

AN ACT

To amend sections 9.231, 169.01, 1702.01, 1702.05, 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, 1702.462, 2901.23, 3955.06, 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, and 5701.13; to enact sections 1702.411, 1745.05 to 1745.46, 1745.461, and 1745.47 to 1745.57; and to repeal sections 1702.45, 1745.01, 1745.02, and 1745.04 of the Revised Code to adopt the Revised Uniform Unincorporated Nonprofit Association Act and to revise the merger and consolidation provisions of the Nonprofit Corporation Law.

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

SECTION 1. That sections 9.231, 169.01, 1702.01, 1702.05, 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, 1702.462, 2901.23, 3955.06, 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, and 5701.13 be amended, and sections 1702.411, 1745.05, 1745.06, 1745.07, 1745.08, 1745.09, 1745.10, 1745.11, 1745.12, 1745.13, 1745.14, 1745.15, 1745.16, 1745.17, 1745.18, 1745.19, 1745.20, 1745.21, 1745.22, 1745.23, 1745.24, 1745.25, 1745.26, 1745.27, 1745.28, 1745.29, 1745.30, 1745.31, 1745.32, 1745.33, 1745.34, 1745.35, 1745.36, 1745.37, 1745.38, 1745.39, 1745.40, 1745.41, 1745.42, 1745.43, 1745.44, 1745.45, 1745.46, 1745.461, 1745.47, 1745.48, 1745.49, 1745.50, 1745.51, 1745.52, 1745.53, 1745.54, 1745.55, 1745.56, and 1745.57 of the Revised Code be enacted to read as follows:

Sec. 9.231. (A)(1) Subject to divisions (A)(2) and (3) of this section, a governmental entity shall not disburse money totaling twenty-five thousand dollars or more to any person for the provision of services for the primary benefit of individuals or the public and not for the primary benefit of a governmental entity or the employees of a governmental entity, unless the contracting authority of the governmental entity first enters into a written contract with the person that is signed by the person or by an officer or agent of the person authorized to legally bind the person and that embodies all of

the requirements and conditions set forth in sections 9.23 to 9.236 of the Revised Code. If the disbursement of money occurs over the course of a governmental entity's fiscal year, rather than in a lump sum, the contracting authority of the governmental entity shall enter into the written contract with the person at the point during the governmental entity's fiscal year that at least seventy-five thousand dollars has been disbursed by the governmental entity to the person. Thereafter, the contracting authority of the governmental entity shall enter into the written contract with the person at the beginning of the governmental entity's fiscal year, if, during the immediately preceding fiscal year, the governmental entity disbursed to that person an aggregate amount totaling at least seventy-five thousand dollars.

(2) If the money referred to in division (A)(1) of this section is disbursed by or through more than one state agency to the person for the provision of services to the same population, the contracting authorities of those agencies shall determine which one of them will enter into the written contract with the person.

(3) The requirements and conditions set forth in divisions (A), (B), (C), and (F) of section 9.232, divisions (A)(1) and (2) and (B) of section 9.234, divisions (A)(2) and (B) of section 9.235, and sections 9.233 and 9.236 of the Revised Code do not apply with respect to the following:

(a) Contracts to which all of the following apply:

(i) The amount received for the services is a set fee for each time the services are provided, is determined in accordance with a fixed rate per unit of time or per service, or is a capitated rate, and the fee or rate is established by competitive bidding or by a market rate survey of similar services provided in a defined market area. The market rate survey may be one conducted by or on behalf of the governmental entity or an independent survey accepted by the governmental entity as statistically valid and reliable.

(ii) The services are provided in accordance with standards established by state or federal law, or by rules or regulations adopted thereunder, for their delivery, which standards are enforced by the federal government, a governmental entity, or an accrediting organization recognized by the federal government or a governmental entity.

(iii) Payment for the services is made after the services are delivered and upon submission to the governmental entity of an invoice or other claim for payment as required by any applicable local, state, or federal law or, if no such law applies, by the terms of the contract.

(b) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that meets all of the following requirements:

(i) The program calculates the reimbursement rate on the basis of the previous year's experience or in accordance with an alternative method set forth in rules adopted by the Ohio department of job and family services.

(ii) The reimbursement rate is derived from a breakdown of direct and indirect costs.

(iii) The program's guidelines describe types of expenditures that are allowable and not allowable under the program and delineate which costs are acceptable as direct costs for purposes of calculating the reimbursement rate.

(iv) The program includes a uniform cost reporting system with specific audit requirements.

(c) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that calculates the reimbursement rate on a fee for service basis in compliance with United States office of management and budget Circular A-87, as revised May 10, 2004.

(d) Contracts for services that are paid pursuant to the earmarking of an appropriation made by the general assembly for that purpose.

(B) Division (A) of this section does not apply if the money is disbursed to a person pursuant to a contract with the United States or a governmental entity under any of the following circumstances:

(1) The person receives the money directly or indirectly from the United States, and no governmental entity exercises any oversight or control over the use of the money.

(2) The person receives the money solely in return for the performance of one or more of the following types of services:

(a) Medical, therapeutic, or other health-related services provided by a person if the amount received is a set fee for each time the person provides the services, is determined in accordance with a fixed rate per unit of time, or is a capitated rate, and the fee or rate is reasonable and customary in the person's trade or profession;

(b) Medicaid-funded services, including administrative and management services, provided pursuant to a contract or medicaid provider agreement that meets the requirements of the medicaid program established under Chapter 5111. of the Revised Code.

(c) Services, other than administrative or management services or any of the services described in division (B)(2)(a) or (b) of this section, that are commonly purchased by the public at an hourly rate or at a set fee for each time the services are provided, unless the services are performed for the benefit of children, persons who are eligible for the services by reason of advanced age, medical condition, or financial need, or persons who are

confined in a detention facility as defined in section 2921.01 of the Revised Code, and the services are intended to help promote the health, safety, or welfare of those children or persons;

(d) Educational services provided by a school to children eligible to attend that school. For purposes of division (B)(2)(d) of this section, "school" means any school operated by a school district board of education, any community school established under Chapter 3314. of the Revised Code, or any nonpublic school for which the state board of education prescribes minimum education standards under section 3301.07 of the Revised Code.

(e) Services provided by a foster home as defined in section 5103.02 of the Revised Code;

(f) "Routine business services other than administrative or management services," as that term is defined by the attorney general by rule adopted in accordance with Chapter 119. of the Revised Code;

(g) Services to protect the environment or promote environmental education that are provided by a nonprofit entity or services to protect the environment that are funded with federal grants or revolving loan funds and administered in accordance with federal law.

(3) The person receives the money solely in return for the performance of services intended to help preserve public health or safety under circumstances requiring immediate action as a result of a natural or man-made emergency.

(C) With respect to a an unincorporated nonprofit association, corporation, or organization established for the purpose of providing educational, technical, consulting, training, financial, or other services to its members in exchange for membership dues and other fees, any of the services provided to a member that is a governmental entity shall, for purposes of this section, be considered services "for the primary benefit of a governmental entity or the employees of a governmental entity."

Sec. 169.01. As used in this chapter, unless the context otherwise requires:

(A) "Financial organization" means any bank, trust company, savings bank, safe deposit company, mutual savings bank without mutual stock, savings and loan association, credit union, or investment company.

(B)(1) "Unclaimed funds" means any moneys, rights to moneys, or intangible property, described in section 169.02 of the Revised Code, when, as shown by the records of the holder, the owner has not, within the times provided in section 169.02 of the Revised Code, done any of the following:

(a) Increased, decreased, or adjusted the amount of such funds;

- (b) Assigned, paid premiums, or encumbered such funds;
- (c) Presented an appropriate record for the crediting of such funds or received payment of such funds by check, draft, or otherwise;
- (d) Corresponded with the holder concerning such funds;
- (e) Otherwise indicated an interest in or knowledge of such funds;
- (f) Transacted business with the holder.

(2) "Unclaimed funds" does not include any of the following:

- (a) Money received or collected under section 9.39 of the Revised Code;
- (b) Any payment or credit due to a business association from a business association representing sums payable to suppliers, or payment for services rendered, in the course of business, including, but not limited to, checks or memoranda, overpayments, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates;

(c) Any payment or credit received by a business association from a business association for tangible goods sold, or services performed, in the course of business, including, but not limited to, checks or memoranda, overpayments, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates;

(d) Any credit due a retail customer that is represented by a gift certificate, gift card, merchandise credit, or merchandise credit card, redeemable only for merchandise.

For purposes of divisions (B)(2)(b) and (c) of this section, "business association" means any corporation, joint venture, business trust, limited liability company, partnership, association, or other business entity composed of one or more individuals, whether or not the entity is for profit.

(C) "Owner" means any person, or the person's legal representative, entitled to receive or having a legal or equitable interest in or claim against moneys, rights to moneys, or other intangible property, subject to this chapter.

(D)(1) "Holder" means any person that has possession, custody, or control of moneys, rights to moneys, or other intangible property, or that is indebted to another, if any of the following applies:

- (a) Such person resides in this state;
- (b) Such person is formed under the laws of this state;
- (c) Such person is formed under the laws of the United States and has an office or principal place of business in this state;
- (d) The records of such person indicate that the last known address of the owner of such moneys, rights to moneys, or other intangible property is in this state;
- (e) The records of such person do not indicate the last known address of

the owner of the moneys, rights to moneys, or other intangible property and the entity originating or issuing the moneys, rights to moneys, or other intangible property is this state or any political subdivision of this state, or is incorporated, organized, created, or otherwise located in this state. Division (D)(1)(e) of this section applies to all moneys, rights to moneys, or other intangible property that is in the possession, custody, or control of such person on or after July 22, 1994, whether the moneys, rights to moneys, or other intangible property becomes unclaimed funds prior to or on or after that date.

(2) "Holder" does not mean any hospital granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code or any hospital owned or operated by the state or by any political subdivision. Any entity in order to be exempt from the definition of "holder" pursuant to this division shall make a reasonable, good-faith effort to contact the owner of the unclaimed funds.

(E) "Person" includes a natural person; corporation, whether for profit or not for profit; copartnership; unincorporated nonprofit association ~~or organization~~; public authority; estate; trust; two or more persons having a joint or common interest; eleemosynary organization; fraternal or cooperative association; other legal or community entity; the United States government, including any district, territory, possession, officer, agency, department, authority, instrumentality, board, bureau, or court; or any state or political subdivision thereof, including any officer, agency, board, bureau, commission, division, department, authority, court, or instrumentality.

(F) "Mortgage funds" means the mortgage insurance fund created by section 122.561 of the Revised Code, and the housing guarantee fund created by division (D) of section 128.11 of the Revised Code.

(G) "Lawful claims" means any vested right a holder of unclaimed funds has against the owner of such unclaimed funds.

(H) "Public utility" means any entity defined as such by division (A) of section 745.01 or by section 4905.02 of the Revised Code.

(I) "Deposit" means to place money in the custody of a financial organization for the purpose of establishing an income-bearing account by purchase or otherwise.

(J) "Income-bearing account" means a time or savings account, whether or not evidenced by a certificate of deposit, or an investment account through which investments are made solely in obligations of the United States or its agencies or instrumentalities or guaranteed as to principal and interest by the United States or its agencies or instrumentalities, debt

securities rated as investment grade by at least two nationally recognized rating services, debt securities which the director of commerce has determined to have been issued for the safety and welfare of the residents of this state, and equity interests in mutual funds that invest solely in some or all of the above-listed securities and involve no general liability, without regard to whether income earned on such accounts, securities, or interests is paid periodically or at the end of a term.

(K) "Director of commerce" may be read as the "division of unclaimed funds" or the "superintendent of unclaimed funds."

Sec. 1702.01. As used in this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Modest perquisites.

(N) "Business corporation" means any entity, ~~as defined in section 1701.01 of the Revised Code, other than a public benefit corporation or a mutual benefit corporation,~~ that is organized pursuant to Chapter 1701. of the Revised Code other than a public benefit entity.

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

(P) "Public benefit corporation" means a corporation that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation, the United States, a

state or any political subdivision of a state, or a person that is recognized as exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," as amended. "Public benefit corporation" does not include a nonprofit corporation that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.

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

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

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

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

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

(a) A common law trust;

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

(c) A limited liability company;

(d) A for profit corporation;

(e) An unincorporated nonprofit association.

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

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

Sec. 1702.05. (A) Except as provided in this section and in sections 1702.41 and ~~1702.45~~ 1702.411 of the Revised Code, the secretary of state

shall not accept for filing in the secretary of state's office any articles if the corporate name set forth in the articles is not distinguishable upon the secretary of state's records from any of the following:

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

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

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

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

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

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

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

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

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

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

(D) In case of judicial sale or judicial transfer, by sale or transfer of

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

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

Sec. 1702.41. (A)(1) ~~Any two or more corporations may merge into a single corporation which shall be one of the constituent corporations, or may consolidate into a single corporation which shall be a new corporation to be formed by the consolidation~~ Pursuant to an agreement of merger, a domestic corporation and one or more additional domestic or foreign entities may be merged into a surviving domestic corporation. Pursuant to an agreement of consolidation, one or more domestic or foreign entities may be consolidated into a new domestic corporation. If any constituent entity is formed or organized under the laws of any state other than this state or under any chapter of the Revised Code other than this chapter, the merger or consolidation also must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(2) To effect ~~such a~~ a merger or consolidation under this section, the directors of each constituent domestic corporation shall approve an agreement of merger or consolidation to be signed by the chairperson of the board of directors, the president, or a vice-president and by the secretary or an assistant secretary, ~~which. The agreement of merger or consolidation~~

shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

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

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

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

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

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

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

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

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

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

(~~g~~)(i) The regulations of the surviving or new corporation or a provision to the effect that the regulations of ~~one of the~~ a specified constituent ~~corporations~~ corporation shall be the regulations of the surviving or new corporation or to the effect that the voting members or the directors of the surviving or new corporation may adopt regulations, or any combination thereof of them.

