent that as a result of the investment the corporation shall not acquire control of another corporation, business, or undertaking the activities and operations of which are not incidental to the purposes stated in its articles.

(H) No lack of, or limitation upon, the authority of a corporation shall be asserted in any action except (1) by the state in an action by it against the corporation, (2) by or on behalf of the corporation against a director, an officer, or any shareholder as such, (3) by a shareholder as such or by or on behalf of the holders of shares of any class against the corporation, a director, an officer, or any shareholder as such, or (4) in an action involving an alleged overissue of shares. This division shall apply to any action brought in this state upon any contract made in this state by a foreign corporation.

Sec. 1701.56. (A) Except as provided in division (B) of this section and section 1701.911 of the Revised Code:

(1) The number of directors ~~as may be fixed by the articles or the regulations shall be not less than three or, if not so fixed, shall be three, provided that where all shares of a corporation are owned of record by one or two shareholders, the number of directors may be less than three but not less than the number of shareholders, but the number so fixed shall not be less than one.~~ may be fixed by the articles or the regulations shall be not less than three or, if not so fixed, shall be three, provided that where all shares of a corporation are owned of record by one or two shareholders, the number of directors may be less than three but not less than the number of shareholders, but the number so fixed shall not be less than one.

(2) Unless the articles or the regulations fix the number of directors or provide the manner in which such number may be fixed or changed by the shareholders, the number may be fixed or changed to a number not less than one at a meeting of the shareholders called for the purpose of electing directors at which a quorum is present, by the affirmative vote of the holders of a majority of the shares which are represented at the meeting and entitled to vote on the proposal. In addition to the authority of the shareholders to fix or change the number of directors and the manner in which such number may be fixed or changed, the articles or the regulations may authorize the directors to change the number of directors, may specify the manner in which the directors are to change the number of directors and limitations upon the directors use of this authority, and may authorize the directors who

are in office to fill any director's office that is created by an increase in the number of directors. No reduction in the number of directors shall of itself have the effect of shortening the term of any incumbent director.

(3) The directors shall be natural persons of at least eighteen years of age and shall have such qualifications, if any, as are stated in the articles or the regulations.

(B) The court of common pleas of the county in which a corporation maintains its principal office may, pursuant to division (A) of section 1701.911 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.

Sec. 1701.59. (A) Except where the law, the articles, or the regulations require action to be authorized or taken by shareholders, 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. The selection of a time frame for the achievement of corporate goals shall be the responsibility of the directors.

(B) A director shall perform the director's duties as 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. ~~In~~ A director serving on a committee of directors is acting as a director.

(C) In performing a director's duties, 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 any of 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.

~~(C)(D)~~ For purposes of division (B) of this section, the following apply:

(1) A director shall not be found to have violated the director's duties under division (B) of this section unless it is proved by clear and convincing evidence 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, in any action brought against a director, including actions involving or affecting any of the following:

(a) A change or potential change in control of the corporation, including a determination to resist a change or potential change in control made pursuant to division (F)(7) of section 1701.13 of the Revised Code;

(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 ~~(B)~~(C)(1) to (3) of this section to be unwarranted.

(3) Nothing contained in this division limits relief available under section 1701.60 of the Revised Code.

~~(D)~~(E) A director shall be liable in damages for any action that the director takes or fails to take as a director only if it is proved by clear and convincing evidence in a court of competent jurisdiction that the director's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation or undertaken with reckless disregard for the best interests of the corporation. Nothing contained in this division affects the liability of directors under section 1701.95 of the Revised Code or limits relief available under section 1701.60 of the Revised Code. This division does not apply if, and only to the extent that, at the time of a director's act or omission that is the subject of complaint, the articles or the regulations of the corporation state by specific reference to this division that the provisions of this division do not apply to the corporation.

~~(E)~~(F) For purposes of this section, a director, in determining what the director reasonably believes to be in the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in the director's discretion, may consider any of the following:

(1) The interests of the corporation's employees, suppliers, creditors,

and customers;

(2) The economy of the state and nation;

(3) Community and societal considerations;

(4) The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

(F)(G) Nothing contained in division (C)(D) or (D)(E) of this section affects the duties of either of the following:

(1) A director who acts in any capacity other than the director's capacity as a director;

(2) A director of a corporation that does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, who votes for or assents to any action taken by the directors of the corporation that, in connection with a change in control of the corporation, directly results in the holder or holders of a majority of the outstanding shares of the corporation receiving a greater consideration for their shares than other shareholders.

Sec. 1701.66. (A) A mortgage of property of any description, or any interest ~~therein~~ in the property, made (1) by a corporation ~~which that~~ is a railroad or a public utility as defined by sections 4907.02, 4905.02, and 4905.03 of the Revised Code; ~~or~~ (2) by a corporation, domestic or foreign, organized for the purpose of constructing, acquiring, owning, or operating a railroad or public utility, as so defined, or any part ~~thereof~~ of a railroad or public utility, or, as a common carrier, a trolley bus system, in whole or in part in this state; ~~or~~ (3) by a municipal corporation pursuant to Section 12 of Article XVIII, Ohio Constitution; ~~or~~ (4) by the state, a county, or a municipal corporation, pursuant to Chapter 165. of the Revised Code, or a port authority pursuant to section 4582.06 or 4582.31 of the Revised Code; or (5) by an electric cooperative as defined by section 4928.01 of the Revised Code, shall be recorded in the office of the county recorder of each county in this state in which any of ~~said~~ that property is situated or employed; ~~but, However,~~ a mortgage by such mortgagor ~~which that~~ includes rolling stock or movable equipment such as cars, locomotives, or trolley buses, motor buses, or other vehicles, or machines for aerial transportation, may be filed in the office of the secretary of state, and when so filed shall have the same effect, as to the lien created ~~thereby~~ by the mortgage on ~~such that~~ rolling stock, movable equipment, or machines, as though filed in the office of the recorder of each ~~such~~ county in which ~~such the~~ rolling stock, movable equipment, or machines are situated or employed. In lieu of filing

an original of ~~said~~ the mortgage described in this division, a true copy ~~thereof of the mortgage~~, with an affidavit by the mortgagor, the mortgagee, or an agent of either that it is a true copy, may be filed.

(B) Any ~~such~~ mortgage described in division (A) of this section shall be a lien on the property ~~therein~~ described in the mortgage from the respective times of the filing of ~~such~~ the mortgage for record with the recorders of ~~said~~ the appropriate counties; but any such mortgage covering ~~such~~ rolling stock, movable equipment, or machines described in division (A) of this section shall be a lien ~~thereon~~ on that stock or equipment or those machines from the time of the filing of ~~such~~ the mortgage, or a true copy ~~thereof of the mortgage~~, with the secretary of state.

(C) If any mortgage by its terms creates a lien upon any property, ~~which~~ that may thereafter be acquired by the mortgagor, it shall be a lien upon all the interest of the mortgagor in ~~such~~ that after-acquired property from the date of its acquisition, if ~~such~~ the mortgage was or is recorded or filed as provided in this section.

