

GENERAL CORPORATION LAW AND NON-PROFIT CORPORATION LAW

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On October 11, 1955, Amended House Bill 70 became law. This Bill, prepared and sponsored by the Ohio State Bar Association Corporation Law Committee, effected the first complete revision of the Ohio Corporation Law in over 26 years. The extent of the revision and the importance to practicing attorneys of the many changes effected through the adoption of Amended House Bill 70 can be appreciated only by an examination of the revised Ohio Corporation Law itself and by the employment of it in corporate transactions. Although the label "substantially accurate" may be placed upon the State Bar Committee's claim that a major portion of the material found in Amended House Bill 70 effects only technical changes, it is necessary to reiterate that there has been a complete restatement of the Ohio law respecting corporations; although it is a fact that the State Bar Committee was as equally concerned in safeguarding the rights of shareholders as it was in making available to attorneys and corporate management a more readily understood Ohio Corporation Law and means for facilitating daily corporate transactions, it is equally true that the extensive changes in the law will make it essential that attorneys, shareholders, and corporate management become conversant with the revised Ohio Corporation Law so that they may appreciate the extent to which daily corporate dealings must be revised.

The State Bar Committee believes that the new Ohio Corporation Law is a pronounced improvement over the former law and that the Ohio Corporation Law has many advantages over the corporation laws of every other state.

The last major change in the Ohio Corporation Law was adopted by the Ohio Legislature in 1949. Amended Senate Bill No. 82 became law on September 9, 1949. This Bill, also prepared and sponsored by the Ohio State Bar Association Corporation Law Committee, effected changes in 29 sections of the Ohio General Corporation Law and provided for a net addition of five new sections. Most of the 1949 changes involved matters of technical detail or clarification, but it was recognized in 1949 that the State Bar Committee's work was not completely finished, as the State Bar Committee was not then ready to report any redraft on the subjects of dissenting shareholders, dividends, derivative suits, and examination of books and records. As early as March, 1949, while the 1949 amendments were being considered by the Legislature, subcommittees were appointed by the State Bar Committee to consider the

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matter of indemnification of directors and officers and the liability of directors on dissolution.

At every State Bar Committee meeting thereafter, additional problems were considered, as the State Bar Committee necessarily recognized the impossibility of preparing a corporation law so perfect that changes would never be required. The State Bar Committee also examined and took advantage of the best features of amendments made in recent years in the corporation laws of other states.

The State Bar Committee recognized that a major program would be involved in improving the Ohio Non-Profit Corporation law and a subcommittee was appointed to consider a complete revision of this law which had remained virtually untouched since 1927. This subcommittee prepared a complete draft of a proposed revised Ohio Non-Profit Corporation Law and the full State Bar Committee recognized that many of the provisions of this draft should be the basis for changes in corresponding sections of the Ohio General Corporation Law. Similarly, the work of other subcommittees produced suggested improvements in one section which improvements, in turn, suggested changes in related sections. The final effort was House Bill 70, introduced in the Ohio Legislature in January, 1955. House Bill 70 consisted of three major parts. The first part consisted of a new General Corporation Law, consisting of 99 sections in Chapter 1701. Most of the material in this chapter was a restatement of the then existing law with improvements and minor technical changes. All of the material in the General Corporation Law was rearranged in a more orderly fashion and, to the extent possible, each section was made shorter, so as to relate only to one major corporate principle. The second part of House Bill 70 was the Non-Profit Law, set forth in 59 sections in Chapter 1702. Wherever possible, each section of Chapter 1702 which had a counterpart in Chapter 1701 made use of the same language and the same phraseology. Although the titles of the sections are not now part of the law, the titles suggested by the Ohio Bar Association Corporation Law Committee for comparable sections in the two chapters were made the same or substantially the same. The third part of House Bill 70 consisted of a new statutory agent section for the foreign corporation chapter and a new derivative suit section. A fourth, and the least important, part of House Bill 70 consisted of amendments to other sections of the Revised Code which referred to the then existing sections of Chapters 1701 and 1702. House Bill 70 was amended in the House and in the Senate, both as a result of suggestions made by the Ohio State Bar Association Corporation Law Committee and as the result of suggestions made by the House Judiciary Committee or the Senate Code Revision Committee. The final result, Amended House Bill 70, became law on October 11, 1955, the date mentioned in the first sentence of this article.