(~~3~~)(4) The agreement of merger or consolidation may also set forth any of the following:

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

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

the filing of the agreement;

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

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

(B)(1) ~~Without the prior approval of~~ A merger or consolidation in which a domestic public benefit corporation is one of the constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the public benefit corporation is located, in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right, ~~a public benefit corporation may merge or consolidate only with any of the following.~~ No approval by the court under division (B)(1) of this section is required if either of the following applies:

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

(b) ~~A foreign corporation that would qualify under the Revised Code as a public benefit corporation;~~

(c) ~~A mutual benefit corporation or a business corporation, provided that the domestic public benefit corporation is not the surviving corporation entity in the case of a merger and continues to be a public benefit corporation or that a public benefit corporation or is not the new corporation in the case of a consolidation;~~

(d) ~~A business corporation or mutual benefit corporation, provided that, and~~ all of the following apply:

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

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

(iii) The merger or consolidation is approved by a majority of directors

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

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

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

~~consolidation other than membership or directorship in the surviving or new public benefit corporation.~~ The court shall approve the transaction if it is in the public interest.

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

~~(C) A corporation may be the surviving or new entity in a merger or consolidation with one or more business corporations, or a corporation may merge or consolidate into one or more business corporations with a business corporation, a mutual benefit corporation, or a foreign corporation as the surviving or new entity, provided that the corporation complies with the provisions of this section and sections 1702.42 and 1702.43 of the Revised Code, as applicable to the corporation, and that the business corporation complies with the provisions of section 1701.781 or 1701.791 of the Revised Code, as applicable to the business corporation.~~

Sec. 1702.411. (A)(1) Pursuant to an agreement of merger between the constituent entities as provided in this section, a domestic corporation and, if so provided, one or more additional domestic or foreign entities, may be merged into a surviving entity other than a domestic corporation. Pursuant to an agreement of consolidation, a domestic corporation together with one or more additional domestic or foreign entities may be consolidated into a new entity other than a domestic corporation, to be formed by that consolidation. The merger or consolidation must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists. The name of the surviving or new entity may be the same as or similar to that of any constituent entity.

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

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

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

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

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

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

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

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

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

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

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

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

liability company registers to transact business in this state:

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

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

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

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

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

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

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

(iii) The merger or consolidation is approved by a majority of directors of the domestic public benefit corporation who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of

the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, directors, officers, managers, employees, agents, or other representatives of, or consultants to, the surviving or new entity.

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

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

(4) The attorney general may institute a civil action to enforce the requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located or in the Franklin county

court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.

Sec. 1702.42. (A) The directors of each constituent domestic corporation, upon approving an agreement of merger or consolidation, shall direct that the agreement be submitted to the voting members entitled to vote on it at a meeting of voting members of ~~such that~~ corporation held for that purpose, ~~and notice.~~ Notice of the meeting shall be given to all members of the constituent domestic corporation entitled to vote at the meeting. The notice shall be accompanied by a copy or summary of the material terms of the agreement.

(B)(1) At each meeting described in division (A) of this section, a vote of the members shall be taken on the proposed agreement. In order to be adopted, the agreement (, including any amendments or additions to the agreement proposed at each such meeting) ~~must,~~ shall receive the affirmative vote of a majority of the voting members of each constituent domestic corporation present at that meeting in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy if a quorum is present, or, if the articles or the regulations of that corporation provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and the affirmative vote of the voting members of any particular class that is required by the articles or the regulations of ~~such that~~ corporation. If the agreement would effect or authorize any particular corporate action that, under any applicable provision of law or under the ~~existing~~ articles ~~of one or more of the constituent corporations,~~ could be effected or authorized only by or pursuant to a specified vote of ~~voting the~~ members, the agreement (, including any amendments or additions to the agreement proposed at each such meeting) ~~in order to,~~ shall be adopted ~~must receive by~~ the same affirmative vote ~~so specified as would be required for that action.~~

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

(C) At any time prior to the filing of the agreement, the merger or consolidation may be abandoned by the directors of one or more of the constituent domestic corporations or the comparable representatives of any other constituent entity, if the power of abandonment is conferred ~~upon those directors~~ either by the agreement or by the same vote ~~of voting members of each of the constituent corporations and at the same meetings as~~

~~those referred to in division (B) of this section or at subsequent meetings or action as is required to adopt that agreement.~~

Sec. 1702.43. (A) Upon adoption by each constituent ~~corporation~~ entity of an agreement of merger or consolidation pursuant to section ~~1702.42~~ 1702.41 or ~~1702.45~~ 1702.411 of the Revised Code, a certificate of merger or consolidation, signed by any authorized representative of each constituent ~~corporation~~ entity, shall be filed with the secretary of state. The certificate shall be on a form prescribed by the secretary of state and shall set forth only the information required by this section.

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

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

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

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

(d) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate;

(e) The signature of each representative authorized to sign the certificate on behalf of each constituent entity and the office each representative authorized to sign holds or the capacity in which the representative is acting;

(f) A statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that each person who signed the certificate on behalf of each entity is authorized to do so;

(g) In the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity;

(h) In the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in this state, the name and address of the statutory agent upon whom any process, notice, or demand may be served;

(i) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served.

(2) In the case of a consolidation into a new domestic corporation, the articles of incorporation of the new domestic corporation shall be filed with the certificate of consolidation ~~shall be accompanied by a copy of the~~

~~articles of incorporation of the new domestic corporation.~~

(3) In the case of a merger into a domestic corporation, any amendments to the articles of incorporation of the surviving domestic corporation shall be filed with the certificate of merger ~~shall be accompanied by a copy of any amendments to the articles of incorporation of the surviving domestic corporation.~~ Filing requirements with respect to mergers and consolidations in which a domestic corporation is not the surviving or resulting entity shall be subject to division (B) of section 1702.43 of the Revised Code.

(4) If the surviving or new entity is a foreign entity that desires to transact business in this state as a foreign corporation, limited liability company, limited partnership, or unincorporated association, the certificate of merger or consolidation shall ~~contain a statement to that effect and a statement with respect to the appointment of the statutory agent and with respect to the consent to service of any process, notice, or demand upon that statutory agent or the secretary of state, as required when a foreign corporation applies for a certificate authorizing it to transact business in this state~~ be accompanied by the information required by division (A)(3)(h), (i), (j), or (k) of section 1702.411 of the Revised Code, whichever is applicable.

(5) If a domestic or foreign corporation licensed to transact business in this state is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a domestic or foreign corporation that is to be licensed to transact business in this state, the certificate of merger or consolidation shall be accompanied by the affidavits, receipts, certificates, or other evidence required by division (G) of section 1702.47 of the Revised Code, with respect to each domestic corporation, and by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code, with respect to each foreign constituent corporation licensed to transact business in this state.

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

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

(D) The secretary of state shall furnish, upon request and payment of the fee specified in division (D) of section 111.16 of the Revised Code, a certificate setting forth the name and form of each constituent entity and the

state under whose laws each constituent entity existed prior to the merger or consolidation, the name and form of the surviving or new entity and the state under whose laws the surviving entity exists or the new entity is to exist, the date of filing of the certificate of merger or consolidation with the secretary of state, and the effective date of the merger or consolidation. The certificate of the secretary of state or a copy of the merger or consolidation certified by the secretary of state may be filed for record in the office of the recorder of any county in this state and, if filed, shall be recorded in the records of deeds for that county. For that recording, the county recorder shall charge and collect the same fee as in the case of deeds.

Sec. 1702.44. (A) When ~~such a~~ merger or consolidation becomes effective, all of the following apply:

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

~~(B)~~ The constituent corporations shall become a single corporation which, in the case of a merger, shall be that one of the constituent corporations designated in the agreement of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the agreement of consolidation;

~~(C)~~ The surviving or new corporation shall have all the rights, privileges, immunities, powers, franchises, and authority and shall be subject to all the obligations of a corporation formed under this chapter;

~~(D).~~

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

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

~~(E) To the extent permitted by the laws of any other state in which any constituent corporation has property, the provisions of division (D) of this section apply in such state;~~

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

~~(G)(5) All of the rights of creditors of each constituent corporation shall be entity are preserved unimpaired, and all liens upon the property of any of the constituent corporations shall be entity are preserved unimpaired, limited in lien to on only the property affected by such those liens immediately prior to the effective date of the merger or consolidation;~~

~~(H) The agreement shall operate as amended articles in the case of a merger and as original articles in the case of consolidation. If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, the former general partner has no liability for any obligation incurred after the~~

merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a partner extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity.

(B) If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, division (B) of section 1782.434 of the Revised Code applies.

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

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

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

Sec. 1702.46. ~~(A)~~ Upon the filing of the certificate of merger or consolidation in compliance with the laws of each state under the laws of which any constituent ~~corporation~~ entity exists, or at ~~such~~ any later date as

that the certificate specifies, the merger or consolidation shall become effective.

~~(B) The effect of such merger or consolidation, if the surviving or new corporation is to be a domestic corporation, shall be the same as in the case of the merger or consolidation of domestic corporations. If the surviving or new corporation is to be a foreign corporation:~~

~~(1) The surviving or new corporation shall thenceforth be liable for all the obligations of each of the constituent corporations;~~

~~(2) All the rights of creditors of each constituent corporation shall be preserved unimpaired, and all liens upon the property of any of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the effective date of the merger or consolidation;~~

~~(3) The effect of such merger or consolidation shall, in all other respects, be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state otherwise provide.~~

~~(C) If the surviving or new corporation is to be a foreign corporation and if the certificate states that the surviving or new corporation desires to exercise its corporate privileges in this state as a foreign corporation in a continual course of transactions, the surviving or new corporation shall, when the merger or consolidation becomes effective, be deemed to have complied with the requirements for procuring a certificate authorizing it to do so, and a copy of the certificate of merger or consolidation, certified by the secretary of state of this state, shall be considered and accepted as the license certificate prescribed by the laws of this state for a foreign corporation exercising its corporate privileges in this state in a continual course of transactions.~~

Sec. 1702.462. (A) Upon the adoption of a declaration of conversion pursuant to section 1702.461 of the Revised Code, or at a later time as authorized by the declaration of conversion, a certificate of conversion that is signed by an authorized representative of the converting entity shall be filed with the secretary of state. The certificate shall be on a form prescribed by the secretary of state and shall set forth only the information required under division (B) of this section.

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

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

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

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

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

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

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

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

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

(2) In the case of a conversion into a limited liability company, limited partnership, or other partnership, any organizational document, including a designation of agent, that would be filed upon the creation of the new entity shall be filed with the certificate of conversion.

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

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

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

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

believe that the conversion would render the converted entity unable to pay its obligations as they become due in the usual course of its affairs.

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

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

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

(3) The date of filing of the certificate of conversion with the secretary of state and the effective date of the conversion.

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

Sec. 1745.05. As used in this chapter, unless the context otherwise requires:

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

(B)(1) "Entity" means any of the following:

(a) An unincorporated nonprofit association existing under the laws of this state or any other state;

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

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

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

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

(ii) A limited liability company;

(iii) Any other legal or commercial entity the formation and operation of which is governed by statute.

(2) "Entity" includes a domestic or foreign entity.

(C) "Established practices" means the practices used by an unincorporated nonprofit association without material change during the most recent five years of its existence or, if it has existed for less than five years, during its entire existence.

(D) "Governing principles" means all agreements, whether oral, in a record, or implied from its established practices, or any combination of them, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. "Governing principles" includes any amendment or restatement of the agreements constituting the governing principles.

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

(F) "Manager" means a person, irrespective of the person's designation as director or other designation, that is responsible, alone or in concert with others, for the management of an unincorporated nonprofit association as stated in division (E) of section 1745.32 of the Revised Code.

(G) "Member" means a person that, under the governing principles of an unincorporated nonprofit association, is entitled to participate in the selection of persons authorized to manage the affairs of the association or in the adoption of the policies and activities of the association.

(H) "Mutual benefit association" means any unincorporated nonprofit association organized under this chapter other than a public benefit association.

(I) "Person" means an individual, corporation, business trust, statutory entity trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, two or more persons having a joint or common interest, or any other legal or commercial entity.

(J) "Public benefit association" means an unincorporated nonprofit association that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit association, the United States, a state or any political subdivision of a state, or a person that is recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

(K) "Public benefit entity" means an entity that is recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit entity, the United States, a state or any political subdivision of a state, or a person that

is recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. "Public benefit entity" does not include an entity that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.

(L) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(M) "Unincorporated nonprofit association" means an unincorporated organization, consisting of two or more members joined by mutual consent pursuant to an agreement, written, oral, or inferred from conduct, for one or more common, nonprofit purposes. "Unincorporated nonprofit association" does not include any of the following:

(1) A trust;

(2) A marriage, domestic partnership, common law relationship, or other domestic living arrangement;

(3) An organization that is formed under any other statute that governs the organization and operation of unincorporated associations;

(4) A joint tenancy, tenancy in common, or tenancy by the entireties notwithstanding that the co-owners share use of the property for a nonprofit purpose;

(5) A religious organization that operates according to the rules, regulations, canons, discipline, or customs established by the organization, including any ministry, apostolate, committee, or group within that organization.

(N)(1) Subject to division (N)(2) of this section, "volunteer" means a manager, officer, member, or agent of an unincorporated nonprofit association, or another person acting for the association, who satisfies both of the following:

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

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

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

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

(b) Insurance premiums paid on behalf of a volunteer, and amounts paid or reimbursed, pursuant to divisions (A) and (G) of section 1745.43 of the Revised Code;

(c) Modest perquisites.

Sec. 1745.06. (A) Principles of law and equity supplement this chapter unless displaced by a particular provision of this chapter.

(B) A statute in this state governing a particular type of unincorporated nonprofit association prevails over an inconsistent provision in this chapter to the extent of the inconsistency.

(C) This chapter supplements all regulatory laws that are applicable to nonprofit organizations operating in this state. In the event of a conflict, those regulatory laws prevail.