(D) The secretary of state shall charge and collect, for every ~~such~~ mortgage or true copy ~~thereof of the mortgage~~ filed in the secretary of state's office under this section, a fee of ten dollars and, for each page in excess of twenty-five pages an additional fee of one dollar. The secretary of state shall endorse on the mortgage or true copy the time of its filing and shall keep a record of the filing in a book to be kept for ~~said~~ that purpose, giving the names of all parties to the mortgage, alphabetically arranged, the date of the mortgage, and the time of its filing. The mortgage or true copy and the record of its filing shall be open to public inspection. When the mortgage is canceled, the date of cancellation shall be entered on the margin of the record ~~thereof of the mortgage~~.

(E) Mortgages of the character described in this section need not be otherwise filed or refiled as security interests under Chapter 1309. of the Revised Code.

(F) Nothing contained in this section shall make inapplicable the provisions of Chapters 4505. to 4519. of the Revised Code, relating to motor vehicles.

Sec. 1701.74. (A) If an amendment does any of the following, then shareholders are entitled to relief to the extent provided in division (B) of this section:

(1) Changes issued shares of a particular class that have preference in dividends or distributions or on liquidation over shares of any other class into shares of any other class, or changes any of the express terms of issued shares of such particular class, and the holders of the shares of such

particular class are substantially prejudiced thereby and the articles do not expressly or by implication provide for or permit such amendment;

(2) Changes the express terms of issued shares of a particular class that have preference in dividends or distributions or on liquidation over shares of any other class, in such manner as to discharge without payment of, or to adjust or eliminate rights to, accrued undeclared cumulative dividends or distributions on the shares of any such class;

(3) Changes substantially the purposes of the corporation or provides that thereafter an amendment to change substantially the purposes of the corporation may be adopted;

(4) Changes the corporation into a nonprofit corporation.

(B) In the cases provided for in divisions (A)(1) and (2) of this section, dissenting holders of shares of such particular class, and, in the cases provided for in divisions (A)(3) and (4) of this section, dissenting holders of shares of any class, shall be entitled to relief under section 1701.85 of the Revised Code, subject to the following exceptions:

(1) If the articles of the corporation in effect at the time of the adoption of an amendment that changes substantially the purposes of the corporation expressly provide that such an amendment may be adopted, then dissenting shareholders shall not be entitled to relief under section 1701.85 of the Revised Code with respect to the adoption of such amendment;

(2) Division (A)(3) of this section does not apply to any corporation incorporated after December 31, 1970.

(3) No amendment that eliminates or creates cumulative voting rights as permitted by division (B)(10) of section 1701.69 of the Revised Code, entitles any dissenting shareholder to relief under section 1701.85 of the Revised Code with respect to the adoption of such amendment.

(4) No relief as a dissenting shareholder shall be available if the shares of the corporation for which the dissenting shareholder would otherwise be entitled to relief are listed on a national securities exchange as of the day immediately preceding the date of the vote and no proceedings have been commenced to delist the shares from the national securities exchange as of the time of the vote or, if division (A)(1) of this section applies and the shares to be received are listed on a national securities exchange and no proceedings are pending to delist the shares, as of the effective time of the amendment.

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. of the Revised Code do not prevent the transaction from being effected, a lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of a corporation, if not made in the

usual and regular course of its business, may be made upon the terms and conditions and for the consideration, that may consist, in whole or in part, of money or other property of any description, including shares or other securities or promissory obligations of any other corporation, domestic or foreign, that may be authorized as follows:

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

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

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

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

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

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

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

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

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

(1) The shares of the corporation for which the dissenting shareholder would otherwise be entitled to relief are listed on a national securities exchange as of the day immediately preceding the date of the vote described in division (A)(1)(b) of this section.

(2) The consideration to be received by the shareholders consists of shares or shares and cash in lieu of fractional shares that, immediately following the time of the vote described in division (A)(1)(b) of this section, are listed on a national securities exchange, and no proceedings are pending to delist the shares from the national securities exchange as of the time of the vote.

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

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

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

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

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

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

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

Sec. 1701.84. The (A) Except as provided in division (B) of this section, the following are entitled to relief as dissenting shareholders under section 1701.85 of the Revised Code:

~~(A)~~(1) Shareholders of a domestic corporation that is being merged or consolidated into a surviving or new entity, domestic or foreign, pursuant to section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.801 of the Revised Code;

~~(B)~~(2) In the case of a merger into a domestic corporation, shareholders of the surviving corporation who under section 1701.78 or 1701.781 of the Revised Code are entitled to vote on the adoption of an agreement of merger, but only as to the shares so entitling them to vote;

~~(C)~~(3) Shareholders, other than the parent corporation, of a domestic subsidiary corporation that is being merged into the domestic or foreign parent corporation pursuant to section 1701.80 of the Revised Code;

~~(D)~~(4) In the case of a combination or a majority share acquisition, shareholders of the acquiring corporation who under section 1701.83 of the Revised Code are entitled to vote on such transaction, but only as to the shares so entitling them to vote;

~~(E)~~(5) Shareholders of a domestic subsidiary corporation into which one or more domestic or foreign corporations are being merged pursuant to section 1701.801 of the Revised Code;

~~(F)~~(6) Shareholders of a domestic corporation that is being converted pursuant to section 1701.792 of the Revised Code.

(B) All of the following shareholders shall not be entitled to relief as dissenting shareholders under section 1701.85 of the Revised Code:

(1) Shareholders described in division (A)(1) or (6) of this section, if both of the following apply:

(a) The shares of the corporation for which the dissenting shareholder would otherwise be entitled to relief under division (A)(1) or (6) of this section are listed on a national securities exchange as of the day immediately preceding the date on which the vote on the proposal is taken at the meeting of the shareholders.

(b) The consideration to be received by the shareholders consists of shares or shares and cash in lieu of fractional shares that, immediately following the effective time of a merger, consolidation, or conversion, as applicable, are listed on a national securities exchange and for which no proceedings are pending to delist the shares from the national securities exchange as of the effective time of the merger, consolidation, or conversion.

(2) Shareholders described in division (A)(2) of this section, if the

shares so entitling them to vote are listed on a national securities exchange both as of the day immediately preceding the date on which the vote on the proposal is taken at the meeting of the shareholders and immediately following the effective time of the merger and there are no proceedings pending to delist the shares from the national securities exchange as of the effective time of the merger;

(3) The shareholders described in division (A)(4) of this section, if the shares so entitling them to vote are listed on a national securities exchange both as of the day immediately preceding the date on which the vote on the proposal is taken at the meeting of the shareholders and immediately following the effective time of the combination or majority share acquisition, and there are no proceedings pending to delist the shares from the national securities exchange as of the effective time of the combination or majority share acquisition.

Sec. 1701.85. (A)(1) A shareholder of a domestic corporation is entitled to relief as a dissenting shareholder in respect of the proposals described in sections 1701.74, 1701.76, and 1701.84 of the Revised Code, only in compliance with this section.

(2) If the proposal must be submitted to the shareholders of the corporation involved, the dissenting shareholder shall be a record holder of the shares of the corporation as to which the dissenting shareholder seeks relief as of the date fixed for the determination of shareholders entitled to notice of a meeting of the shareholders at which the proposal is to be submitted, and such shares shall not have been voted in favor of the proposal. ~~Not~~

(3) Not later than twenty days before the date of the meeting at which the proposal will be submitted to the shareholders, the corporation may notify the corporation's shareholders that relief under this section is available. The notice shall include or be accompanied by all of the following:

(a) A copy of this section;

(b) A statement that the proposal can give rise to rights under this section if the proposal is approved by the required vote of the shareholders;

(c) A statement that the shareholder will be eligible as a dissenting shareholder under this section only if the shareholder delivers to the corporation a written demand with the information provided for in division (A)(4) of this section before the vote on the proposal will be taken at the meeting of the shareholders and the shareholder does not vote in favor of the proposal.