Any effort to summarize in this article every change effected by Amended House Bill 70 is clearly impossible. A complete understanding

of the changes necessitates a reading of the Committee Comment, i.e., the comment of the Corporation Law Committee. The Committee Comment is found in the January 10, 1955, issue of *The Ohio Bar*. Certain of the comments have been modified by reason of the changes made in the legislature and the final version of the Committee Comment has been made available to the various law book publishers and will be printed by these publishers. The introduction to the report of the Corporation Law Committee in the January 10, 1955, issue of the *Ohio Bar* summarizes the principal changes proposed to be made through House Bill 70. Rather than attempting to restate that summary, this article will be confined to a section-by-section reference to the principal changes in the law. The following material necessarily assumes that the reader is familiar with the provisions of Chapters 1701 and 1702 in effect prior to October 11, 1955.

OHIO GENERAL CORPORATION LAW

General title of Chapter 1701.

The Committee has suggested, and it is to be expected, that Chapter 1701 will carry the unofficial title of the "Ohio General Corporation Law".

Section 1701.01. *Definition.*

This section is based on old section 1701.01, with three major changes.

1. The definition of "shareholder" in division (F) makes it clear that a person may be a subscriber to shares even though his name does not appear on the corporation's books as a subscriber, as subscriptions generally appear on special contracts prepared for the purpose. In this definition, it is also made clear that subscriptions may be received not only immediately after incorporation but at later times pursuant to director authorization.

2. The definition of "treasury shares" in division (K) accords with the new concept that treasury shares are not assets of the corporation. Until such time as treasury shares are retired, they constitute issued shares, but, under this section, they are not deemed to be outstanding for accounting, dividend, quorum, voting, or other purposes. Until retired, treasury shares are treated the same as authorized but unissued shares, except that pre-emptive rights do not attach to treasury shares under section 1701.15 and except that the consideration for par value treasury shares may be less than par under section 1701.18.

3. The definition of "insolvent" in division (O) is new and, as here defined, "insolvent" is used in the equity sense. This definition is of importance in the statutory restrictions on dividend declarations and in the statutory limitations on distributions to shareholders.

Section 1701.02. *Computation of time for notice.*

This section is based on old section 1701.02 but the latter section has been amplified in one respect and changed in another respect.

1. As amplified, this section applies to notices under articles, regulations, and by-laws, and to any other notices, and is not confined to notices given under the chapter.

2. The change consists of a change in the computation method and, as changed, this section is consistent with Revised Code section 1.14 in excluding the first day and including the last day.

Section 1701.03. *Purposes of corporation.*

This section is based on old section 1701.04, with no substantive change.

Section 1701.04. *Forming a corporation; contents of articles.*

This section is based on old sections 1701.06 and 1701.10 and on a portion of old section 1701.20. The material has been systematically arranged so as to separate the mandatory from the optional provisions in the articles and it is made clear that, even though there is only one class of shares, such shares may have express terms. In addition, there are three major changes.

1. The provision in old section 1701.06 respecting the termini of a railroad has been eliminated as unnecessary.

2. The requirement that articles be acknowledged has been eliminated.

3. The articles may contain a provision specifying the period of existence of the corporation if it is to be otherwise than perpetual. If a limited life provision is placed in the original articles, the shareholders may later amend the articles to provide for an extension of life or for perpetual existence unless express provision is made in the articles to prevent a change in the limited life provision in the absence of a vote larger than that ordinarily required to amend the articles. When the limited period has ended, the corporation has the status of a dissolved corporation with the directors authorized to do only such things as are required to wind up the affairs of the corporation.

Section 1701.05. *Corporate name; reservation of name.*

This section is based on old section 1701.08, with no substantive change.

Section 1701.06. *Express terms of shares.*

This section is based on old section 1701.07, with no substantive change.

Section 1701.07. *Statutory agent.*

This section is based on old section 1702.37, with two major changes.

1. Under this section, as well as under the statutory agent sections in the Ohio Non-Profit Corporation Law (Chapter 1702) and in the Ohio Foreign Corporation Law (Chapter 1703), a professional corporation may serve as statutory agent.

2. When service may be made on the Secretary of State, the party desiring such service must deliver to the Secretary of State an affidavit stating the set of facts by reason of which service on the Secretary of State is permitted and setting forth the most recent address for the corpo-

ration which the deponent has been able to ascertain. After the receipt of such an affidavit, the Secretary of State is required to notify the corporation at the address of the corporation appearing on the Secretary of State's records, at any different address shown on the corporation's last franchise tax report, and at any different address shown in the required affidavit.

Section 1701.08. *Recording articles and effect thereof.*

This section is based on old sections 1701.09 and 1701.12, with no substantive change.

Section 1701.09. *Initial subscriptions for shares.*

This section is based on old sections 1701.13 and 1702.42, with two minor changes.

1. This section eliminates the requirement that books of subscription be opened, as the definition section and this section takes cognizance of the fact that subscriptions are not always made in books.