Sec. 1745.07. (A) Except as otherwise provided in division (B) of this section, the law of this state governs all unincorporated nonprofit associations formed or operating in this state.

(B) Unless the governing principles of an unincorporated nonprofit association specify a different jurisdiction, the law of the jurisdiction in which the association has its main place of activities governs the internal affairs of the association.

Sec. 1745.08. All of the following apply to an unincorporated nonprofit association:

(A) It is a legal entity distinct from its members and managers.

(B) It has perpetual duration unless its governing principles specify otherwise.

(C) It has the same powers as an individual to do all things necessary or convenient to carry on its activities.

(D) It may engage in profit-making activities, but any profits from those activities shall be used or set aside for the association's nonprofit purposes.

Sec. 1745.09. An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an estate or interest in real or personal property. An unincorporated nonprofit association may be a legatee, a devisee, or a beneficiary of a trust or contract. All property acquired by an unincorporated nonprofit association by purchase, gift, devise, bequest, or otherwise shall be the absolute property of the association, unless it is otherwise specified in writing at the time of acquiring that property.

Sec. 1745.10. A debt, obligation, or other liability of an unincorporated nonprofit association, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the association and does not become the debt, obligation, or other liability of a member or manager solely because the member acts as a member or the manager acts as a manager. A person's status as a member or a manager of an unincorporated nonprofit association does not prevent or restrict any law other than this

chapter from imposing liability on the person or association because of the person's conduct.

Sec. 1745.11. An unincorporated nonprofit association has the capacity to sue and be sued in its own name. A member or a manager of an unincorporated nonprofit association may assert a claim that the member or manager has against the association. An unincorporated nonprofit association may assert a claim that it has against a member or a manager of the association.

Sec. 1745.12. All assets, property, funds, and rights or interests, at law or in equity, of any unincorporated nonprofit association shall be subject to judgment, execution, and other process. A money judgment against an unincorporated nonprofit association shall be enforced only against the association as an entity and shall not be enforceable against the property of any manager or member of the association.

Sec. 1745.13. (A) An unincorporated nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process. The agent may be a natural person who is a resident of this state or may be a for profit domestic corporation or a for profit foreign corporation holding a license as such under the laws of this state and that has a business address in this state. The statement appointing an agent shall set forth the name of the unincorporated nonprofit association and the name and address in this state of the agent, including the street and number or other particular description, and shall otherwise be in the form that the secretary of state prescribes. The secretary of state shall keep a record of the names of all unincorporated nonprofit associations that have filed a statement appointing an agent authorized to receive service of process and the names and addresses of their respective agents.

(B) A statement appointing an agent authorized to receive service of process under division (A) of this section shall be signed by a person authorized to manage the affairs of the unincorporated nonprofit association. The statement also shall be signed by the person appointed as agent who accepts the appointment. The appointed agent may resign by filing with the secretary of state, on a form prescribed by the secretary of state, a written notice to that effect that is signed by the agent and by sending a copy of the notice to the association at the current or last known address of its principal office on or prior to the date that the notice is filed with the secretary of state. Upon the expiration of thirty days after the filing, the authority of the agent shall terminate.

(C) An unincorporated nonprofit association may revoke the appointment of an agent by filing with the secretary of state on a form

prescribed by the secretary of state a written appointment of another agent and a statement that the appointment of the former agent is revoked.

Sec. 1745.14. In an action or proceeding against an unincorporated nonprofit association, a summons and complaint or other process may be served on an agent authorized by appointment to receive service of process or a manager of the association or in any other manner authorized by the law of this state.

Sec. 1745.15. An action or proceeding against an unincorporated nonprofit association does not abate merely because of a change in its members or managers.

Sec. 1745.16. Unless otherwise provided by law, the venue of an action against an unincorporated nonprofit association brought in this state shall be determined under the statutes applicable to an action brought in this state against a nonprofit corporation.

Sec. 1745.17. A member of an unincorporated nonprofit association is not an agent of the association solely by reason of being a member.

Sec. 1745.18. Except as otherwise provided in its governing principles, an unincorporated nonprofit association shall have the approval of its members to do any of the following:

(A) Admit, suspend, dismiss, or expel a member;

(B) Select or dismiss a manager;

(C) Adopt, amend, or repeal its governing principles;

(D) Sell, lease, exchange, or otherwise dispose of all or substantially all of the association's property, with or without the association's goodwill, outside the ordinary course of its activities;

(E) Dissolve under section 1745.50 of the Revised Code or merge or consolidate under section 1745.46 or 1745.461 of the Revised Code;

(F) Undertake any other act outside the ordinary course of the association's activities if the association has annual gross receipts of less than twenty-five thousand dollars;

(G) Determine the purposes of the association and, if the association has annual gross receipts of less than twenty-five thousand dollars, determine the policies of the association;

(H) Do any other act or exercise any right that requires action by the members under the governing principles.

Sec. 1745.19. (A) Unless another form of notice is required by the governing principles of an unincorporated nonprofit association or by applicable law, any notice required by this chapter shall be in writing and shall be delivered personally or sent by telegram, by the use of authorized communications equipment, or by United States mail, express mail, or

courier service, with postage or fees prepaid.

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

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

Sec. 1745.20. (A) An unincorporated nonprofit association shall maintain a record of its members containing the name and address of each member and, if members are classified, the class to which the member belongs.

(B) A member of an unincorporated nonprofit association may be suspended, dismissed, or expelled as provided in division (A) of section 1745.29 of the Revised Code or may resign as provided in division (A) of section 1745.30 of the Revised Code. Upon the suspension or termination of membership, that fact and the date of the suspension or termination shall be recorded in the association's membership records.

(C) Unless the governing principles provide otherwise, all rights and privileges of a member in an unincorporated nonprofit association and its property shall cease on termination of membership.

(D) Whenever the number of members of an unincorporated nonprofit association that, under the law or its governing principles, must have a specified number of members is reduced below the specified number, the unincorporated nonprofit association shall not be required because of that reduction to cease carrying on its activities, but the continuing members may fill all vacancies.

(E) Unless otherwise provided in the governing principles of an unincorporated nonprofit association, all members have the same membership rights and privileges.

(F) All members of an unincorporated nonprofit association shall exercise their membership rights and privileges consistent with the obligation of good faith and fair dealing.

Sec. 1745.21. (A) Unless the governing principles provide otherwise, meetings of voting members of an unincorporated nonprofit association may be called by any of the following:

(1) The president or, in case of the president's absence, death, or disability, the vice-president authorized to exercise the authority of the president;

(2) The manager or managers by action at a meeting, or a majority of the managers acting without a meeting;

(3) The lesser of ten per cent of the voting members or twenty-five of the voting members, unless the governing principles specify for that purpose a smaller or larger proportion or number, but not in excess of fifty per cent of the voting members;

(4) Any other officers or persons that the governing principles authorize to call those meetings.

(B) If so provided in the governing principles, meetings of voting members may be held either within or outside this state or solely by means of authorized communications equipment.

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

Sec. 1745.22. Unless the governing principles provide for notice of meetings otherwise than as provided in this section, written notice stating the place, if any, and the time of a meeting, the means, if any, by which the voting members can be present and vote at the meeting through the use of authorized communications equipment, and in case of a special meeting the purpose or purposes for which the meeting is called, shall be given in the manner described in section 1745.19 of the Revised Code, to each member entitled to notice of the meeting not less than ten and not more than sixty days before the date of the meeting. The notice of the meeting shall be given by or at the direction of the president, the secretary, or any other person required or permitted by the governing principles to give notice or by the officers or persons calling the meeting. If mailed or sent by overnight delivery service, that notice shall be addressed to the member at the member's address as it appears on the records of the unincorporated nonprofit association. If sent by means of authorized communications equipment, that notice shall be sent to the address furnished by the voting member for transmissions by authorized communications equipment. Notice of adjournment of a meeting need not be given if the place, if any, and the time to which it is adjourned and the procedure by which the voting members can be present and vote at the adjourned meeting through the use of authorized communications equipment are fixed and announced at the meeting.

Sec. 1745.23. (A) Notice of the place, if any, the time, and the purpose or purposes of any meeting of voting members or managers, as the case may be, whether required by law or the governing principles may be waived in writing, either before or after the holding of that meeting, by any member or any manager. That writing shall be filed with or entered upon the records of the meeting. A transmission by authorized communications equipment that contains a waiver is a writing for purposes of this division.

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

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

equipment.

Sec. 1745.24. Unless the governing principles provide otherwise, the following apply:

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

(B) The affirmative vote of a majority of the voting members present at a meeting at which a quorum is present as provided in division (A) of this section shall be necessary for the authorization or taking of any action voted upon by the members, except that no action required by law or by the governing principles to be authorized or taken by a specified proportion or number of the voting members or of any class of voting members may be authorized or taken by a lesser proportion or number.

Sec. 1745.25. (A) Except as otherwise provided in the governing principles, each member, regardless of class, shall be entitled to one vote on each matter properly submitted to the members for their vote, consent, waiver, release, or other action.

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

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

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

Sec. 1745.26. Whenever with respect to the authorization or taking of any action by the members or the managers the governing principles require the vote, consent, waiver, or release of a greater proportion or number of the members or the managers than that otherwise required by law with respect to that authorization or taking of the action, the provisions of the governing principles shall control.

Sec. 1745.27. The authorization or taking of any action by vote, consent, waiver, or release of the members may be rescinded or revoked by the same vote, consent, waiver, or release as at the time of rescission or revocation would be required to authorize or take that action in the first instance, subject to the contract rights of other persons.

Sec. 1745.28. (A) Unless the governing principles prohibit the authorization or taking of any action of the members or the managers without a meeting, any action that may be authorized or taken at a meeting of the members or the managers, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, all of the members or all of the managers, as the case may be, who would be entitled to notice of a meeting for that purpose, or, in the case of members, any other proportion or number of voting members, not less than a majority, that the governing principles permit. The writing or writings described in this division shall be filed with or entered upon the records of the unincorporated nonprofit association. Any certificate with respect to the authorization or taking of any action described in this division that is required to be filed in the office of the secretary of state shall recite that the authorization or taking of that action was in a writing or writings approved and signed as specified in this section.

(B) Any transmission by authorized communications equipment that contains an affirmative vote or approval of the person described in division (A) of this section is a signed writing for purposes of this section. The date on which that transmission by authorized communications equipment is sent is the date on which the writing is signed.

Sec. 1745.29. (A) A person becomes a member of an unincorporated nonprofit association and may be suspended, dismissed, or expelled in accordance with the association's governing principles. If there are no applicable governing principles, a person may become a member or be suspended, dismissed, or expelled from an unincorporated nonprofit association by a vote of its members. A person may not be admitted as a member of an unincorporated nonprofit association without the person's consent.

(B) Unless the governing principles provide otherwise, the suspension, dismissal, or expulsion of a member of an unincorporated nonprofit association does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before the suspension, dismissal, or expulsion.

Sec. 1745.30. (A) A member may resign from membership in an unincorporated nonprofit association in accordance with the governing principles. In the absence of applicable governing principles, a member may resign at any time.

(B) Unless the governing principles provide otherwise, resignation of a member of an unincorporated nonprofit association does not relieve the

member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before the resignation.

Sec. 1745.31. Except as otherwise provided in the governing principles, any interest or right of the member under the governing principles is not transferable.

Sec. 1745.32. Except as otherwise provided in this chapter or the governing principles, all of the following apply:

(A) The members of an unincorporated nonprofit association may select the manager or managers.

(B) A manager may be a member of the association.

(C) If no manager is selected, all members are managers.

(D) Each manager has equal rights in the management and conduct of the association's activities.

(E) All matters relating to the association's activities are decided by its managers, except for those matters reserved for approval by members as specified in section 1745.18 of the Revised Code.

(F) A difference among managers is decided by a majority of the managers.

Sec. 1745.33. (A) Except when the law or the governing principles require that action be otherwise authorized or taken, all of the authority of an unincorporated nonprofit association shall be exercised by or under the direction of its manager or managers.

(B) The only fiduciary duties a manager owes to the association are the duties set forth in this division. The duties of a manager are to act in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the unincorporated nonprofit association, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances. A manager serving on a committee of managers is acting as a manager.

(C) In performing the duties of a manager, a manager 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 managers, officers, or employees of the association who the manager reasonably believes are reliable and competent in the matters prepared or presented;

(2) Counsel, public accountants, or other persons as to matters that the manager reasonably believes are within the person's professional or expert competence;

(3) A committee of the managers in which the manager does not serve, duly established in accordance with a provision of the governing principles as to matters within its designated authority, which committee the manager reasonably believes to merit confidence.

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

(1) A manager shall not be found to have failed to perform the manager's duties in accordance with that division, unless it is proved by clear and convincing evidence in an action brought against the manager that the manager has not acted in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the unincorporated nonprofit association, or with the care that an ordinarily prudent person in a similar position would use under similar circumstances. An action under division (D)(1) of this section 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 association;

(b) A termination or potential termination of the manager's service to the association as manager;

(c) The manager's service in any other position or relationship with the association.

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

(3) The provisions of division (D) of this section do not limit relief available under section 1745.42 of the Revised Code.

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

(2) Division (E)(1) of this section does not affect the liability of a manager under section 1745.56 of the Revised Code.

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

(F) For purposes of this section, in determining what a manager

reasonably believes to be in or not opposed to the best interests of the association, a manager shall consider the purposes of the association and may consider any of the following:

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

(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 association, including, but not limited to, the possibility that those interests may be best served by the continued independence of the association.

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

Sec. 1745.34. Unless otherwise provided in the governing principles, the following apply:

(A) Meetings of the managers may be called by any two managers or by any chairperson, president, or vice-president of the unincorporated nonprofit association.

(B) Meetings of the managers may be held at any place within or outside this state, including by means of authorized communications equipment, unless the governing principles prohibit participation by managers at a meeting by means of authorized communications equipment. Participation at a meeting pursuant to this division constitutes presence at that meeting.