(4) If the corporation delivers notice to its shareholders as provided in

division (A)(3) of this section, a shareholder electing to be eligible as a dissenting shareholder under this section shall deliver to the corporation before the vote on the proposal is taken a written demand for payment of the fair cash value of the shares as to which the shareholder seeks relief. The demand for payment shall include the shareholder's address, the number and class of such shares, and the amount claimed by the shareholder as the fair cash value of the shares.

(5) If the corporation does not notify the corporation's shareholders pursuant to division (A)(3) of this section, not later than ten days after the date on which the vote on the proposal was taken at the meeting of the shareholders, the dissenting shareholder shall deliver to the corporation a written demand for payment to the dissenting shareholder of the fair cash value of the shares as to which the dissenting shareholder seeks relief, which demand shall state the dissenting shareholder's address, the number and class of such shares, and the amount claimed by the dissenting shareholder as the fair cash value of the shares.

(3)(6) If a signatory, designated and approved by the dissenting shareholder, executes the demand, then at any time after receiving the demand, the corporation may make a written request that the dissenting shareholder provide evidence of the signatory's authority. The shareholder shall provide the evidence within a reasonable time but not sooner than twenty days after the dissenting shareholder has received the corporation's written request for evidence.

(7) The dissenting shareholder entitled to relief under division (C)(A)(3) of section 1701.84 of the Revised Code in the case of a merger pursuant to section 1701.80 of the Revised Code and a dissenting shareholder entitled to relief under division (E)(A)(5) of section 1701.84 of the Revised Code in the case of a merger pursuant to section 1701.801 of the Revised Code shall be a record holder of the shares of the corporation as to which the dissenting shareholder seeks relief as of the date on which the agreement of merger was adopted by the directors of that corporation. Within twenty days after the dissenting shareholder has been sent the notice provided in section 1701.80 or 1701.801 of the Revised Code, the dissenting shareholder shall deliver to the corporation a written demand for payment with the same information as that provided for in division (A)(2)(4) of this section.

(4)(8) In the case of a merger or consolidation, a demand served on the constituent corporation involved constitutes service on the surviving or the new entity, whether the demand is served before, on, or after the effective date of the merger or consolidation. In the case of a conversion, a demand served on the converting corporation constitutes service on the converted

entity, whether the demand is served before, on, or after the effective date of the conversion.

~~(5)~~(9) If the corporation sends to the dissenting shareholder, at the address specified in the dissenting shareholder's demand, a request for the certificates representing the shares as to which the dissenting shareholder seeks relief, the dissenting shareholder, within fifteen days from the date of the sending of such request, shall deliver to the corporation the certificates requested so that the corporation may endorse on them a legend to the effect that demand for the fair cash value of such shares has been made. The corporation promptly shall return the endorsed certificates to the dissenting shareholder. A dissenting shareholder's failure to deliver the certificates terminates the dissenting shareholder's rights as a dissenting shareholder, at the option of the corporation, exercised by written notice sent to the dissenting shareholder within twenty days after the lapse of the fifteen-day period, unless a court for good cause shown otherwise directs. If shares represented by a certificate on which such a legend has been endorsed are transferred, each new certificate issued for them shall bear a similar legend, together with the name of the original dissenting holder of the shares. Upon receiving a demand for payment from a dissenting shareholder who is the record holder of uncertificated securities, the corporation shall make an appropriate notation of the demand for payment in its shareholder records. If uncertificated shares for which payment has been demanded are to be transferred, any new certificate issued for the shares shall bear the legend required for certificated securities as provided in this paragraph. A transferee of the shares so endorsed, or of uncertificated securities where such notation has been made, acquires only the rights in the corporation as the original dissenting holder of such shares had immediately after the service of a demand for payment of the fair cash value of the shares. A request under this paragraph by the corporation is not an admission by the corporation that the shareholder is entitled to relief under this section.

(B) Unless the corporation and the dissenting shareholder have come to an agreement on the fair cash value per share of the shares as to which the dissenting shareholder seeks relief, the dissenting shareholder or the corporation, which in case of a merger or consolidation may be the surviving or new entity, or in the case of a conversion may be the converted entity, within three months after the service of the demand by the dissenting shareholder, may file a complaint in the court of common pleas of the county in which the principal office of the corporation that issued the shares is located or was located when the proposal was adopted by the shareholders of the corporation, or, if the proposal was not required to be submitted to the

shareholders, was approved by the directors. Other dissenting shareholders, within that three-month period, may join as plaintiffs or may be joined as defendants in any such proceeding, and any two or more such proceedings may be consolidated. The complaint shall contain a brief statement of the facts, including the vote and the facts entitling the dissenting shareholder to the relief demanded. No answer to a complaint is required. Upon the filing of a complaint, the court, on motion of the petitioner, shall enter an order fixing a date for a hearing on the complaint and requiring that a copy of the complaint and a notice of the filing and of the date for hearing be given to the respondent or defendant in the manner in which summons is required to be served or substituted service is required to be made in other cases. On the day fixed for the hearing on the complaint or any adjournment of it, the court shall determine from the complaint and from evidence submitted by either party whether the dissenting shareholder is entitled to be paid the fair cash value of any shares and, if so, the number and class of such shares. If the court finds that the dissenting shareholder is so entitled, the court may appoint one or more persons as appraisers to receive evidence and to recommend a decision on the amount of the fair cash value. The appraisers have power and authority specified in the order of their appointment. The court thereupon shall make a finding as to the fair cash value of a share and shall render judgment against the corporation for the payment of it, with interest at a rate and from a date as the court considers equitable. The costs of the proceeding, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable. The proceeding is a special proceeding and final orders in it 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. If, during the pendency of any proceeding instituted under this section, a suit or proceeding is or has been instituted to enjoin or otherwise to prevent the carrying out of the action as to which the shareholder has dissented, the proceeding instituted under this section shall be stayed until the final determination of the other suit or proceeding. Unless any provision in division (D) of this section is applicable, the fair cash value of the shares that is agreed upon by the parties or fixed under this section shall be paid within thirty days after the date of final determination of such value under this division, the effective date of the amendment to the articles, or the consummation of the other action involved, whichever occurs last. Upon the occurrence of the last such event, payment shall be made immediately to a holder of uncertificated securities entitled to payment. In the case of holders of shares represented by

certificates, payment shall be made only upon and simultaneously with the surrender to the corporation of the certificates representing the shares for which the payment is made.

(C)(1) If the proposal was required to be submitted to the shareholders of the corporation, fair cash value as to those shareholders shall be determined as of the day prior to the day on which the vote by the shareholders was taken and, in the case of a merger pursuant to section 1701.80 or 1701.801 of the Revised Code, fair cash value as to shareholders of a constituent subsidiary corporation shall be determined as of the day before the adoption of the agreement of merger by the directors of the particular subsidiary corporation. The fair cash value of a share for the purposes of this section is the amount that a willing seller who is under no compulsion to sell would be willing to accept and that a willing buyer who is under no compulsion to purchase would be willing to pay, but in no event shall the fair cash value of a share exceed the amount specified in the demand of the particular shareholder. In computing fair cash value, any both of the following shall be excluded:

(a) Any appreciation or depreciation in market value resulting from the proposal submitted to the directors or to the shareholders shall be excluded;

(b) Any premium associated with control of the corporation, or any discount for lack of marketability or minority status.