2. Under division (C) of this section, the authority of the incorporators to receive subscriptions is expressly terminated upon the election of directors.

Section 1701.10. *First meeting of shareholders.*

This section is based on old section 1701.14, with no major change; however, it is made clearer in this section that the shareholders are not required to adopt regulations if the articles already contain the necessary provisions or if Chapter 1701 is deemed to be detailed enough to make regulations unnecessary.

Section 1701.11. *Adoption, contents, and amendment of regulations.*

This section is based on old section 1701.15, with no substantive change.

Section 1701.12. *Liability for non-payment of initial stated capital.*

This section is based on old section 1701.16, with three minor changes.

1. The provision in old section 1701.16 that no corporation should commence business until the initial stated capital had been paid in has been eliminated as unnecessary.

2. Incorporators are made liable for the payment of the initial stated capital if they have participated in business transactions before directors have been elected.

3. The amount of the liability is now stated to be only the amount of the deficiency in the initial stated capital.

Section 1701.13. *Authority of corporation.*

This section is based on old sections 1701.05, 1701.11, and 1702.26. The material has been rearranged and condensed and, in addition, there are two major changes.

1. The material in division (D), respecting the making of charitable contributions, grants to the corporation very broad authority. The material in old section 1702.26 was not only defective in many particulars but it was extremely narrow in its grant of authority. Under this section,

the directors have broad authority to make donations, subject only to the overriding requirement that they act reasonably and with prudence.

2. Division (E), relating to indemnification, is an entirely new provision in the Ohio law. The right to indemnify is limited to indemnification against expenses actually incurred in connection with the defense of any proceeding, unless the party is found to be liable for negligence or misconduct, but the statutory provision is specifically stated to be not exclusive of other rights to indemnification.

Section 1701.14. *Issuing of shares and release of subscriptions.*

This section is a combination of portions of old sections 1701.20 and 1701.31, with no substantive change.

Section 1701.15. *Pre-emptive rights.*

This section is based on old section 1701.40. The material has been rearranged and some duplication has been avoided. In addition, fractional shares are now deleted from the exempt category, as otherwise pre-emptive rights could be evaded through the sale of large numbers of fractional shares. The section has also been enlarged to make it clear that only a majority vote is required to release pre-emptive rights with respect to shares which are made the subject of options granted to employees.

Section 1701.16. *Options to purchase shares.*

This section is based on old section 1701.24, with no substantive change.

Section 1701.17. *Plans for sale of shares to employees.*

This section is based on old section 1701.41, with two minor changes.

1. This section recognizes that shares may be offered to employees through the grant of stock options.

2. By a change in language, an effort is made in this section to make it clearer than under the old law that a plan for the sale of shares to employees need not be extended to every employee or to a particular number or class of employees.

Section 1701.18. *Consideration for shares and liability of shareholders therefor.*

This section is based on old sections 1701.26 and 1701.28, with no substantive change.

Section 1701.19. *Valuation of property or services.*

This section is based on old section 1701.29, with no substantive change, except that cognizance is taken of the prohibition found in section 1701.32 against the directors' creating an appreciation surplus out of anything other than physical assets of the corporation.

Section 1701.20. *Enforcing payment for shares.*

This section is based on old section 1701.30, with no substantive change.

Section 1701.21. *Convertible shares.*

This section is based on old section 1701.21, with only one minor change. A sentence has been added to permit the inclusion in the ex-

press terms of convertible shares of a statement to provide that, upon the exercise of conversion rights, the stated capital of the corporation shall be increased or reduced, consistent with the provisions of section 1701.30. This is the first of several instances where the new stated capital concept referred to below under sections 1701.30 et seq. required the insertion of a new provision.

Section 1701.22. *Convertible obligations.*

This section is based on a portion of old section 1701.83, with two minor changes.

1. A new sentence has been added, comparable to that referred to in the comment above respecting section 1701.21. Under this new sentence, the terms of convertible obligations may include statements not inconsistent with the provisions of section 1701.30 to provide that, upon exercise of the conversion rights, the stated capital of the corporation shall be increased in a specified way.

2. Division (D) is a revision of division (C) of old section 1701.83 and is designed to prevent the issuance of convertible obligations convertible into shares having a par value greater than the face amount of the convertible obligations, unless the corporation has sufficient surplus at the time of original issuance of the convertible obligations to make up the difference. Division (D), as revised, is an exact counterpart of the corresponding division of section 1701.21.

Section 1701.23. *Redeemable shares and redemption thereof.*

This section is based on a portion of old section 1701.22, with no substantive change.