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

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

Sec. 1745.35. Unless the governing principles provide otherwise, a majority of the whole authorized number of managers is necessary to constitute a quorum for a meeting of the managers, except that a majority of the managers in office constitutes a quorum for filling a vacancy in the position of manager. The act of a majority of the managers present at a meeting at which a quorum is present is the act of all of the managers, unless the act of a greater number is required by the governing principles.

Sec. 1745.36. (A) The governing principles may provide for the creation by the managers of an executive committee or any other committee of the

managers, to consist of one or more managers, and may authorize the delegation to that committee of any of the authority of the managers, however conferred.

(B) The managers may appoint one or more managers as alternate members of any committee described in division (A) of this section, who may take the place of any absent member or members at any meeting of the particular committee.

(C) Each committee described in division (A) of this section shall serve at the pleasure of the managers, shall act only in the intervals between meetings of the managers, and shall be subject to the control and direction of the managers.

(D) Unless otherwise provided in the governing principles or ordered by the managers, any committee described in division (A) of this section may act by a majority of its members at a meeting or by a writing or writings signed by all of its members.

(E) Meetings of committees described in division (A) of this section may be held by any means of authorized communication equipment, unless participation by members of the committee at a meeting by means of authorized communications equipment is prohibited by the governing principles or any order of the managers. Participation at a meeting pursuant to this division constitutes presence at the meeting.

(F) An act or authorization of an act by any committee described in division (A) of this section within the authority delegated to it shall be as effective for all purposes as the act or authorization of the managers.

Sec. 1745.37. (A) The officers of an unincorporated nonprofit association, if any, may consist of a president, a secretary, a treasurer, and, if desired, a chairperson, one or more vice-presidents, and any other officers and assistant officers that may be considered necessary, each of whom may be designated by any other titles that may be provided in the governing principles or the resolutions of the managers. Unless the governing principles provide otherwise, none of the officers need be a manager. Any two or more offices may be held by the same person. The officers shall be elected or appointed at the time, in the manner, and for the terms that may be prescribed in the governing principles. In the absence of any such provision, all officers shall be elected annually by the managers.

(B) Unless the governing principles provide otherwise, the following apply:

(1) All officers, as between themselves and the association, shall respectively have the authority and perform the duties that are determined by the persons authorized to elect or appoint them.

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

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

Sec. 1745.38. The managers of an unincorporated nonprofit association may authorize any mortgage, pledge, or deed of trust of all or any of the property of the association of any description or any interest in the property, for the purpose of securing the payment or performance of any obligation or contract. Unless the governing principles or the terms of any trust on which the association holds any particular property provide otherwise, no vote or consent of the members of the association or authorization from the court under section 1715.39 of the Revised Code is necessary for that action.

Sec. 1745.39. (A) On reasonable notice, a member or manager of an unincorporated nonprofit association may inspect and copy during the association's regular operating hours and at a reasonable location specified by the association any record maintained by the association regarding its activities, financial condition, and other circumstances, to the extent the information is material to the member's or manager's rights and duties under the association's governing principles or this chapter.

(B) An unincorporated nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing nondisclosure and safeguarding obligations on the recipient.

(C) An unincorporated nonprofit association may charge a person that makes a demand under this section reasonable copying costs, limited to the costs of labor and materials.

(D) A former member or manager of an unincorporated nonprofit association may have access to information to which the member or manager was entitled while a member or manager of the association if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies divisions (A) to (C) of this section.

Sec. 1745.40. (A) Except as otherwise provided in division (B) of this section, an unincorporated nonprofit association may not pay dividends or distribute any part of its income or profits to a member, manager, officer, or other private person.

(B) An unincorporated nonprofit association may do any of the following:

(1) Pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered;

(2) Confer benefits on a member or manager in conformity with its nonprofit purposes;

(3) Repurchase a membership and repay a capital contribution made by a member to the extent authorized by its governing principles;

(4) Make distributions of property to members upon winding up and termination to the extent permitted by section 1745.52 of the Revised Code.

Sec. 1745.41. (A) The office of a manager becomes vacant if the manager dies or resigns. A resignation under this division takes effect immediately or at any other time that the manager may specify.

(B) A manager may be removed from office pursuant to any procedure for removal from office provided in the governing principles. That removal from office creates a vacancy.

(C) Unless the governing principles provide otherwise, the remaining managers, although less than a majority of the whole authorized number of managers, may by the vote of a majority of their number fill any vacancy in the office of manager for the unexpired term. For purposes of this section, a vacancy exists if the voting members increase the authorized number of managers but fail at the meeting at which that increase is authorized or an adjournment of the meeting to elect the additional managers provided for or if the voting members fail at any time to elect the whole authorized number of managers.

Sec. 1745.42. (A) Unless otherwise provided in the governing principles, the following apply:

(1) No contract, action, or transaction is void or voidable with respect to an unincorporated nonprofit association because the contract, action, or transaction is between or affects the association and one or more of its members, managers, or officers or is between or affects the association and any other person in which one or more of the association's members, managers, or officers are members, managers, or officers or in which one or more of the association's members, managers, or officers have a financial or personal interest, or because one or more interested members, managers, or officers participate in or vote at the meeting of the members, the managers, or a committee of the managers that authorizes the contract, action, or transaction, if any of the following applies:

(a) The material facts as to the member's, manager's, or officer's relationship or interest and as to the contract, action, or transaction are

disclosed or are known to the managers or the committee, and the managers or committee, in good faith reasonably justified by the material facts, authorizes the contract, action, or transaction by the affirmative vote of a majority of the disinterested managers, even though the disinterested managers constitute less than a quorum of the managers or the committee.

(b) The material facts as to the member's, manager's, or officer's relationship or interest and as to the contract, action, or transaction are disclosed or are known to the members entitled to vote on the contract, action, or transaction, and the contract, action, or transaction is specifically approved at a meeting of the members held for the purpose of voting on the contract, action, or transaction, by the affirmative vote of a majority of the voting members of the unincorporated nonprofit association who are not interested in the contract, action, or transaction.

(c) The contract, action, or transaction is fair as to the unincorporated nonprofit association as of the time it is authorized or approved by the managers, a committee of the managers, or the members.

(2) Common or interested managers may be counted in determining the presence of a quorum at a meeting of the managers or a committee of the managers that authorizes the contract, action, or transaction.

(3) The managers, by the affirmative vote of a majority of those in office and irrespective of any financial or personal interest of any of the managers, have the authority to establish reasonable compensation, which may include pension, disability, and death benefits, for services to the unincorporated nonprofit association by the managers and officers, or to delegate that authority to establish reasonable compensation to one or more officers or managers.

(B) Divisions (A)(1) and (2) of this section do not limit or otherwise affect the liability of managers under section 1745.56 of the Revised Code.

(C) For purposes of division (A) of this section, a manager is not an interested manager solely because the subject of a contract, action, or transaction may involve or effect a change in control of the unincorporated nonprofit association or the manager's continuation in office as a manager of the association.

(D) For purposes of this section, "action" means a resolution that is adopted by the managers or a committee of the managers.

Sec. 1745.43. (A) An unincorporated nonprofit association 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 association, by reason of the fact that

the person is or was a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, or is or was serving at the request of the association as a director, officer, employee, member, manager, agent, or volunteer of any other entity, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with that 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 association, 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 association, 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.

(B) An unincorporated nonprofit association 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 association to procure a judgment in its favor by reason of the fact that the person is or was a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, or is or was serving at the request of the association as a director, officer, employee, member, manager, agent, or volunteer of any other entity, against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with the defense or settlement of that 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 association, except that no indemnification shall be made with respect to any of the following:

(1) 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 unincorporated nonprofit association 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 the expenses that the court of common pleas or that other court considers proper;

(2) Any action or suit in which liability is asserted against a manager and that liability is asserted only pursuant to section 1745.56 of the Revised Code.

(C) To the extent that a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in division (A) or (B) of this section, or in defense of any claim, issue, or matter in the action, suit, or proceeding, that 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.

(D)(1) Unless ordered by a court and subject to division (C) of this section, any indemnification under division (A) or (B) of this section shall be made by the unincorporated nonprofit association only as authorized in the specific case upon a determination that indemnification of the manager, officer, employee, member, agent, or volunteer of the association or the person acting in any other representative capacity, however denominated, is proper in the circumstances because the person has met the applicable standard of conduct set forth in division (A) or (B) of this section. That determination shall be made in any of the following manners:

(a) By a majority vote of a quorum consisting of managers of the indemnifying unincorporated nonprofit association who were not and are not parties to or threatened with the action, suit, or proceeding referred to in division (A) or (B) of this section;

(b) Whether or not a quorum as described in division (D)(1)(a) of this section is obtainable, and if a majority of a quorum of disinterested managers so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with an attorney, who has been retained by or has performed services for the association 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 (A) or (B) of this section was brought.

(2) If an action or suit by or in the right of the unincorporated nonprofit association is involved, any determination made by the disinterested managers under division (D)(1)(a) of this section or by independent legal counsel under division (D)(1)(b) of this section shall be communicated promptly to the person who threatened or brought the action or suit under division (B) of this section, and, within ten days after receipt of that notification, the person shall have the right to petition the court of common

pleas or the court in which the action or suit was brought to review the reasonableness of that determination.

(E)(1)(a) Unless at the time of a manager's or volunteer's act or omission that is the subject of an action, suit, or proceeding referred to in division (A) or (B) of this section the governing principles of the unincorporated nonprofit association stated, by specific reference to division (E)(1)(a) of this section, that its provisions do not apply to the association, unless the only liability asserted against a manager in an action, suit, or proceeding referred to in division (A) or (B) of this section is pursuant to section 1745.56 of the Revised Code, or unless division (E)(1)(b) of this section applies, the expenses, including attorney's fees, incurred by the manager or volunteer in defending the action, suit, or proceeding shall be paid by the unincorporated nonprofit association. Upon the request of the manager or volunteer and in accordance with division (E)(2) of this section, those expenses shall be paid as they are incurred, in advance of the final disposition of the action, suit, or proceeding.

(b) Notwithstanding division (E)(1)(a) of this section, the expenses incurred by a manager or volunteer in defending an action, suit, or proceeding referred to in division (A) or (B) of this section, including attorney's fees, shall not be paid by the unincorporated nonprofit association 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 association by the manager or volunteer, if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the manager or volunteer was one undertaken with a deliberate intent to cause injury to the association or was one undertaken with a reckless disregard for the best interests of the association.

(2) Expenses, including attorney's fees, incurred by a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, in defending any action, suit, or proceeding referred to in division (A) or (B) of this section may be paid by the unincorporated nonprofit association as they are incurred, in advance of the final disposition of the action, suit, or proceeding, as authorized by the managers in the specific case, upon receipt of an undertaking by or on behalf of the manager, officer, employee, member, agent, volunteer, or person acting in any other representative capacity to repay the amount if it ultimately is determined that the person is not entitled to be indemnified by the association.

(F) The indemnification authorized by this section is not exclusive of, and shall be in addition to, any other rights granted to those seeking

indemnification pursuant to the governing principles, any agreement, a vote of the members or disinterested managers, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions, shall continue as to a person who has ceased to be a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, and shall inure to the benefit of the heirs, executors, and administrators of that person.

(G) An unincorporated nonprofit association 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 manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, or is or was serving at the request of the association as a director, manager, officer, employee, member, agent, or volunteer of any other entity, against any liability asserted against the person and incurred by the person in that capacity, or arising out of the person's status as such, whether or not the association 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 association has a financial interest.

(H) The authority of an unincorporated nonprofit association to indemnify persons pursuant to division (A) or (B) 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) of this section or the payment of indemnification, insurance, or other protection that may be provided pursuant to division (F) or (G) of this section. Divisions (A) and (B) of this section do not create any obligation to repay or return payments made by the association pursuant to division (E), (F), or (G) of this section.

(I) As used in this section, "unincorporated nonprofit association" includes all constituent entities in a consolidation or merger, and the new or surviving entity, so that any person who is or was a manager, officer, employee, member, agent, or volunteer of a constituent entity or a person acting in any other representative capacity, however denominated, or is or was serving at the request of a constituent entity as a director, officer, employee, member, manager, agent, or volunteer of any other entity, shall stand in the same position under this section with respect to the new or surviving entity as the person would if the person had served the new or surviving entity in the same capacity.

Sec. 1745.44. (A) Unless the governing principles of the unincorporated nonprofit association provide otherwise, the lease, sale, exchange, transfer, or other disposition of any assets of the association may be made without the necessity of procuring authorization from the court under section 1715.39 of the Revised Code, upon terms and for the consideration that may be authorized by the managers, except that a lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets may be made only when that transaction is also authorized, either before or after authorization by the managers, by the voting members of the association at a meeting held for that purpose.

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

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

(b) The public benefit association has provided written notice of the proposed transaction, including a copy or summary of the terms of that transaction, at least twenty days before consummation of the lease, sale, exchange, transfer, or other disposition of the assets, to the attorney general's charitable law section and to the members of the association, and the proposed transaction has been approved by the members.

(c) The transaction is in accordance with the purpose or purposes for which the public benefit association was organized, as set forth in its governing principles, and the lessee, purchaser, or transferee of the assets is a public benefit entity.

(2) The attorney general may require pursuant to section 109.24 of the Revised Code the production of the documents necessary for review of a proposed transaction under division (B)(1) of this section. The attorney general may retain at the expense of the public benefit association one or more experts, including an investment banker, actuary, appraiser, certified

public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed transaction under division (B)(1) of this section.

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

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

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

Sec. 1745.45. Property of any description and any interest in the property of an unincorporated nonprofit association, domestic or foreign, may be sold under the judgment or decree of a court, as provided in the Revised Code with respect to similar property of natural persons, at a public or private sale in the manner, at the time and place, on the notice by publication or otherwise, and on the terms that the court adjudging or decreeing that sale considers equitable and proper. It is not necessary to appraise that property or to advertise the sale of the property otherwise than as the court adjudges or decrees.