(2) For the purposes of this section, the fair cash value of a share that was listed on a national securities exchange at any of the following times shall be the closing sale price on the national securities exchange as of the applicable date provided in division (C)(1) of this section:

(a) Immediately before the effective time of a merger or consolidation;

(b) Immediately before the filing of an amendment to the articles of incorporation as described in division (A) of section 1701.74 of the Revised Code;

(c) Immediately before the time of the vote described in division (A)(1)(b) of section 1701.76 of the Revised Code.

(D)(1) The right and obligation of a dissenting shareholder to receive fair cash value and to sell such shares as to which the dissenting shareholder seeks relief, and the right and obligation of the corporation to purchase such shares and to pay the fair cash value of them terminates if any of the following applies:

(a) The dissenting shareholder has not complied with this section, unless the corporation by its directors waives such failure;

(b) The corporation abandons the action involved or is finally enjoined or prevented from carrying it out, or the shareholders rescind their adoption

of the action involved;

(c) The dissenting shareholder withdraws the dissenting shareholder's demand, with the consent of the corporation by its directors;

(d) The corporation and the dissenting shareholder have not come to an agreement as to the fair cash value per share, and neither the shareholder nor the corporation has filed or joined in a complaint under division (B) of this section within the period provided in that division.

(2) For purposes of division (D)(1) of this section, if the merger, consolidation, or conversion has become effective and the surviving, new, or converted entity is not a corporation, action required to be taken by the directors of the corporation shall be taken by the partners of a surviving, new, or converted partnership or the comparable representatives of any other surviving, new, or converted entity.

(E) From the time of the dissenting shareholder's giving of the demand until either the termination of the rights and obligations arising from it or the purchase of the shares by the corporation, all other rights accruing from such shares, including voting and dividend or distribution rights, are suspended. If during the suspension, any dividend or distribution is paid in money upon shares of such class or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of or in substitution for such shares, an amount equal to the dividend, distribution, or interest which, except for the suspension, would have been payable upon such shares or securities, shall be paid to the holder of record as a credit upon the fair cash value of the shares. If the right to receive fair cash value is terminated other than by the purchase of the shares by the corporation, all rights of the holder shall be restored and all distributions which, except for the suspension, would have been made shall be made to the holder of record of the shares at the time of termination.

Sec. 1701.86. (A) A corporation may be dissolved voluntarily in the manner provided in this section, provided the provisions of Chapter 1704. of the Revised Code do not prevent the dissolution from being effected.

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

~~(1) That that the corporation elects to be dissolved;~~

~~(2). The resolution also may include any of the following:~~

~~(1) The date on which the certificate of dissolution is to be filed or the conditions or events that will result in the filing of the certificate;~~

~~(2) Authorization for the officers or directors to abandon the proposed dissolution before the filing of the certificate of dissolution;~~

~~(3) Any additional provision considered necessary with respect to the proposed dissolution and winding up.~~

(C) If an initial stated capital is not set forth in the articles then before the corporation begins business, or if an initial stated capital is set forth in the articles then before subscriptions to shares shall have been received in the amount of that initial stated capital, the incorporators or a majority of them may adopt, by a writing signed by each of them, a resolution of dissolution.

(D) The directors may adopt a resolution of dissolution in any of 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 articles have been canceled for failure to file annual franchise or excise tax returns or for failure to pay franchise or excise taxes and the corporation has not been reinstated or does not desire to be reinstated;

(5) When the period of existence of the corporation specified in its articles has expired.

(E) The shareholders at a meeting held for such purpose may adopt a resolution of dissolution by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on such proposal or, if the articles provide or permit, by the affirmative vote of a greater or lesser proportion, though not less than a majority, of such voting power, and by such affirmative vote of the holders of shares of any particular class as is required by the articles. Notice of the meeting of the shareholders shall be given to all the shareholders whether or not entitled to vote at it.

(F) Upon the adoption of a resolution of dissolution, a certificate shall be prepared, on a form prescribed by the secretary of state, setting forth all of 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 such resolution, and, in the case of its adoption by the incorporators or directors, a statement of the basis for such 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, unless the~~

~~resolution of dissolution is adopted by the incorporators, in which event the names and addresses of the incorporators shall be set forth in the certificate internet address of each domain name held or maintained by or on behalf of the corporation;~~

(6) The name and address of its statutory agent;

(7) The date of dissolution, if other than the filing date. The date of dissolution shall not be more than ninety days after the filing of the certificate of dissolution.

(G) ~~Such certificate shall be signed as follows:~~

(1) ~~When the resolution of dissolution is adopted by the incorporators or a majority of them, the certificate shall be signed by not less than a majority of them;~~

(2) ~~When the resolution is adopted by the directors or by the shareholders. In all other cases, the certificate shall be signed by any authorized officer, unless the officer fails to execute and file such certificate within thirty days after the adoption of the resolution or upon any date specified in the resolution as the date upon which such certificate is to be filed or upon the expiration of any period specified in the resolution as the period within which such certificate is to be filed, whichever is latest, in which. In that latter event, the certificate of dissolution may be signed by any three shareholders or, if there are less than three shareholders, all of the shareholders and shall set forth a statement that the persons signing the certificate are shareholders and are filing the certificate because of the failure of the officers to do so.~~

(H) ~~A~~ Except as otherwise provided in division (I) of this section, a certificate of dissolution, filed with the secretary of state, shall be accompanied by all of the following:

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

(2) ~~A receipt, certificate, or other evidence from the department of taxation showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing or, if applicable, to the later date specified in the certificate of dissolution in accordance with division (F) of this section; or showing that such payment has been adequately guaranteed, or an affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement that the corporation is not required to pay or the department of taxation has not~~

assessed any tax for which such a certificate or other evidence is not provided;

(3) A ~~receipt~~, certificate, or other evidence showing the payment of all personal property and commercial activity taxes accruing up to the date of such filing or, if applicable, to the later date specified in the certificate of dissolution ~~in accordance with division (F) of this section~~, or showing that such payment has been adequately guaranteed, or an affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement that the corporation is not required to pay or the department of taxation has not assessed any tax for which such a certificate or other evidence is not provided;

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

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

~~(6)(I)~~ In lieu of the receipt, certificate, or other evidence described in division (H)(2), (3), (4), or (5) of this section, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled effective date of the dissolution and was advised in writing of the acknowledgment by the corporation of the applicability of the provisions of section 1701.95 of the Revised Code.

~~(H)(J)~~ Upon the filing of a certificate of dissolution and such 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.

Sec. 1701.87. ~~Following the filing of the certificate of dissolution, the directors or the incorporators, as the case may be, shall forthwith cause a notice of voluntary dissolution to be published~~ (A) A corporation shall give notice of a dissolution by certified or registered mail, return receipt requested, to each known creditor and to each person that has a claim against the corporation, including claims that are conditional, unmatured, or contingent upon the occurrence or nonoccurrence of future events.