Section 1701.24. *Certificates for shares.*

This section is based on old section 1701.34, with one minor change, through the addition of paragraph (C)(2). By virtue of the addition of this paragraph, a corporation may, in lieu of executing and delivering a certificate for a fraction of a share, provide means whereby the person otherwise entitled to the fraction may purchase or sell the fractional interest. This provision is inserted in this section to permit a continuation of the practice of corporations which do not wish to have scrip outstanding for long periods of time.

Section 1701.25. *Statements on certificate for shares.*

This section is based on old section 1701.36, with two minor changes.

1. The provision in the old section to the effect that statements of the express terms of shares must be set forth or referred to on the certificate only when the shares of the corporation are classified has been changed to make it clear that the express terms, if any, of unclassified shares must also be set forth or referred to on the certificate, as there are many cases where the only shares authorized have express terms.

2. This section now provides that restrictions on the right to transfer shares or reservations of liens on shares may be set forth or summarized on either the face or the back of the particular certificate,

rather than requiring that the restriction or reservation be "stated on the certificate".

Section 1701.26. *Transfer agents and registrars.*

This section is based on old section 1701.37, with no substantive change.

Section 1701.27. *Loss, theft, or destruction of certificate for shares.*

This section is based on old section 1701.35, with no substantive change. The language of this section and other sections has been revised so that the words "execution and delivery" of certificates for shares is used instead of referring to the "issuance" of certificates, in line with the concept that shares of a corporation are issued, but certificates representing the shares are executed and delivered.

Section 1701.28. *Recognition by corporation of record ownership of shares or other securities.*

This section is based on old section 1701.38, with no substantive change.

Section 1701.29. *Expenses of organization and financing.*

This section is based on old section 1701.33, with only a minor change, in emphasizing that the payment by the corporation of reasonable expenses on the sale of shares does not render the shares assessable.

Section 1701.30. *Stated capital.*

This section is based on a portion of old section 1701.42, with one major change, involving the accounting treatment of par value shares, and with six other changes.

1. The basic change found in this section is the provision that par value shares may have a stated capital in excess of their par value, so as to make par value and no par value shares identical in so far as stated capital is concerned, except that the stated capital of a par value share may not be less than its par value. If the incorporators, shareholders, or directors authorizing the sale of par value shares desire that all or any part of the consideration received in excess of the par value of a par value share be allocated to capital surplus, the allocation is to be made prior to the execution and delivery of the certificates for the shares.

2. As an elaboration on that basic change in treatment of the stated capital of par value shares, this section also provides that each class of outstanding shares has a particular amount of stated capital and that the stated capital of every share of the particular class outstanding at a particular time is identical.

3. If a corporation carries one aggregate amount of stated capital for more than one class of shares and if the stated capital of each class cannot otherwise be readily determined, provision is made in division (D) for such determination by the directors of the corporation.

4. A new provision is found in paragraph (B)(1), designed to furnish some protection to the holders of preferred shares issued after October 10, 1955. Under this provision, no part of the consideration

received for the preferred shares over and above the par value, if any, may be allocated to capital surplus, except such part (if any) as is in excess of the amount payable in respect of the shares in the event of involuntary liquidation of the corporation. This will mean that if a preferred share having a par value of \$1.00 and a preference on involuntary liquidation of \$106 is sold for \$104, the entire amount of \$104 must be placed in stated capital. If, on the other hand, a \$1.00 par share having a preference on involuntary liquidation of \$104 were sold for \$106, the full amount of \$106 will be placed in stated capital unless a portion or all of the amount (\$2.00) by which the consideration exceeds the involuntary liquidation price is allotted to capital surplus. Under the old law and in the absence of this new provision, substantially all of the consideration in the preceding two examples and substantially all of the consideration received on the sale of no par preferred shares could be allocated to capital surplus, with the result that the capital surplus could be distributed among the holders of common shares to the detriment of the holders of the preferred shares.

5. A new provision is also made in this section to provide that the stated capital of a share issued upon the conversion of convertible shares shall be the same as that of the share so converted, unless the express terms of the convertible shares make other provision. A similar carryover of stated capital is provided in the case of change of shares, unless the amendment effecting the change makes other provision. These two provisions are changes in the old law, at least when par value shares are involved.