Sec. 1745.46. (A)(1) Pursuant to an agreement of merger, an unincorporated nonprofit association and one or more additional domestic or foreign entities may be merged into a surviving unincorporated nonprofit association. Pursuant to an agreement of consolidation, one or more domestic or foreign entities may be consolidated into a new unincorporated nonprofit association. If any constituent entity is formed or organized under

the laws of any state other than this state or under any chapter of the Revised Code other than this chapter, the merger or consolidation also must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(2) To effect a merger or consolidation under this section, the manager or managers of each constituent unincorporated nonprofit association shall approve an agreement of merger or consolidation to be signed by the manager, the chairperson, the president, or a vice-president and by the secretary or an assistant secretary or, if there are no officers, by one or more authorized managers. The agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

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

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

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

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

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

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

(f) The names and addresses of the first managers and officers, if any, of the surviving or new unincorporated nonprofit association and, if desired, their term or terms of office;

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

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

(i) The governing principles of the surviving or new unincorporated

nonprofit association or a provision to the effect that the governing principles of a specified constituent unincorporated nonprofit association shall be the governing principles of the surviving or new unincorporated nonprofit association or to the effect that the voting members or the managers of the surviving or new unincorporated nonprofit association may adopt governing principles, or any combination of them.

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

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

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

(c) Any additional provision permitted to be included in the governing principles of a newly formed unincorporated nonprofit association;

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

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

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

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

(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit association or the fair market value of the public benefit association if it is to be operated as a business concern, are transferred or conveyed to one or more persons that would have received its assets under division (D)(2) of section 1745.52

of the Revised Code had it voluntarily dissolved.

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

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

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

(3) No member, other than a member that is a public benefit entity, or manager of a public benefit association in that person's capacity as a member or manager may receive or keep anything as a result of a merger or consolidation other than as a member or manager in the surviving or new public benefit association without the prior written consent of the attorney general or of the court of common pleas of the county in this state in which the principal office of the public benefit association is located in a proceeding in which the attorney general's charitable law section has been

given written notice by certified mail within three days of the initiation of the proceeding and in which the attorney general may intervene as of right. The court shall approve the transaction if it is in the public interest.

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

Sec. 1745.461. (A)(1) Pursuant to an agreement of merger between the constituent entities as provided in this section, a domestic unincorporated nonprofit association and, if so provided, one or more additional domestic or foreign entities may be merged into a surviving entity other than a domestic unincorporated nonprofit association. Pursuant to an agreement of consolidation, a domestic unincorporated nonprofit association together with one or more additional domestic or foreign entities may be consolidated into a new entity other than a domestic unincorporated nonprofit association to be formed by that consolidation. The merger or consolidation must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(2) To effect a merger or consolidation under this section, the manager or managers of each constituent unincorporated nonprofit association shall approve an agreement of merger or consolidation to be signed by the manager, the chairperson, the president, or a vice-president and by the secretary or an assistant secretary or, if there are no officers, by an authorized manager. The agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

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

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

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

new entity may be the same as or similar to that of any constituent entity.

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

(d) If the surviving or new entity is a foreign unincorporated nonprofit association, all additional statements and matters, other than the name and address of the statutory agent, that would be required by section 1745.46 of the Revised Code if the surviving or new unincorporated nonprofit association were a domestic unincorporated nonprofit association;

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

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

(g) The consent of the surviving or the new entity to be sued and served with process in this state and the irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding in this state to enforce against the surviving or new entity any obligation of any domestic constituent unincorporated nonprofit association. Such service shall be made upon the secretary of state by leaving duplicate copies of such process, together with an affidavit of the plaintiff or one of the plaintiff's attorneys, showing the last known address of such association, and a fee of up to five dollars that shall be included as taxable costs in the case of judicial proceedings. Upon receipt of such process, affidavit, and fee, the secretary of state shall immediately give notice to the association at the address specified in the affidavit and forward to such address by certified mail, with a request for return receipt, a copy of such process.

(h) If the surviving or new entity is a foreign unincorporated nonprofit association that desires to transact business in this state as a foreign unincorporated nonprofit association, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the secretary of state;

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

(j) If the surviving or new entity is a foreign limited liability company

that desires to transact business in this state as a foreign limited liability company, a statement to that effect, together with all of the information required under section 1705.54 of the Revised Code when a foreign limited liability company registers to transact business in this state;

(k) If the surviving or new entity is a foreign unincorporated association that desires to transact business in this state as a foreign unincorporated association, a statement to that effect, together with all of the information, if any, required by the secretary of state when a foreign unincorporated association registers to transact business in this state.

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

(B) A merger or consolidation pursuant to this section in which a public benefit association is one of the constituent entities shall be subject to, and shall comply with, the provisions of divisions (B)(1)(b), (2), (3), and (4) of section 1745.46 of the Revised Code.

Sec. 1745.47. (A) The managers of each constituent domestic unincorporated nonprofit association, upon approving an agreement of merger or consolidation, shall direct that the agreement be submitted to the members entitled to vote on it at a meeting of voting members of that unincorporated nonprofit association held for that purpose. Notice of the meeting shall be given to all members of the constituent domestic unincorporated nonprofit association entitled to vote at the meeting. The notice shall be accompanied by a copy or summary of the material terms of the agreement.

(B)(1) In order to be adopted, the agreement, including any amendments or additions to the agreement proposed at each meeting described in division (A) of this section, shall receive the affirmative vote of a majority of the voting members of the constituent domestic unincorporated nonprofit association present at that meeting in person, by the use of authorized communications equipment, by mail, or if permitted, by proxy if a quorum is present, or, if the governing principles provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and the affirmative vote of the voting members of any particular class that is required by the governing principles. If the agreement would effect or authorize any action by the unincorporated nonprofit association that, under any applicable provision of law or under the governing principles of the constituent domestic unincorporated nonprofit association, could be effected or authorized only by or pursuant to a specified vote of the members, the

agreement, including any amendments or additions to the agreement proposed at each meeting described in division (A) of this section, shall be adopted by the same vote as would be required for that action.

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

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

Sec. 1745.48. (A) When a merger or consolidation becomes effective, all of the following apply:

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

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

(3) The surviving or new entity possesses all assets and property of every description and every interest in the assets and property, wherever located, the rights, privileges, immunities, powers, franchises, and authority, of a public as well as of a private nature, of each constituent entity, and all obligations belonging to or due to each constituent entity, all of which are

vested in the surviving or new entity without further act or deed. Any right or interest in respect to any past or future devise, bequest, conditional gift, or trust, property, or fund restricted to particular uses, when vested in or claimed by the surviving or new entity as a result of the merger or consolidation, shall belong to it as a continuation without interruption of the existence and identity of the constituent entity originally named as taker or beneficiary. The surviving or new entity possesses title to any real estate or any interest in the real estate vested in any of the constituent entities. Title to any real estate or any interest in the real estate vested in any constituent entity shall not revert or in any way be impaired by reason of the merger or consolidation.

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

(5) All of the rights of creditors of each constituent entity are preserved unimpaired, and all liens upon the property of any constituent entity are preserved unimpaired on only the property affected by those liens immediately prior to the effective date of the merger or consolidation. If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, the former general partner has no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a partner extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity.

(B) If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, division (B) of section 1782.434 of the Revised Code applies.

(C) In the case of a merger of a domestic constituent unincorporated nonprofit association into a foreign surviving unincorporated nonprofit association, limited liability company, limited partnership, or unincorporated association that is not licensed or registered to transact business in this state or in the case of a consolidation of a domestic constituent unincorporated nonprofit association into a new foreign unincorporated nonprofit association, limited liability company, limited partnership, or unincorporated association, if the surviving or new entity intends to transact business in this state, the surviving or new entity shall

comply with all of the requirements that are necessary for that entity to transact business in this state as a foreign unincorporated nonprofit association, limited liability company, limited partnership, or unincorporated association, whichever is applicable.

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

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

Sec. 1745.49. The merger or consolidation shall become effective at the time that the constituent entities have complied with the laws of each state under the laws of which the constituent entities exist or at any later date that the agreement of merger or consolidation specifies.

Sec. 1745.50. (A) An unincorporated nonprofit association may be dissolved voluntarily in the manner provided in this section.

(B) A resolution of dissolution for an unincorporated nonprofit association shall set forth all of the following:

(1) That the association elects to be dissolved;

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

(C) The managers of an unincorporated nonprofit association may adopt a resolution of dissolution in any of the following cases:

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

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

(3) If substantially all of the assets of the association have been sold at judicial sale;

(4) When the period of existence of the association specified in its governing principles has expired or upon the occurrence of another event or condition specified in its governing principles;

(5) If no members of the association can be identified and the association's operations have been discontinued for at least three years by

the managers or, if the association has no incumbent managers, by its last preceding incumbent manager.

(D) The members of an unincorporated nonprofit association may adopt a resolution of dissolution by the affirmative vote of the members.

Sec. 1745.51. Following the adoption of a resolution of dissolution, the managers in an expeditious manner shall do both of the following:

(A) Cause a notice of voluntary dissolution to be published once a week on the same day of each week for two successive weeks, in a newspaper published and of general circulation in the county in which the principal office of the unincorporated nonprofit association was to be or is located;

(B) 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 association. If a statement is on file with the secretary of state appointing an agent authorized to receive service of process on the association, or if any other document is on file with the secretary of state with respect to the association, a copy of the written notice of dissolution shall also be filed with the secretary of state.

Sec. 1745.52. (A) When an unincorporated nonprofit association is dissolved voluntarily upon the expiration of the period of existence of the association specified in its governing principles, the association shall cease to carry on its activities and shall do only those acts that are required to wind up its affairs, and for those purposes it shall continue as an unincorporated nonprofit association.

(B) Any claim existing or action or proceeding pending by or against the unincorporated nonprofit association or that would have accrued against it may be prosecuted to judgment with right of appeal as in other cases, but any proceeding, execution, or process, or the satisfaction or performance of any order, judgment, or decree, may be stayed as provided in section 1745.53 of the Revised Code.

(C) Any process, notice, or demand against the unincorporated nonprofit association may be served by delivering a copy to a manager, liquidator, or person having charge of its assets or, if none of those persons can be found, to the statutory agent.

(D) The managers of the unincorporated nonprofit association and their survivors or successors shall act in accordance with the governing principles until the affairs of the association are completely wound up. Subject to the orders of courts of this state having jurisdiction over the association, the managers shall proceed as speedily as is practicable to a complete winding up of the affairs of the association and, to the extent necessary or expedient to that end, shall exercise all the authority of the association. Without

limiting the generality of that authority, they may fill vacancies, elect managers, carry out contracts of the association, make new contracts, borrow money, mortgage or pledge the property of the association as security, sell its assets at public or private sale, make conveyances in the association's name, lease real property for any term, including ninety-nine years renewable forever, settle or compromise claims in favor of or against the association, employ one or more persons as liquidators to wind up the affairs of the association with the authority that the managers see fit to grant, cause the title to any of the assets of the association to be conveyed to those liquidators for that purpose, apply assets to the payment of obligations, perform all other acts necessary or expedient to the winding up of the affairs of the association, and, after paying or adequately providing for the payment of all known obligations of the association, distribute the remainder of the assets as follows:

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

(2) In the case of a public benefit association, the following apply:

(a) Assets held by it in trust for specified purposes shall be applied so far as is feasible in accordance with the terms of the trust.

(b) The remaining assets not held in trust shall be applied so far as is feasible towards carrying out the purposes stated in its governing principles.

(c) In the event and to the extent that in the judgment of the managers it is not feasible to apply the assets as provided in divisions (D)(2)(a) and (b) of this section, the assets shall be applied as may be directed by the court of common pleas of the county in this state in which the principal office of the association is located, in an action brought for that purpose by the managers or any one of them or by the association, to which action the attorney general shall be a party, in an action brought by the attorney general in a court of competent jurisdiction, or in an action brought as provided in section 1745.53 of the Revised Code for the purpose of winding up the affairs of the association under the supervision of the court.

(3) In the case of a mutual benefit association, any remaining assets shall be distributed in accordance with the applicable provisions of the governing principles of the association or, to the extent that no such provision is made, the assets shall be distributed pursuant to a plan of distribution adopted by the members of the association at a meeting held for the purpose of voting on dissolution or any adjournment of the meeting. If no plan of distribution is so adopted by the members, those remaining assets

shall be distributed pursuant to a plan of distribution adopted by the managers. If no plan of distribution is so adopted by the members or managers, the remaining assets shall be applied in the manner directed by the court of common pleas of the county in this state in which the principal office of the association is located, in an action brought for that purpose by the mutual benefit association, by the managers or any one of them, or by the attorney general in a court of competent jurisdiction or in an action brought as provided in section 1745.53 of the Revised Code for the purpose of winding up the affairs of the association under the supervision of the court.

(E) Without limiting the authority of the managers, any action within the purview of this section that is authorized or approved by the members at a meeting held for that purpose shall be conclusive for all purposes upon all of the members of the association, except that nothing in this section shall impair the jurisdiction of courts of competent jurisdiction to enforce the duties of a public benefit association with respect to the application of its assets towards its public or charitable purposes, or impair the power of the state, acting through the attorney general, to require those assets to be applied, as nearly as may be, towards its public or charitable purposes.

(F) All deeds and other instruments of the unincorporated nonprofit association shall be in the name of the association and shall be executed, acknowledged, and delivered by a manager of the association.

(G) At any time during the winding up of its affairs, the unincorporated nonprofit association by its managers may make application to the court of common pleas of the county in this state in which the principal office of the association is located to have the winding up continued under supervision of the court as provided in section 1745.53 of the Revised Code.