(B) The notice shall state all of the following:

(1) That all claims shall be presented in writing and shall identify the

claimant and contain sufficient information to reasonably inform the corporation of the substance of the claim;

(2) The mailing address to which the person must send the claim;

(3) The deadline, which shall be not less than sixty days after the date the notice is given, by which the corporation must receive the claim;

(4) That the claim will be barred if the corporation does not receive the claim by the deadline;

(5) That the corporation may make distributions to other creditors or claimants, including distributions to shareholders of the corporation, without further notice to the claimant.

(C) Giving any notice or making any offer under this chapter shall not revive any claim then barred or constitute acknowledgment by the corporation that any person to whom the corporation sent notice under this section is a proper claimant and shall not operate as a waiver of any defense or counterclaim.

(D) A claim is barred if a claimant that was given written notice under division (A) of this section does not deliver the claim to the dissolved corporation by the deadline stated in the notice.

(E) The corporation shall post the notice described in division (B) of this section on any web site the corporation maintains in the corporation's name and shall provide a copy of the notice to the secretary of state to be posted on the web site maintained by the secretary of state in accordance with division (F) of this section.

(F)(1) Except as provided in division (F)(2) of this section, the secretary of state shall make both of the following available to the public in a format that is searchable, viewable, and accessible through the internet:

(a) A list of all domestic corporations that have filed a certificate of dissolution or have had their articles canceled;

(b) For each dissolved corporation on the list described in division (F)(1)(a) of this section, a copy of both the certificate of dissolution and the notice delivered under division (B) of this section.

(2) After the materials relating to any dissolved or canceled corporation have been posted for five years, the secretary of state may remove from the web site the information that the secretary posted pursuant to division (F)(1) of this section that relates to that corporation.

(G) If the certificate of dissolution is filed five years or less after the effective date of this amendment, the corporation shall publish the notice described in division (B) of this section at least 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.~~

Sec. 1701.88. (A) When a corporation is dissolved voluntarily, when the articles of a corporation have been canceled, or when the period of existence of the corporation specified in its articles has expired, the corporation shall cease to carry on business 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 1701.07, 1701.921, 1785.06, or 5733.22 of the Revised Code, or are permitted upon reinstatement by division (C) of section 1701.922 of the Revised Code, and for such purposes it shall continue as a corporation for a period of five years from the dissolution, expiration, or cancellation. A court acting pursuant to section 1701.89 of the Revised Code may extend the five-year period allowed under this division.

(B) The voluntary dissolution of a corporation, cancellation of the articles of a corporation, expiration of the period of existence of a corporation, appointment of a receiver to wind up the affairs of the corporation, or other action to dissolve a corporation under this chapter shall not eliminate or impair any remedy available to or against the corporation or its directors, officers, or shareholders for any right or claim existing, or liability incurred, prior to the dissolution, if either of the following brings such an action:

(1) The corporation within the time limits otherwise permitted by law;

(2) Any other person before five years after the date of the dissolution or within the time limits otherwise required by section 1701.881 of the Revised Code or any other provision of law, whichever is less.

(C) Any claim existing or action or proceeding pending by or against the corporation or which 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 1701.89 of the Revised Code. Any action, suit, or proceeding begun by or against the corporation within the time limits established in division (B) of this section shall not abate, and the corporation shall, solely for the purpose of such action, suit, or proceeding, be continued as a body corporate beyond the five-year period and until any judgments, orders, or decrees are fully executed, without the necessity for any court order required under division (A) of this section.

~~(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 articles and 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 acting pursuant to section 1701.89 of the Revised Code, 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.~~ For that purpose, the directors may exercise all the authority of the corporation. Without limiting the generality of such authority, they may ~~fill~~ do all of the following:

- (1) Fill vacancies, elect;
- (2) Elect officers, carry;
- (3) Appoint agents, liquidators, or other entities or persons to carry out the winding up of the corporation's business;
- (4) Carry out contracts of the corporation, make;
- (5) Make new contracts, borrow;
- (6) Borrow money, mortgage;
- (7) Mortgage or pledge the property of the corporation as security, sell;
- (8) Sell its assets at public or private sale, make;
- (9) Make conveyances in the corporate name, lease;
- (10) Lease real estate for any term, including ninety-nine years renewable forever, settle;
- (11) Settle or compromise claims in favor of or against the corporation; employ;
- (12) 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;
- (13) Cause the title to any of the assets of the corporation to be conveyed to such liquidators for that purpose, apply;
- (14) Apply assets to the payment of obligations, and, after paying or adequately providing for the payment of all known obligations of the corporation, distribute;
- (15) Distribute the remainder of the assets either in cash or in kind among the shareholders according to their respective rights and interests. In addition, they may perform after paying or adequately providing for the payment of all known obligations of the corporation under section 1701.882 of the Revised Code and for claims that have not been made known to the corporation or that have not arisen but that, based on facts known to the corporation, are likely to arise or to become known to the corporation within

five years after the date of dissolution or such longer period of time as the directors or a court acting under section 1701.89 of the Revised Code may determine, not to exceed ten years after the date of dissolution;

(16) Perform all other acts necessary or expedient to the winding up of the affairs of the corporation.

Division (E) of section 1701.76 of the Revised Code applies to the disposition of a voluntarily dissolved corporation's assets by its directors.

~~(E) Without limiting the authority of the directors and subject to division (E) of section 1701.76 of the Revised Code, any action within the purview of this section which is authorized or approved at a meeting held for such purpose by the holders of shares entitling them to receive two-thirds of the value of the remaining assets shall be conclusive for all purposes upon all shareholders of the corporation.~~

~~(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 1701.89 of the Revised Code.~~

(F) If any property right of a corporation is discovered after the winding up of the corporation, any member or members of the board of directors that wound up the affairs of the corporation, or a receiver appointed by the court, may enforce the property right, collect and divide the assets discovered among the persons entitled to those assets, and prosecute actions or proceedings in the corporate name of the corporation. Any assets collected under this division shall be distributed and disposed of in accordance with any applicable court order or, in the absence of a court order, in accordance with this section.

(G) In the event a receiver is appointed to wind up the affairs of the corporation, or an action is commenced under section 1701.91 of the Revised Code to dissolve the corporation, the five-year period specified in divisions (A) and (B)(2) of this section shall not commence until:

(1) The effective date of dissolution under division (J) of section 1701.86 of the Revised Code, if a certificate of dissolution is filed under that section; or

(2) The date of filing of a certified copy of an order of dissolution in the office of the secretary of state under division (D) of section 1701.91 of the Revised Code.

Sec. 1701.881. (A) A corporation that has given notice under division (A) of section 1701.87 of the Revised Code may reject, in whole or in part, any matured claim made by a claimant by sending notice of the rejection by certified or registered mail, return receipt requested, to the claimant within ninety days after receipt of the claim and at least thirty days before the expiration of the five-year period specified in division (A) of section 1701.88 of the Revised Code. A notice sent pursuant to this section shall include or be accompanied by a copy of this division and of section 1701.89 of the Revised Code. A claim against a corporation is barred if a claimant whose claim is rejected by the corporation does not commence an action to enforce the claim within thirty days after the corporation mails the rejection notice.