Sec. 1745.53. (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 unincorporated nonprofit association or of an unincorporated nonprofit association whose period of existence has expired, upon the complaint of the association, a majority of the managers, or a creditor or member of the association and upon notice to all of the managers and any other interested persons that the court considers proper, at any time may order and adjudge in regard to the following matters:

(1) The presentation and proof of all claims and demands against the association and of all rights, interests, or liens in or on any of its property, the fixing of the time within which and the manner in which that proof shall be made and the person to whom that presentation shall be made, and the

barring from participation in any distribution of assets of all persons failing to make and present proofs as required by the order of the court;

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

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

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

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

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

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

(8) The appointment of a receiver, in accordance with the usages of a court in equitable matters, to wind up the affairs of the association, to take custody of any of its property, or for any other purpose;

(9) The issuance or entry of any injunction or any other order that the court considers proper in the administration of the trust involved in the winding up of the affairs of the association and the giving of notice of it;

(10) The allowance and payment of compensation to the managers 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 association or to those interested in it;

(11) The entry of a judgment or decree that, if it so provides, may operate as the deed or other instrument ordered to be executed, or the appointment of a master to execute that deed or instrument in the name of the association with the same effect as if executed by an authorized manager pursuant to authority conferred by the managers or by the members of the association if there is no manager competent to execute the deed or

instrument, if the association or its managers do not perform or comply with a judgment or decree of court, or if the court considers it proper.

(B) A judicial proceeding under this section concerning the winding up of the affairs of an unincorporated nonprofit association 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. 1745.54. (A) If after an unincorporated nonprofit association is dissolved voluntarily or the period of existence of the association has expired a receiver is appointed to wind up the affairs of the association, all of the claims, demands, rights, interests, or liens of creditors, claimants, and members shall be determined as of the day on which the receiver was appointed. Unless it is otherwise ordered, that appointment vests in the receiver and the receiver's successors the right to the immediate possession of all of the property of the association that shall, if so ordered, execute and deliver conveyances of the property to the receiver or the receiver's nominee.

(B) Any manager, member, or other person, whether a resident or nonresident of this state and however interested, may be appointed as receiver.

(C) The receiver has all the authority vested in the managers and members of the association, shall exercise that authority subject to the orders that are made by the court, and may be required to qualify by giving bond to the state in the amount that the court fixes, with surety to the satisfaction of the clerk of the court, conditioned for the faithful discharge of the receiver's duties and for a due accounting for all money or property received by the receiver.

Sec. 1745.55. (A) An unincorporated nonprofit association may be dissolved judicially and its affairs wound up in any of the following manners:

(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 association to be wound up by its managers 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 association has its principal office;

(2) By an order of the court of common pleas of the county in this state in which that association has its principal office, in an action brought by members entitled to dissolve the association voluntarily, if any of the

following is established:

(a) The association's period of existence as set forth in its governing principles has expired, and it is necessary in order to protect the members that the association be judicially dissolved.

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

(c) The objects of the association have wholly failed or are entirely abandoned, or their accomplishment is impracticable.

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

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

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

(C) Upon the filing of a complaint for judicial dissolution, the court with which it is filed shall have the power to issue injunctions, to appoint a receiver with the authority and duties that the court from time to time may direct, to take any other proceedings that may be necessary to protect the property or the rights of the complainants or of the persons interested, and to carry on the activities of the unincorporated nonprofit association 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 unincorporated nonprofit association or involving

any of its property and require the parties to it to present and prove their claims, demands, rights, interests, or liens at the time and in the manner required of creditors or others. The court may refer the complaint to a special master commissioner.

(D) After a hearing had upon the notice that 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 association or dismissing the complaint. An order or judgment for the judicial dissolution of an unincorporated nonprofit association shall contain a concise statement of the proceedings leading up to the order or judgment, the name of the association, the place in this state where its principal office is located, the names and addresses of its managers, the name and address of a statutory agent, and if desired, any other provisions with respect to the judicial dissolution and winding up of affairs that are considered necessary or desirable. Upon the issuance of that order or judgment, the association shall be dissolved. To the extent consistent with orders entered in that proceeding, the effect of the judicial dissolution shall be the same as in the case of voluntary dissolution, and the provisions of sections 1745.52, 1745.53, and 1745.54 of the Revised Code with respect to the authority and duties of managers during the winding up of the affairs of an association dissolved voluntarily, the jurisdiction of courts over the winding up of the affairs of an association, and receivers for winding up the affairs of an association are applicable to associations that are judicially dissolved. If a statement is on file with the secretary of state appointing an agent authorized to receive service of process on the association, or if any other document is on file with the secretary of state with respect to the association, a certified copy of any order or judgment dissolving the association shall be filed with the secretary of state.

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

Sec. 1745.56. (A) The members, the managers, and the officers of an unincorporated nonprofit association shall not be personally liable for any obligation of the association.

(B)(1) Managers who vote for or assent to any of the following shall be

jointly and severally liable to the association as provided in division (B)(2) of this section:

(a) A distribution of assets to members contrary to law or the governing principles:

(b) A distribution of assets to persons other than creditors during the winding up of the affairs of the association on dissolution or otherwise without the payment of all known obligations of the association or without making adequate provision for that payment;

(c) The making of loans, other than in the usual conduct of its affairs or in accordance with provisions for the making of loans in the governing principles, to an officer, manager, or member of the association.

(2) The managers described in division (B)(1) of this section shall be jointly and severally liable to the association as follows:

(a) In cases under division (B)(1)(a) of this section, except as provided in division (B)(3) of this section, up to the amount of the distribution in excess of the amount that could have been distributed without violation of law or the governing principles but not in excess of the amount that would inure to the benefit of the creditors of the association if it was insolvent at the time of the distribution or there was reasonable ground to believe that by that action it would be rendered insolvent, or to the benefit of the members other than members of the class in respect of which the distribution was made;

(b) In cases under division (B)(1)(b) of this section, except as provided in division (B)(3) of this section, to the extent that those obligations that are not otherwise barred by statute are not paid or for the payment of which adequate provision has not been made;

(c) In cases under division (B)(1)(c) of this section, for the amount of the loan with interest at the rate of six per cent per annum until that amount has been paid.

(3) A manager shall not be liable under division (B)(1)(a) or (b) of this section if in determining the amount available for any distribution under that division, the manager in good faith relied on a financial statement of the association prepared by an officer or employee of the association in charge of its accounts or certified by a public accountant or firm of public accountants, in good faith considered the assets to be of their book value, or followed what the manager believed to be sound accounting and business practice.

(C) A manager who is present at a meeting of the managers or of a committee of the managers at which action on any matter is authorized or taken and who has not voted for or against that action shall be presumed to

have voted for the action unless the manager's written dissent from the action is filed either during the meeting or within a reasonable time after the adjournment of the meeting, with the person acting as secretary of the meeting or with the secretary of the association.

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

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

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

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

Sec. 1745.57. Sections 1745.05 to 1745.56 of the Revised Code do not affect any action or proceeding that is commenced, or any right that accrues, before those sections take effect.

Sec. 2901.23. (A) An organization may be convicted of an offense under any of the following circumstances:

(1) The offense is a minor misdemeanor committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of ~~his~~ the officer's, agent's, or employee's office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, ~~such~~ those provisions shall apply.

(2) A purpose to impose organizational liability plainly appears in the section defining the offense, and the offense is committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of ~~his~~ the officer's, agent's, or employee's office or employment, except that if the section defining the offense designates the officers, agents,

or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, ~~such~~ those provisions shall apply.

(3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated, or performed by the board of directors, trustees, partners, or by a high managerial officer, agent, or employee acting in behalf of the organization and within the scope of ~~his~~ such a board's or person's office or employment.

(B) ~~When~~ If strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

(C) In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent, or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the section defining the offense.

(D) As used in this section, "organization" means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated nonprofit association, estate, trust, or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program.

Sec. 3955.06. (A) There is hereby created ~~a nonprofit~~ an unincorporated nonprofit association to be known as the Ohio insurance guaranty association. All member insurers, as defined in division (D) of section 3955.01 of the Revised Code, shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 3955.09 of the Revised Code and shall exercise its powers through a board of directors established under section 3955.07 of the Revised Code.

(B) For purposes of administration and assessment, the association shall be divided into two accounts:

(1) The automobile insurance account;

(2) The account for all other insurance to which sections 3955.01 to 3955.19 of the Revised Code apply.

Sec. 3956.06. (A) There is hereby created ~~a nonprofit~~ an unincorporated

nonprofit association to be known as the Ohio life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact the business of insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 3956.10 of the Revised Code and shall exercise its powers through a board of directors established under section 3956.07 of the Revised Code. For purposes of administration and assessment, the association shall maintain the following two accounts:

(1) The life insurance and annuity account ~~which~~ that includes the following subaccounts:

(a) Life insurance subaccount;

(b) Annuity subaccount;

(c) Unallocated annuity subaccount ~~which~~ that also includes all annuity contracts meeting the requirements of section 403(b) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(2) The health insurance account.

(B) The association is subject to the supervision of the superintendent of insurance and to the applicable insurance laws of this state.

Sec. 4121.70. (A) There is hereby created the labor-management government advisory council consisting of fifteen members appointed as follows:

(1) The governor, with the advice and consent of the senate, shall appoint three members who, by training and vocation, are representative of labor and three members who, by training and vocation, are representative of employers.

(2) Ex officio, the chairpersons of the standing committees of the house of representatives and the senate to which legislation concerned with workers' compensation is customarily referred. A chairperson may designate the vice-chairperson of the committee to serve instead.

(3) One person who by training and vocation represents labor and one person who by training and vocation represents employers of differing political parties appointed by the speaker of the house of representatives.

(4) One person who by training and vocation represents labor and one person who by training and vocation represents employers of differing political parties appointed by the president of the senate.

(5) One person who by training and vocation represents nonprofit vocational rehabilitation services providers that deliver services to injured workers, appointed by the speaker of the house of representatives;

(6) One person who by training and vocation represents nonprofit

vocational rehabilitation services providers that deliver services to injured workers, appointed by the president of the senate;

(7) The governor, with the advice and consent of the senate, shall ~~appoint~~ appoint one member who, by training and vocation, represents a nonprofit ~~association~~ organization of vocational rehabilitation services providers that deliver services to injured workers.

(B) Members appointed by the governor shall serve for a term of six years with each term ending on the same day of the year in which the member was first appointed, except that each member shall serve for a period of sixty additional days at the end of the member's term or until the member's successor is appointed and qualifies, whichever date occurs first. Of the members first appointed to the council by the governor, one member each representing labor and management shall serve an initial term of two years, one member each representing labor and management shall serve a term of four years, and the remaining two members shall serve full six-year terms. The members initially appointed by the speaker of the house of representatives and the president of the senate shall serve a term of six years. Thereafter, members shall be appointed to and serve full six-year terms. Members are eligible for reappointment to any number of additional terms.

Legislative members shall serve a term that coincides with the two-year legislative session in which they are first appointed with each term ending on the thirty-first day of December of the even-numbered year. Legislative members are eligible for reappointment.

Vacancies on the council shall be filled in the same manner as the original appointment. All members of the council shall serve without additional compensation but shall be reimbursed by the bureau of workers' compensation for actual and necessary expenses.

The council shall advise the bureau of workers' compensation board of directors and the administrator of workers' compensation on the quality and effectiveness of rehabilitation services and make recommendations pertaining to the bureau's rehabilitation program, including the operation of that program.

Sec. 4303.201. (A) As used in this section:

(1) "Convention facility" means any structure owned or leased by a municipal corporation or county which was expressly designed and constructed and is currently used for the purpose of presenting conventions, public meetings, and exhibitions.

(2) "Nonprofit organization" means any unincorporated nonprofit association or nonprofit corporation that is not formed for the pecuniary gain

or profit of, and whose net earnings or any part ~~thereof~~ of whose net earnings is not distributable to, its members, trustees, officers, or other private persons; provided, that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution shall not be considered pecuniary gain or profit or distribution of earnings in an association or corporation all of whose members are nonprofit corporations. Distribution of earnings to member organizations does not deprive it of the status of a nonprofit organization.

(B) An F-1 permit may be issued to any nonprofit organization to allow the nonprofit organization and its members and their guests to lawfully bring beer, wine, and intoxicating liquor in its original package, flasks, or other containers into a convention facility for consumption therein, if both of the following requirements are met:

(1) The superintendent of liquor control is satisfied the organization meets the definition of a nonprofit organization as set forth in division (A)(2) of this section, the nonprofit organization's membership includes persons residing in two or more states, and the organization's total membership is in excess of five hundred. The superintendent may accept a sworn statement by the president or other chief executive officer of the nonprofit organization as proof of the matters required in this division.

(2) The managing official or employee of the convention facility has given written consent to the use of the convention facility and to the application for the F-1 permit, as shown in the nonprofit organization's application to the superintendent.

(C) The superintendent shall specify individually the effective period of each F-1 permit on the permit, which shall not exceed three days. The fee for an F-1 permit is two hundred fifty dollars. The superintendent shall prepare and make available application forms to request F-1 permits and may require applicants to furnish such information as the superintendent determines to be necessary for the administration of this section.

(D) No holder of an F-1 permit shall make a specific charge for beer, wine, or intoxicating liquor by the drink, or in its original package, flasks, or other containers in connection with its use of the convention facility under the permit.

Sec. 4303.204. (A) The division of liquor control may issue an F-4 permit to an ~~association~~ organization or corporation organized not-for-profit in this state to conduct an event that includes the introduction, showcasing, or promotion of Ohio wines, if the event has all of the following characteristics:

(1) It is coordinated by that ~~association~~ organization or corporation, and

the ~~association~~ organization or corporation is responsible for the activities at it.

(2) It has as one of its purposes the intent to introduce, showcase, or promote Ohio wines to persons who attend it.

(3) It includes the sale of food for consumption on the premises where sold.

(4) It features at least three A-2 permit holders who sell Ohio wine at it.

(B) The holder of an F-4 permit may furnish, with or without charge, wine that it has obtained from the A-2 permit holders that are participating in the event for which the F-4 permit is issued, in two-ounce samples for consumption on the premises where furnished and may sell such wine by the glass for consumption on the premises where sold. The holder of an A-2 permit that is participating in the event for which the F-4 permit is issued may sell wine that it has manufactured, in sealed containers for consumption off the premises where sold. Wine may be furnished or sold on the premises of the event for which the F-4 permit is issued only where and when the sale of wine is otherwise permitted by law.