(B) A corporation that has given notice under division (A) of section 1701.87 of the Revised Code may offer security to any claimant whose claim is contingent, conditional, or unmatured as the corporation determines is sufficient to provide compensation to the claimant if the claim matures. The corporation shall send the corporation's offer to the claimant by certified or registered mail, return receipt requested, within ninety days after receipt of the claim and at least thirty days before the expiration of the five-year period specified in division (A) of section 1701.88 of the Revised Code. A notice sent pursuant to this section shall include or be accompanied by a copy of this division and of section 1701.89 of the Revised Code. If the claimant offered the security does not deliver to the corporation a written notice rejecting the offer within thirty days after the corporation mails the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy claimant's claim against the corporation.

(C) A corporation that has given notice under division (A) of section 1701.87 of the Revised Code may file an application with the court having jurisdiction under section 1701.89 of the Revised Code for a determination of the amount and form of insurance or other security that satisfies both of the following requirements:

(1) The insurance or other security will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to this section.

(2) The insurance or other security will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on the facts known to the corporation, are likely to arise or to become known to the corporation within five years after the date of dissolution or such longer

period of time as the directors or a court acting under section 1701.89 of the Revised Code may determine, not to exceed ten years after the date of dissolution.

Sec. 1701.882. (A) A dissolved corporation shall do all of the following:

(1) Pay the claims made and not rejected under division (A) of section 1701.881 of the Revised Code;

(2) Post the security offered and not rejected under division (B) of section 1701.881 of the Revised Code;

(3) Post security ordered by the court in any proceeding under division (C) of section 1701.881 of the Revised Code;

(4) Make any payment required by a court acting under section 1701.89 of the Revised Code;

(5) Pay or make provision by insurance or otherwise for all other claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation and any other claims described in division (C)(2) of section 1701.881 of the Revised Code.

(B) A corporation shall pay in full any claims and liabilities or provide for those payments in full by insurance or otherwise if the corporation has sufficient assets. If the corporation does not have sufficient assets, a corporation shall pay claims and liabilities or provide for those payments by insurance or otherwise in order of their priority. Among claims of equal priority, the corporation shall apportion those payments to the extent of funds legally available for the payment of those claims. Any remaining assets shall be distributed to the shareholders of the corporation according to their respective rights and preferences.

(C) In the absence of fraud, the judgment of the board of directors of the dissolved corporation as to the provision the corporation made for the payment of all claims under division (A)(5) of this section shall be conclusive.

Sec. 1701.883. (A) The dissolution of a corporation shall not affect the limited liability of a shareholder with respect to transactions occurring or acts or omissions done or omitted in the name of or by the corporation.

(B) A shareholder who receives a distribution of assets from a dissolved corporation shall not be liable for any claim against the corporation in an amount in excess of the amount of shareholder's pro rata share of the claim or the amount distributed to the shareholder, whichever is less. The aggregate liability of any shareholder for claims against a dissolved corporation shall not exceed the amount distributed to that stockholder after the dissolution.

(C) A shareholder of a dissolved corporation, the assets of which were

distributed pursuant to this chapter, may be liable for a claim against the corporation only if an action on that claim is commenced before expiration of the period specified in division (B)(2) of section 1701.88 of the Revised Code.

Sec. 1701.89. (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 is located, in which the principal office was to be located, or in which the principal office of a corporation whose articles have been canceled or whose period of existence has expired is located~~, upon the complaint of the corporation, a majority of the directors, or a creditor or ~~shareholder~~ claimant, 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 of all of the following matters:

(1) Any proceedings or actions under division (C) of section 1701.881 of the Revised Code;

(2) 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 including property described in division (F) of section 1701.88 of the Revised Code; 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)(3)~~ (3) 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 ~~to~~ of leave to bring or maintain an independent proceeding to enforce liens;

~~(3)(4)~~ (4) 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 or insurance to be obtained to pay or provide for the payment of such claims or any claim; the determination of the assets available for distribution among shareholders; and the making of new parties to the proceeding so far as the court considers proper for the determination of all matters;

~~(4)(5)~~ (5) The determination of the rights of holders of shares of all classes in and to the assets of the corporation;

~~(5)(6)~~ (6) The presentation and 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)~~(7) The appointment of a special master commissioner or guardian ad litem to hear and determine any such matters with such authority as the court considers proper; The applicant in the proceeding shall pay the reasonable fees and expenses of the special master commissioner or guardian ad litem, including all reasonable expert witness fees, unless otherwise ordered by the court.

~~(7)~~(8) 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)~~(9) 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)~~(10) The issuance or entry of any injunction or any other order which 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)~~(11) 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)~~(12) The entry of a judgment or decree which, if it so provides, may operate as the deed or other instrument ordered to be executed, or the appointment of a master or guardian ad litem 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 shareholders 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.

Sec. 1701.90. (A) Whenever, after a corporation is dissolved voluntarily or the articles of a corporation have been cancelled 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 shareholders shall be determined as of the day on which the receiver was appointed unless those claims, demands, rights, interests, or liens have already been determined under section 1701.881 of the Revised Code. Unless it is otherwise ordered, such appointment vests in the receiver and ~~his~~ 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 ~~his~~ the receiver's nominee.

(B) Any officer, director, shareholder, or other person, whether a resident of the state or a non-resident and however interested, may be appointed as receiver.

(C) ~~The~~ Unless otherwise ordered, 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 ~~his~~ the receiver's duties and for a due accounting for all money or property received by ~~him~~ the receiver.

Sec. 1701.91. (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 holders of shares entitled to dissolve the corporation voluntarily, when it is established that any of the following are true:

(a) That its articles have been canceled or its period of existence has expired ~~and that it is necessary in order to protect the shareholders 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 the holders of shares entitling them to exercise ~~a majority~~ at least two-thirds of the voting power of the corporation on such proposal, ~~or the holders of such lesser proportion as are entitled by the articles to dissolve the corporation voluntarily,~~ when it is established that it is beneficial to the shareholders that the corporation be judicially dissolved, or the holders of such lesser proportion as are entitled by the articles to dissolve the corporation voluntarily;

(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 the holders of shares entitling them to exercise ~~one-half~~ at least two-thirds of the voting power, 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 shareholders are unable to break the deadlock, or when it is established that the corporation has an uneven number of directors and that the shareholders 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. Under these circumstances, dissolution of the corporation shall not be denied on the ground that the corporation is solvent or on the ground that the business of the corporation has been or could be conducted at a profit.

(5) By an order of the court of common pleas of the county in which the corporation, whether for profit or nonprofit, has its principal office, in an action brought by the prosecuting attorney of the county, when it is found that the corporation was organized or systematically used to further criminal purposes, or as a subterfuge to engage in prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, obscenity, extortion, corruption of law enforcement officers or other public officers, officials, or any employees, or any other criminal activity.

(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 shareholders, a schedule shall be annexed to the complaint setting forth the name of each shareholder, his address if it is known or the fact that it is not known, the number of shares owned by him, and any balance unpaid on his shares.

(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 business 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 the proceeding 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 1701.87, 1701.88, 1701.89, and 1701.90 of the Revised Code relating to the required notice a corporation shall give of a dissolution and 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 it 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.

Sec. 1701.911. (A) Upon the complaint of not less than one-fourth of

the directors of a corporation or upon the complaint of the holders of shares entitling them to exercise not less than one-fifth of the voting power of a corporation in the election of directors, 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 may direct. If directed by the court, the notice also shall be given to each of the shareholders. The complainants shall establish at the hearing that, because of irreconcilable differences among the existing directors or because there are no directors and the shareholders are unable to elect any 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 holders of shares entitling them to exercise a majority of the voting power of the corporation in the election of directors, or until ~~his~~ the provisional director's earlier resignation or death. If the provisional director dies or resigns, the court, pursuant to divisions (A) and (C) 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 ~~he~~ the person is generally conversant with corporate affairs, has no legal or equitable interest in the shares or obligations of the corporation of which ~~he~~ 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 ~~he~~ the provisional director is serving, subject to the approval of the appointing court, except that the appointing court may fix ~~his~~ 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.

Sec. 1702.12. (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 ~~such that~~ notification, ~~such the~~ person shall have the right to petition the court of common pleas or the court in which ~~such the~~ action or suit was brought to review the reasonableness of ~~such 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 ~~such a~~ 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 ~~(E)~~(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.

Sec. 1702.30. (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. ~~It~~ 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.

~~(C)~~(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 ~~(B)~~(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.

~~(D)~~(E)(1) Subject to divisions ~~(D)~~(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 ~~(D)~~(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 ~~(D)~~(E)(2) of this section, division ~~(D)~~(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.

~~(E)~~(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.

~~(F)~~(G) Divisions ~~(C)~~(D) and ~~(D)~~(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.

Sec. 1705.01. As used in this chapter:

(A) "Business" means every trade, occupation, or profession.

(B) "Contribution" means any cash, property, services rendered, promissory note, or other binding obligation to contribute cash or property or to perform services that a member contributes to a limited liability company in the capacity as a member.

(C) "Conveyance" means every assignment, lease, mortgage, or encumbrance.

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

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

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

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

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

(e) A limited liability company.

(E) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.

(F) "Knowledge," of a fact, means actual knowledge of that fact and knowledge of other facts that under the circumstances shows bad faith.

(G) "Member" means a person whose name appears on the records of

the limited liability company as the owner of a membership interest in that company.

(H) "Membership interest" means a member's share of the profits and losses of a limited liability company and the right to receive distributions from that company.

(I) "Notice" means that the person who claims the benefit of the notice has done one of the following:

(1) Stated the fact to the person entitled to notice;

(2) Delivered through the mail or by other means of communication a written statement of the fact to the person entitled to notice or to a proper person at the place of business or residence of the person entitled to receive a notice.

(J) "Operating agreement" means all of the valid written or oral agreements of the members or, in the case of a limited liability company consisting of one member, a written declaration of that member, as to the affairs of a limited liability company and the conduct of its business.

(K) "Person" means any natural person; partnership, limited partnership, trust, estate, association, limited liability company, or corporation; any custodian, nominee, trustee, executor, administrator, or other fiduciary; or any other individual or entity in its own or any representative capacity.

(L) "Professional association" and "professional service" have the same meanings as in section 1785.01 of the Revised Code.

(M) "State" has the same meaning as in section 1.59 of the Revised Code and additionally includes a foreign country and any province, territory, or other political subdivision of a foreign country.

(N) "Tribunal" means a court or, if provided in the operating agreement or otherwise agreed, an arbitrator, arbitration panel, or other tribunal.

Sec. 1705.081. (A) Except as otherwise provided in division (B) of this section, an operating agreement governs relations among members and between members, any managers, and the limited liability company. A limited liability company is bound by the operating agreement of its member or members whether or not the limited liability company executes the operating agreement. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members and between the members, any managers, and the limited liability company.

(B) The operating agreement may not do any of the following:

(1) Vary the rights and duties under section 1705.04 of the Revised Code;

(2) Unreasonably restrict the right of access to books and records under section 1705.22 of the Revised Code;

(3) Eliminate the duty of loyalty under division (C) of section 1705.161 of the Revised Code or division (B) of section 1705.281 of the Revised Code, but the operating agreement may identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable, and all of the members or a number or percentage of members specified in the operating agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under division (C) of section 1705.161 of the Revised Code or division (C) of section 1705.281 of the Revised Code;

(5) Eliminate the obligation of good faith and fair dealing under division (D) of section 1705.281 of the Revised Code, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(6) Eliminate the duties of a manager under division (B) of section 1705.29 of the Revised Code, but the operating agreement may prescribe in writing the standards by which performance is to be measured or specify types or categories of activities that do not violate the duties in each case if not manifestly unreasonable;

(7) Vary the requirement to wind up the limited liability company's business in cases specified in division (A) or (B) of section 1705.47 of the Revised Code;

(8) Restrict the rights of third parties under this chapter.

Sec. 1705.161. (A) Upon a member's withdrawal from a limited liability company, the member's right to participate in the management and conduct of the limited liability company's business terminates.

(B) Upon a member's withdrawal, the member's duty of loyalty under division (B)(3) of section 1705.281 of the Revised Code terminates.

(C) Upon a member's withdrawal, a member's duty of loyalty under divisions (B)(1) and (2) of section 1705.281 of the Revised Code and duty of care under division (C) of section 1705.281 of the Revised Code continue only with regard to matters arising and events occurring before the member's withdrawal.

Sec. 1705.18. (A) Except as otherwise provided in the operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of a membership interest does not dissolve the company or entitle the assignee to become or to exercise any rights of a member. An assignment entitles the assignee only to receive, to the extent assigned, the distributions of cash and other property and the

allocations of profits, losses, income, gains, deductions, credits, or similar items to which the assignee's assignor would have been entitled. Except as otherwise provided in the operating agreement, an assignor ceases to be a member upon assignment of all the assignor's membership interest. Unless otherwise provided in an operating agreement and except to the extent assumed by agreement of an assignee, until an assignee of a membership interest becomes a member, the assignee does not have liability as a member solely because of the assignment.

(B) A substitute member of a limited liability company or an assignee of a membership interest in a limited liability company is bound by the operating agreement whether or not the substitute member or assignee executes the operating agreement.

Sec. 1705.19. (A) If any judgment creditor of a member of a limited liability company applies to a court of common pleas to charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest, the court may so charge the membership interest. To the extent the membership interest is so charged, the judgment creditor has only the rights of an assignee of the membership interest as set forth in section 1705.18 of the Revised Code. Nothing in this chapter deprives a member of the member's statutory exemption.

(B) An order charging the membership interest of a member of a limited liability company is the sole and exclusive remedy that a judgment creditor may seek to satisfy a judgment against the membership interest of a member or a member's assignee.

(C) No creditor of a member of a limited liability company or a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(D) A limited liability company or one or more members of a limited liability company who are not subject to a charging order entered in favor of a judgment creditor may at any time pay to the judgment creditor the full amount then still due under the judgment and by that payment succeed to the rights of that judgment creditor.

Sec. 1705.281. (A) The only fiduciary duties a member owes to a limited liability company and the other members are the duty of loyalty and the duty of care set forth in divisions (B) and (C) of this section.

(B) A member's duty of loyalty to the limited liability company and the other members is limited to the following:

(1) To account to the limited liability company and hold as trustee for the limited liability company any property, profit, or benefit derived by the

member in the conduct and winding up of the limited liability company's business or derived from a use by the member of the limited liability company's property, including the appropriation of a limited liability company opportunity;

(2) To refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's business as or on behalf of a party having an interest adverse to the limited liability company;

(3) To refrain from competing with the limited liability company in the conduct of the limited liability company's business before the dissolution of the limited liability company.