(C) The premises of the event for which the F-4 permit is issued shall be clearly defined and sufficiently restricted to allow proper enforcement of the permit by state and local law enforcement officers. If an F-4 permit is issued for all or a portion of the same premises for which another class of permit is issued, that permit holder's privileges will be suspended in that portion of the premises in which the F-4 permit is in effect.

(D) No F-4 permit shall be effective for more than seventy-two consecutive hours. No sales or furnishing of wine shall take place under an F-4 permit after one a.m.

(E) The division shall not issue more than six F-4 permits to the same not-for-profit ~~association~~ organization or corporation in any one calendar year.

(F) An applicant for an F-4 permit shall apply for the permit not later than thirty days prior to the first day of the event for which the permit is sought. The application for the permit shall list all of the A-2 permit holders that will participate in the event for which the F-4 permit is sought. The fee for the F-4 permit is sixty dollars per day.

The division shall prepare and make available an F-4 permit application form and may require applicants for and holders of the F-4 permit to provide information that is in addition to that required by this section and that is necessary for the administration of this section.

(G)(1) The holder of an F-4 permit is responsible for, and is subject to penalties for, any violations of this chapter or Chapter 4301. of the Revised

Code or the rules adopted under this and that chapter.

(2) An F-4 permit holder shall not allow an A-2 permit holder to participate in the event for which the F-4 permit is issued if the A-2 or A-1-A permit of that A-2 permit holder is under suspension.

(3) The division may refuse to issue an F-4 permit to an applicant who has violated any provision of this chapter or Chapter 4301. of the Revised Code during the applicant's previous operation under an F-4 permit, for a period of up to two years after the date of the violation.

(H)(1) Notwithstanding division (D) of section 4301.22 of the Revised Code, an A-2 permit holder that participates in an event for which an F-4 permit is issued may donate wine that it has manufactured to the holder of that F-4 permit. The holder of an F-4 permit may return unused and sealed containers of wine to the A-2 permit holder that donated the wine at the conclusion of the event for which the F-4 permit was issued.

(2) The participation by an A-2 permit holder or its employees in an event for which an F-4 permit is issued does not violate section 4301.24 of the Revised Code.

Sec. 4303.207. (A) As used in this section:

(1) "Nonprofit organization" means any unincorporated nonprofit association or nonprofit corporation that is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, directors, officers, or other private persons.

(2) "Qualified golf event" means a golf tournament or other golf competition event that meets all of the following requirements:

(a) It is hosted by the nonprofit organization to which an F-7 permit is issued.

(b) It is sanctioned by a recognized national golf organization.

(c) It includes the sale of food for consumption on the premises for which an F-7 permit is issued.

(d) Contributions to charity are made from the proceeds of the event that equal in the aggregate at least two hundred thousand dollars.

(3) "Recognized national golf organization" means any of the following:

(a) The United States golf association;

(b) The professional golf association of America (PGA);

(c) The PGA tour, including the champions tour and the nationwide tour;

(d) The LPGA tour;

(e) The successors of any organization listed in divisions (A)(3)(a) to (d) of this section.

(B) An F-7 permit may be issued to a nonprofit organization to sell beer, wine, mixed beverages, and spirituous liquor by the individual drink at a qualified golf event being held on premises located in a political subdivision or part of a political subdivision where the sale of beer, wine, mixed beverages, and spirituous liquor is otherwise permitted by law on that day, if both of the following requirements are met:

(1) The superintendent of liquor control is satisfied that the organization is a nonprofit organization. For this purpose, the superintendent may accept as proof a sworn statement by the president or other chief executive officer of the applicant organization.

(2) The superintendent is satisfied that the event for which the F-7 permit is sought to be issued is a qualified golf event. For this purpose, the superintendent may accept as proof a sworn statement by the president or other chief executive officer of the applicant organization.

(C) The premises for which the F-7 permit is issued shall meet all of the following requirements:

(1) Be owned or leased by the nonprofit organization to which the F-7 permit is issued;

(2) Be limited to areas in which the qualified golf event is conducted and to other areas that are contiguous to those areas in which the qualified golf event is conducted, which areas are specifically designated for food and beverage consumption and hospitality for the qualified golf event;

(3) Be clearly defined;

(4) Be sufficiently restricted to allow proper supervision of use of the permit by state and local law enforcement personnel.

(D) A nonprofit organization to which an F-7 permit is issued shall be held responsible for any conduct that violates the laws pertaining to the sale of beer, wine, mixed beverages, or spirituous liquor.

(E) The division of liquor control shall prepare and make available an F-7 permit application form and may require applicants for the permit to provide information that, in addition to the information required by this section, is necessary for the administration of this section.

(F) An F-7 permit shall be effective for a period not to exceed eight consecutive days. The division of liquor control shall not issue more than two F-7 permits per calendar year to the same nonprofit organization. The fee for an F-7 permit is four hundred fifty dollars.

Sec. 5111.151. (A)(1) This section applies only to either of the following:

(a) Initial eligibility determinations for the medicaid program made by the department of job and family services pursuant to section 5101.47 of the

Revised Code or by a county department of job and family services pursuant to section 5111.012 of the Revised Code;

(b) An appeal from a determination described in division (A)(1)(a) of this section pursuant to section 5101.35 of the Revised Code.

(2)(a) Except as provided in division (A)(2)(b) of this section, this section shall not be used by a court to determine the effect of a trust on an individual's initial eligibility for the medicaid program.

(b) The prohibition in division (A)(2)(a) of this section does not apply to an appeal described in division (A)(1)(b) of this section.

(B) As used in this section:

(1) "Trust" means any arrangement in which a grantor transfers real or personal property to a trust with the intention that it be held, managed, or administered by at least one trustee for the benefit of the grantor or beneficiaries. "Trust" includes any legal instrument or device similar to a trust.

(2) "Legal instrument or device similar to a trust" includes, but is not limited to, escrow accounts, investment accounts, partnerships, contracts, and other similar arrangements that are not called trusts under state law but are similar to a trust and to which all of the following apply:

(a) The property in the trust is held, managed, retained, or administered by a trustee.

(b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary.

(c) The trustee holds identifiable property for the beneficiary.

(3) "Grantor" is a person who creates a trust, including all of the following:

(a) An individual;

(b) An individual's spouse;

(c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse;

(d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse.

(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust.

(5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries.

(6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association.

(7) "Applicant" is an individual who applies for medicaid or the individual's spouse.

(8) "Recipient" is an individual who receives medicaid or the individual's spouse.

(9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even if the terms of the trust state that it is irrevocable:

(a) A trust that provides that the trust can be terminated only by a court;

(b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee.

(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor.

(11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property.

(12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient.

(13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust.

(C)(1) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust:

(a) Is a resource available to the applicant or recipient;

(b) Contains income available to the applicant or recipient;

(c) Constitutes both items described in divisions (C)(1)(a) and (b) of this section;

(d) Is neither an item described in division (C)(1)(a) nor (C)(1)(b) of this section.

(2) Except as provided in division (F) of this section, a trust or portion of a trust that is a resource available to the applicant or recipient or contains income available to the applicant or recipient shall be counted for purposes of determining medicaid eligibility.

(D)(1) A trust or legal instrument or device similar to a trust shall be considered a medicaid qualifying trust if all of the following apply:

(a) The trust was established on or prior to August 10, 1993.

(b) The trust was not established by a will.

(c) The trust was established by an applicant or recipient.

(d) The applicant or recipient is or may become the beneficiary of all or part of the trust.

(e) Payment from the trust is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant or recipient.

(2) If a trust meets the requirement of division (D)(1) of this section, the amount of the trust that is considered by the county department of job and family services to be a resource available to the applicant or recipient shall be the maximum amount of payments permitted under the terms of the trust to be distributed to the applicant or recipient, assuming the full exercise of discretion by the trustee or trustees. The maximum amount shall include only amounts that are permitted to be distributed but are not distributed from either the income or principal of the trust.

(3) Amounts that are actually distributed from a medicaid qualifying trust to a beneficiary for any purpose shall be treated in accordance with rules adopted by the department of job and family services governing income.

(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:

(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid, medical assistance for covered families and children, or as a qualified medicare beneficiary, specified low-income medicare beneficiary, qualifying individual-1, or qualifying individual-2;

(b) Whether or not the trustee actually exercises discretion.

(5) If any real or personal property is transferred to a medicaid qualifying trust that is not distributable to the applicant or recipient, the transfer shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(6) The baseline date for the look-back period for disposition of assets involving a medicaid qualifying trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(E)(1) A trust or legal instrument or device similar to a trust shall be considered a self-settled trust if all of the following apply:

(a) The trust was established on or after August 11, 1993.

(b) The trust was not established by a will.

(c) The trust was established by an applicant or recipient, spouse of an

applicant or recipient, or a person, including a court or administrative body, with legal authority to act in place of or on behalf of an applicant, recipient, or spouse, or acting at the direction or on request of an applicant, recipient, or spouse.

(2) A trust that meets the requirements of division (E)(1) of this section and is a revocable trust shall be treated by the county department of job and family services as follows:

(a) The corpus of the trust shall be considered a resource available to the applicant or recipient.

(b) Payments from the trust to or for the benefit of the applicant or recipient shall be considered unearned income of the applicant or recipient.

(c) Any other payments from the trust shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(3) A trust that meets the requirements of division (E)(1) of this section and is an irrevocable trust shall be treated by the county department of job and family services as follows:

(a) If there are any circumstances under which payment from the trust could be made to or for the benefit of the applicant or recipient, including a payment that can be made only in the future, the portion from which payments could be made shall be considered a resource available to the applicant or recipient. The county department of job and family services shall not take into account when payments can be made.

(b) Any payment that is actually made to or for the benefit of the applicant or recipient from either the corpus or income shall be considered unearned income.

(c) If a payment is made to someone other than to the applicant or recipient and the payment is not for the benefit of the applicant or recipient, the payment shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(d) The date of the disposition shall be the later of the date of establishment of the trust or the date of the occurrence of the event.

(e) When determining the value of the disposed asset under this provision, the value of the trust shall be its value on the date payment to the applicant or recipient was foreclosed.

(f) Any income earned or other resources added subsequent to the foreclosure date shall be added to the total value of the trust.

(g) Any payments to or for the benefit of the applicant or recipient after

the foreclosure date but prior to the application date shall be subtracted from the total value. Any other payments shall not be subtracted from the value.

(h) Any addition of assets after the foreclosure date shall be considered a separate disposition.

(4) If a trust is funded with assets of another person or persons in addition to assets of the applicant or recipient, the applicable provisions of this section and rules adopted by the department of job and family services governing trusts shall apply only to the portion of the trust attributable to the applicant or recipient.

(5) The availability of a self-settled trust shall be considered without regard to any of the following:

(a) The purpose for which the trust is established;

(b) Whether the trustees have exercised or may exercise discretion under the trust;

(c) Any restrictions on when or whether distributions may be made from the trust;

(d) Any restrictions on the use of distributions from the trust.

(6) The baseline date for the look-back period for dispositions of assets involving a self-settled trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(F) The principal or income from any of the following shall not be a resource available to the applicant or recipient:

(1)(a) A special needs trust that meets all of the following requirements:

(i) The trust contains assets of an applicant or recipient under sixty-five years of age and may contain the assets of other individuals.

(ii) The applicant or recipient is disabled as defined in rules adopted by the department of job and family services.

(iii) The trust is established for the benefit of the applicant or recipient by a parent, grandparent, legal guardian, or a court.

(iv) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the applicant or recipient.

(b) If a special needs trust meets the requirements of division (F)(1)(a) of this section and has been established for a disabled applicant or recipient under sixty-five years of age, the exemption for the trust granted pursuant to division (F) of this section shall continue after the disabled applicant or recipient becomes sixty-five years of age if the applicant or recipient continues to be disabled as defined in rules adopted by the department of job and family services. Except for income earned by the trust, the grantor shall not add to or otherwise augment the trust after the applicant or recipient

attains sixty-five years of age. An addition or augmentation of the trust by the applicant or recipient with the applicant's own assets after the applicant or recipient attains sixty-five years of age shall be treated as an improper disposition of assets.

(c) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income.

(d) Transfers of assets to a special needs trust shall not be treated as an improper transfer of resources. An ~~Asset~~ asset held prior to the transfer to the trust shall be considered as a resource available to the applicant or recipient, income available to the applicant or recipient, or both a resource and income available to the individual.

(2)(a) A qualifying income trust that meets all of the following requirements:

(i) The trust is composed only of pension, social security, and other income to the applicant or recipient, including accumulated interest in the trust.

(ii) The income is received by the individual and the right to receive the income is not assigned or transferred to the trust.

(iii) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the applicant or recipient.

(b) No resources shall be used to establish or augment the trust.

(c) If an applicant or recipient has irrevocably transferred or assigned the applicant's or recipient's right to receive income to the trust, the trust shall not be considered a qualifying income trust by the county department of job and family services.

(d) Income placed in a qualifying income trust shall not be counted in determining an applicant's or recipient's eligibility for medicaid. The recipient of the funds may place any income directly into a qualifying income trust without those funds adversely affecting the applicant's or recipient's eligibility for medicaid. Income generated by the trust that remains in the trust shall not be considered as income to the applicant or recipient.

(e) All income placed in a qualifying income trust shall be combined with any income available to the individual that is not placed in the trust to arrive at a base income figure to be used for spend down calculations.

(f) The base income figure shall be used for post-eligibility deductions, including personal needs allowance, monthly income allowance, family

allowance, and medical expenses not subject to third party payment. Any income remaining shall be used toward payment of patient liability. Payments made from a qualifying income trust shall not be combined with the base income figure for post-eligibility calculations.

(g) The base income figure shall be used when determining the spend down budget for the applicant or recipient. Any income remaining after allowable deductions are permitted as provided under rules adopted by the department of job and family services shall be considered the applicant's or recipient's spend down liability.