(C) A member's duty of care to the limited liability company in the conduct and winding up of the limited liability company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(D) A member shall discharge duties to the limited liability company and the other members pursuant to this chapter or under the operating agreement and shall exercise any rights consistent with the obligation of good faith and fair dealing.

(E) A member does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(F) A member may lend money to and transact other business with the limited liability company and as to each loan or transaction the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(G) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

Sec. 1705.282. (A) A manager of a limited liability company who was appointed in writing and has agreed in writing to serve as a manager and who is also a member or who is serving as the representative of a member owes to the limited liability company and the other members the duties of a manager.

(B) Except as otherwise provided in division (A) of this section, a manager of a limited liability company who is a member or who is serving as the representative of a member owes to the limited liability company and the other members only the duties that would be owed by the member.

Sec. 1705.29. (A) If the operating agreement of a limited liability company provides for managers, then the business of the company shall be exercised by or under the direction of its managers, except to the extent

applicable law or the operating agreement provides otherwise.

(B) ~~A manager of a limited liability company shall perform his~~ If a manager's duties as are not governed by division (B) of section 1705.282 of the Revised Code, then the only fiduciary duties a manager owes to the limited liability company are the duties to act in good faith, in a manner he the manager reasonably believes to be in or not opposed to the best interests of the company, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances.

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

(1) A manager of a limited liability company shall not be found to have violated division (B) of this section unless it is proved, by clear and convincing evidence, in any action brought against the manager, including, but not limited to, an action involving or affecting a termination or potential termination of ~~his~~ service to the company as a manager or ~~his~~ service in any other position or relationship with the company, that ~~he~~ the manager has not acted in good faith, in a manner ~~he~~ the manager reasonably believes to be in or not opposed to the best interests of the company, or with the care that an ordinarily prudent person in a similar position would use under similar circumstances.

(2) A manager shall not be considered to be acting in good faith if ~~he~~ the manager has knowledge concerning a particular matter that would cause reliance on information, opinions, reports, or statements that are prepared or presented by the persons described in section 1705.30 of the Revised Code to be unwarranted.

(3) Nothing in division (C) of this section limits relief available under section 1705.31 of the Revised Code.

(D) A manager of a limited liability company is liable in damages for any action that ~~he~~ the manager takes or fails to take as a manager only if it is proved, by clear and convincing evidence, in a court with jurisdiction that ~~his~~ the manager's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the company or undertaken with reckless disregard for the best interests of the company. Nothing contained in this division limits the relief available under section 1705.31 of the Revised Code. This division does not apply if and only to the extent that, at the time of the act or omission of a manager that is the subject of complaint, the articles of organization or the operating agreement of the company state by specific reference to this division that its provisions do not apply to the company.

Sec. 1705.47. On application by ~~or for any~~ a member of a limited liability company, the ~~court of common pleas~~ tribunal may decree the

dissolution of that company if it is not reasonably practicable to carry on the declare a limited liability company dissolved, and the limited liability company's business of the company shall be wound up upon the occurrence of any of the following events:

(A) An event that makes it unlawful for all or substantially all of the business of the limited liability company to be continued, but a cure of illegality within ninety days after notice to the limited liability company of the event is effective retroactively to the date of the event for purposes of this section;

(B) A determination by the tribunal that any of the following is true:

(1) The economic purpose of the limited liability company is likely to be unreasonably frustrated.

(2) Another member has engaged in conduct relating to the limited liability company's business that makes it not reasonably practicable to carry on the business with that member.

(3) It is not otherwise reasonably practicable to carry on the limited liability company's business in conformity with its articles of organization and the operating agreement.

Sec. 1705.61. (A) Absent an express agreement to the contrary, a person providing goods to or performing services for a limited liability company owes no duty to, incurs no liability or obligation to, and is not in privity with the members or creditors of the limited liability company by reason of providing goods to or performing services for the limited liability company.

(B) Absent an express agreement to the contrary, a person providing goods to or performing services for a member or group of members of a limited liability company owes no duty to, incurs no liability or obligation to, and is not in privity with the limited liability company, any other members of the limited liability company, or the creditors of the limited liability company by reason of providing goods to or performing services for the member or group of members of the limited liability company.

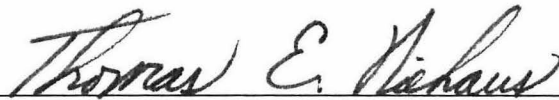
SECTION 2. That existing sections 1701.13, 1701.56, 1701.59, 1701.66, 1701.74, 1701.76, 1701.84, 1701.85, 1701.86, 1701.87, 1701.88, 1701.89, 1701.90, 1701.91, 1701.911, 1702.12, 1702.30, 1705.01, 1705.18, 1705.19, 1705.29, 1705.47, and 1705.61 of the Revised Code are hereby repealed.

SECTION 3. Notwithstanding any other provision of Chapter 1701. of the Revised Code to the contrary, the provisions of division (B)(2) of section 1701.88 of the Revised Code, as amended by this act, shall only apply to

causes of action arising on or after the effective date of this act.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed January 24, 2012

Approved 2-2, 2012



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
3rd day of February, A. D. 2012.

Joe Husted

Secretary of State.

File No. 72

Effective Date May 4, 2012

(129th General Assembly)
(Substitute House Bill Number 48)

AN ACT

To amend sections 1701.13, 1701.56, 1701.59, 1701.66, 1701.74, 1701.76, 1701.84, 1701.85, 1701.86, 1701.87, 1701.88, 1701.89, 1701.90, 1701.91, 1701.911, 1702.12, 1702.30, 1705.01, 1705.18, 1705.19, 1705.29, 1705.47, and 1705.61 and to enact sections 1701.881, 1701.882, 1701.883, 1705.081, 1705.161, 1705.281, and 1705.282 of the Revised Code to make changes to the law governing corporations including dissenting shareholders, the dissolution of a corporation, rights to indemnification or advancement of expenses, directors' fiduciary duties, and recording of corporate mortgages, to make changes to the law governing limited liability companies including the contents of an operating agreement of a limited liability company, the effect of a member's withdrawal from a limited liability company, the standards of conduct and duties of a member of a limited liability company, and the judicial dissolution of a limited liability company, and to specify the rights of an assignee of a member of a limited liability company.

Introduced by

Representatives Mecklenborg, Carney

Cosponsors: Representatives Beck, Combs, DeGeeter, Dovilla, Garland, McGregor, Pillich, Stautberg, Stebelton, Stinziano, Coley, Adams, R., Brenner, Duffey, Blessing, Bulp, Buchy, Derickson, Hackett, Hagan, C., Huffman, Letson, Martin, McClain, Newbold, Peterson, Roegner, Slaby, Thompson, Wachtmann Speaker Batchelder
Senators Wagoner, Bacon, Coley, Eklund, Hughes, Jones, Lehner, Manning, Patton, Seitz

File No. 72

Passed by the House of Representatives,

May 17, 2011

Passed by the Senate,

December 14, 2011

*Filed in the office of the Secretary of State at
Columbus, Ohio, on the*

3rd day of February, A. D. 2012


Secretary of State.

concurring in Senate
amendments
January 24, 2012.