(3)(a) A pooled trust that meets all of the following requirements:

(i) The trust contains the assets of the applicant or recipient of any age who is disabled as defined in rules adopted by the department of job and family services.

(ii) The trust is established and managed by a nonprofit ~~association~~ organization.

(iii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools the funds in these accounts.

(iv) Accounts in the trust are established by the applicant or recipient, the applicant's or recipient's parent, grandparent, or legal guardian, or a court solely for the benefit of individuals who are disabled.

(v) The trust requires that, to the extent that any amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pay to the state the amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the beneficiary.

(b) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income.

(c) Transfers of assets to a pooled trust shall not be treated as an improper disposition of assets. An asset held prior to the transfer to the trust shall be considered as a resource available to the applicant or recipient, income available to the applicant or recipient, or both a resource and income available to the applicant or recipient.

(4) A supplemental services trust that meets the requirements of section 5815.28 of the Revised Code and to which all of the following apply:

(a) A person may establish a supplemental services trust pursuant to section 5815.28 of the Revised Code only for another person who is eligible to receive services through one of the following agencies:

- (i) The department of developmental disabilities;
- (ii) A county board of developmental disabilities;
- (iii) The department of mental health;
- (iv) A board of alcohol, drug addiction, and mental health services.

(b) A county department of job and family services shall not determine eligibility for another agency's program. An applicant or recipient shall do one of the following:

(i) Provide documentation from one of the agencies listed in division (F)(4)(a) of this section that establishes that the applicant or recipient was determined to be eligible for services from the agency at the time of the creation of the trust;

(ii) Provide an order from a court of competent jurisdiction that states that the applicant or recipient was eligible for services from one of the agencies listed in division (F)(4)(a) of this section at the time of the creation of the trust.

(c) At the time the trust is created, the trust principal does not exceed the maximum amount permitted. The maximum amount permitted in calendar year 2006 is two hundred twenty-two thousand dollars. Each year thereafter, the maximum amount permitted is the prior year's amount plus two thousand dollars.

(d) A county department of job and family services shall review the trust to determine whether it complies with the provisions of section 5815.28 of the Revised Code.

(e) Payments from supplemental services trusts shall be exempt as long as the payments are for supplemental services as defined in rules adopted by the department of job and family services. All supplemental services shall be purchased by the trustee and shall not be purchased through direct cash payments to the beneficiary.

(f) If a trust is represented as a supplemental services trust and a county department of job and family services determines that the trust does not meet the requirements provided in division (F)(4) of this section and section 5815.28 of the Revised Code, the county department of job and family services shall not consider it an exempt trust.

(G)(1) A trust or legal instrument or device similar to a trust shall be considered a trust established by an individual for the benefit of the applicant or recipient if all of the following apply:

- (a) The trust is created by a person other than the applicant or recipient.
- (b) The trust names the applicant or recipient as a beneficiary.

(c) The trust is funded with assets or property in which the applicant or recipient has never held an ownership interest prior to the establishment of

the trust.

(2) Any portion of a trust that meets the requirements of division (G)(1) of this section shall be a resource available to the applicant or recipient only if the trust permits the trustee to expend principal, corpus, or assets of the trust for the applicant's or recipient's medical care, care, comfort, maintenance, health, welfare, general well being, or any combination of these purposes.

(3) A trust that meets the requirements of division (G)(1) of this section shall be considered a resource available to the applicant or recipient even if the trust contains any of the following types of provisions:

(a) A provision that prohibits the trustee from making payments that would supplant or replace medicaid or other public assistance;

(b) A provision that prohibits the trustee from making payments that would impact or have an effect on the applicant's or recipient's right, ability, or opportunity to receive medicaid or other public assistance;

(c) A provision that attempts to prevent the trust or its corpus or principal from being a resource available to the applicant or recipient.

(4) A trust that meets the requirements of division (G)(1) of this section shall not be counted as a resource available to the applicant or recipient if at least one of the following circumstances applies:

(a) If a trust contains a clear statement requiring the trustee to preserve a portion of the trust for another beneficiary or remainderman, that portion of the trust shall not be counted as a resource available to the applicant or recipient. Terms of a trust that grant discretion to preserve a portion of the trust shall not qualify as a clear statement requiring the trustee to preserve a portion of the trust.

(b) If a trust contains a clear statement requiring the trustee to use a portion of the trust for a purpose other than medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, that portion of the trust shall not be counted as a resource available to the applicant or recipient. Terms of a trust that grant discretion to limit the use of a portion of the trust shall not qualify as a clear statement requiring the trustee to use a portion of the trust for a particular purpose.

(c) If a trust contains a clear statement limiting the trustee to making fixed periodic payments, the trust shall not be counted as a resource available to the applicant or recipient and payments shall be treated in accordance with rules adopted by the department of job and family services governing income. Terms of a trust that grant discretion to limit payments shall not qualify as a clear statement requiring the trustee to make fixed periodic payments.

(d) If a trust contains a clear statement that requires the trustee to terminate the trust if it is counted as a resource available to the applicant or recipient, the trust shall not be counted as such. Terms of a trust that grant discretion to terminate the trust do not qualify as a clear statement requiring the trustee to terminate the trust.

(e) If a person obtains a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust for the medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, the trust or that portion of the trust subject to the court order shall not be counted as a resource available to the applicant or recipient.

(f) If a trust is specifically exempt from being counted as a resource available to the applicant or recipient by a provision of the Revised Code, rules, or federal law, the trust shall not be counted as such.

(g) If an applicant or recipient presents a final judgment from a court demonstrating that the applicant or recipient was unsuccessful in a civil action against the trustee to compel payments from the trust, the trust shall not be counted as a resource available to the applicant or recipient.

(h) If an applicant or recipient presents a final judgment from a court demonstrating that in a civil action against the trustee the applicant or recipient was only able to compel limited or periodic payments, the trust shall not be counted as a resource available to the applicant or recipient and payments shall be treated in accordance with rules adopted by the department of job and family services governing income.

(i) If an applicant or recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, the trust shall not be counted as a resource available to the applicant or recipient.

(5) Any actual payments to the applicant or recipient from a trust that meet the requirements of division (G)(1) of this section, including trusts that are not counted as a resource available to the applicant or recipient, shall be treated as provided in rules adopted by the department of job and family services governing income. Payments to any person other than the applicant or recipient shall not be considered income to the applicant or recipient. Payments from the trust to a person other than the applicant or recipient shall not be considered an improper disposition of assets.

Sec. 5701.13. (A) As used in this section:

(1) "Nursing home" means a nursing home or a home for the aging, as those terms are defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(2) "Residential care facility" means a residential care facility, as defined in section 3721.01 of the Revised Code, that is issued a license pursuant to section 3721.02 of the Revised Code.

(3) "Adult care facility" means an adult care facility as defined in section 5119.70 of the Revised Code that is issued a license pursuant to section 5119.73 of the Revised Code.

(B) As used in Title LVII of the Revised Code, and for the purpose of other sections of the Revised Code that refer specifically to Chapter 5701. or section 5701.13 of the Revised Code, a "home for the aged" means either of the following:

(1) A place of residence for aged and infirm persons that satisfies divisions (B)(1)(a) to (e) of this section:

(a) It is a nursing home, residential care facility, or adult care facility.

(b) It is owned by a corporation, unincorporated nonprofit association, or trust of a charitable, religious, or fraternal nature, ~~which~~ that is organized and operated not for profit, ~~which~~ is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, officers, or other private persons, and ~~which~~ is exempt from federal income taxation under section 501 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1.

(c) It is open to the public without regard to race, color, or national origin.

(d) It does not pay, directly or indirectly, compensation for services rendered, interest on debts incurred, or purchase price for land, building, equipment, supplies, or other goods or chattels, which compensation, interest, or purchase price is unreasonably high.

(e) It provides services for the life of each resident without regard to the resident's ability to continue payment for the full cost of the services.

(2) A place of residence that satisfies divisions (B)(1)(b), (d), and (e) of this section; that satisfies the definition of "nursing home" or "residential care facility" under section 3721.01 of the Revised Code or the definition of "adult care facility" under section 5119.70 of the Revised Code regardless of whether it is licensed as such a home or facility; and that is provided at no charge to individuals on account of their service without compensation to a charitable, religious, fraternal, or educational institution, which individuals are aged or infirm and are members of the corporation, association, or trust that owns the place of residence. For the purposes of division (B)(2) of this section, "compensation" does not include furnishing room and board, clothing, health care, or other necessities, or stipends or other de minimis payments to defray the cost thereof.

Exemption from taxation shall be accorded, on proper application, only to those homes or parts of homes ~~which~~ that meet the standards and provide the services specified in this section.

Nothing in this section shall be construed as preventing a home from requiring a resident with financial need to apply for any applicable financial assistance or requiring a home to retain a resident who willfully refuses to pay for services for which the resident has contracted even though the resident has sufficient resources to do so.

(C)(1) If a corporation, unincorporated nonprofit association, or trust described in division (B)(1)(b) of this section is granted a certificate of need pursuant to section 3702.52 of the Revised Code to construct, add to, or otherwise modify a nursing home, or is given approval pursuant to section 3791.04 of the Revised Code to construct, add to, or otherwise modify a residential care facility or adult care facility and if the corporation, association, or trust submits an affidavit to the tax commissioner stating that, commencing on the date of licensure and continuing thereafter, the home or facility will be operated in accordance with the requirements of divisions (B)(1)(a) to (e) of this section, the corporation, association, or trust shall be considered to be operating a "home for the aged" within the meaning of division (B)(1) of this section, beginning on the first day of January of the year in which such certificate is granted or approval is given.

(2) If a corporation, association, or trust is considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, the corporation, association, or trust shall notify the tax commissioner in writing upon the occurrence of any of the following events:

(a) The corporation, association, or trust no longer intends to complete the construction of, addition to, or modification of the home or facility, to obtain the appropriate license for the home or facility, or to commence operation of the home or facility in accordance with the requirements of divisions (B)(1)(a) to (e) of this section;

(b) The certificate of approval referred to in division (C)(1) of this section expires, is revoked, or is otherwise terminated prior to the completion of the construction of, addition to, or modification of the home or facility;

(c) The license to operate the home or facility is not granted by the director of health within one year following completion of the construction of, addition to, or modification of the home or facility;

(d) The license to operate the home or facility is not granted by the director of health within four years following the date upon which the certificate or approval referred to in division (C)(1) of this section was

granted or given;

(e) The home or facility is granted a license to operate as a nursing home, residential care facility, or adult care facility.

(3) Upon the occurrence of any of the events referred to in divisions (C)(2)(a), (b), (c), (d), and (e) of this section, the corporation, association, or trust shall no longer be considered to be operating a "home for the aged" pursuant to division (C)(1) of this section, except that the tax commissioner, for good cause shown and to the extent the commissioner considers appropriate, may extend the time period specified in division (C)(2)(c) or (d) of this section, or both. Nothing in division (C)(3) of this section shall be construed to prevent a nursing home, residential care facility, or adult care facility from qualifying as a "home for the aged" if, upon proper application made pursuant to division (B) of this section, it is found to meet the requirements of divisions (A) and (B) of this section.

SECTION 2. That existing sections 9.231, 169.01, 1702.01, 1702.05, 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, 1702.462, 2901.23, 3955.06, 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, and 5701.13 and sections 1702.45, 1745.01, 1745.02, and 1745.04 of the Revised Code are hereby repealed.



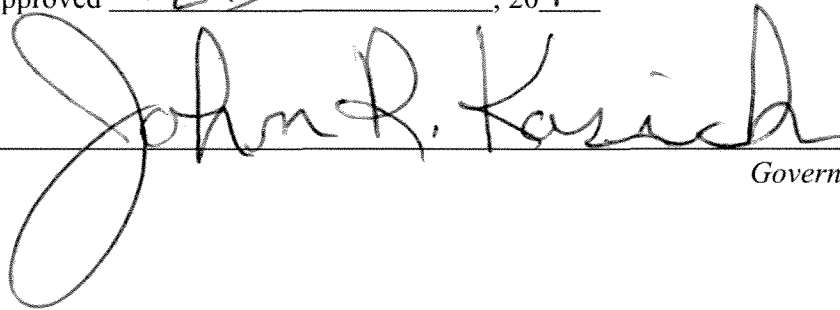
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed February 8, 2012

Approved FEB 21, 2012



Governor.

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

Mary C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 21st day of February, A. D. 2012.

Joe Hutto

Secretary of State.

File No. 79

Effective Date May 22, 2012

File No. 79

(129th General Assembly)
(Substitute House Bill Number 267)

AN ACT

To amend sections 9.231, 169.01, 1702.01, 1702.05, 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, 1702.462, 2901.23, 3955.06, 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, and 5701.13; to enact sections 1702.411, 1745.05 to 1745.46, 1745.461, and 1745.47 to 1745.57; and to repeal sections 1702.45, 1745.01, 1745.02, and 1745.04 of the Revised Code to adopt the Revised Uniform Unincorporated Nonprofit Association Act and to revise the merger and consolidation provisions of the Nonprofit Corporation Law.

Introduced by

Representative McKenney

Cosponsors: Representatives Combs, Letson, Stebelton, Murray, Adams, R., Barnes, Beck, Blair, Blessing, Carney, Dovilla, Duffey, Gardner, Garland, Gonzales, Grossman, Hackett, Hayes, Huffman, Luckie, O'Brien, Patmon, Pillich, Sears, Slaby, Sprague, Terhar, Weddington, Winburn, Young Speaker Batchelder
Senators Beagle, Bacon, Coley, Eklund, Faber, Hite, Hughes, Jones, Obhof, Oelslager, Patton, Sawyer, Wagoner

Passed by the House of Representatives,

September 27, 20 *11*

Passed by the Senate,

January 31, 20 *12*

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

21st day of *February*, A. D. 20 *12*

Garth

Secretary of State.