6. This section also provides that the stated capital of a share issued upon the conversion of a convertible obligation shall be an amount equal to the principal amount of the convertible obligation so converted, unless provision is made in the terms of the obligation for an increase in the stated capital. Under this provision, it is not possible to have any reduction in the stated capital below the principal amount of the convertible obligation, unless shareholders take independent action to reduce stated capital. A similar provision is inserted to cover the issuance of a share in exchange for an outstanding share, to provide that the stated capital of the new share is the same as that of the exchanged share, unless provision is made for an increase in stated capital. In both of these situations, in contrast with those in the paragraph immediately above, the directors may authorize the issuance of the convertible obligations or the exchange offer, without any action by shareholders, and this accounts for the prohibition against any reduction in stated capital absent shareholder action. Upon any conversion of convertible shares or convertible obligations and upon any change or exchange of shares, the stated capital of par value shares outstanding after such transaction must, of course, be not less than the par value of such shares.

7. Provision is also made in this section for a statement in an agreement of merger, an agreement of consolidation, or a plan of reorganiza-

tion respecting the stated capital of each class of shares to be outstanding when the merger, consolidation, or reorganization becomes effective. This requirement is new only in its reference to the stated capital of each class of shares.

Section 1701.31. *Reduction of stated capital.*

This section is based on old section 1701.44, with two major changes.

1. Under division (A) of this section, stated capital is automatically reduced upon the purchase or other acquisition by a corporation of its outstanding shares, even though the shares so acquired are not retired. This change corresponds with the changed definition of treasury shares referred to in the comment respecting section 1701.01 above. It is clearly provided, however, in division (A) that "purchase" or "other acquisition" does not go so far as to cover shares surrendered to the corporation upon conversion, change, or exchange, as changes in stated capital upon conversion, change, or exchange are to be made only in accordance with the provisions of section 1701.30 or of the amendment sections.

2. By reason of the provision in section 1701.30 to the effect that the stated capital of par value shares may be greater than the par value, the language in old section 1701.44 requiring an automatic reduction of stated capital upon a conversion of shares having a specified amount of stated capital into shares having an aggregate par value of lesser amount has been eliminated.

Section 1701.32. *Surplus.*

This section is based on old section 1701.27 and on portions of old sections 1701.42 and 1701.43, with five major changes.

1. In this section the phrase "capital surplus" is defined and that phrase is used in place of the phrase, "paid-in surplus", found in the old law. It is believed that the phrase "paid-in surplus" carried the connotation that it would normally arise only upon a payment to the corporation for shares and would not arise through a transfer from earned surplus.

2. Under division (C), it is now clearly stated for the first time that a contribution to a corporation is to become a part of capital surplus.

3. Under division (D), the writing up of assets is limited to the writing up of physical assets and shares of another corporation, in contrast with the old provision which permitted a write-up of patents, good will, and other intangible assets.

4. Under division (E) of old section 1701.42, transfers from any surplus to stated capital could be effected only upon the declaration of a stock dividend and the amount of the transfer was necessarily limited upon the declaration of a dividend in par value shares. Under division (E) of the new section, directors may make transfers from any surplus to stated capital and from earned surplus to capital surplus at any time and without limitation. This is a further consequence of the change in the

accounting treatment of par value shares. The directors may feel called upon (or may be required by a stock exchange) to capitalize earned surplus upon a declaration of a dividend payable in shares and the new section will now permit such capitalization.

5. Division (F) makes an important change in providing that it is improper for a corporation, by action of its directors alone, to apply capital surplus either towards wiping out a deficit in the earned surplus account or in setting up a reserve for a contingent loss. Under division (F), such action may be taken only by the shareholders, but, in case the resolution is adopted by the required vote, the balance sheet for a period of not less than five years thereafter must contain an appropriate reference to this so-called quasi-reorganization.

Section 1701.33. *Dividends.*

This section is based on a portion of old section 1701.43, with two minor changes.

1. Upon the payment of a stock dividend in par value shares under the old law, an increase in stated capital was a necessary result. Under division (B) of the new section, no increase in stated capital is necessary if the stated capital represented by shares of the same class already outstanding is in excess of the par value of the shares of that class to be outstanding after the stock dividend. If there is no excess or if the excess does not equal the par value of the dividend shares, the stated capital of the corporation may be increased through a transfer from capital surplus or earned surplus.

2. Under division (D) of this section, no stock dividend may be paid in shares of another class if any of the shares of the later class are already outstanding, unless the articles otherwise provide or unless the stock dividend is authorized by the holders of shares of the class in which payment is to be made. The purpose of this new provision is to protect the holders of outstanding preferred shares or non-voting common shares from having their interests diluted through the issuance of such shares as a stock dividend on shares of another class.

Section 1701.34 *Unclaimed dividends.*

This is an entirely new section and provides for the outlawing of claims for dividends properly mailed more than six years before action is brought by the shareholder. It is to be noted, however, that the addition of this section does not eliminate the continuing necessity of mailing out periodic dividend checks and other shareholder notices; it affords relief only with respect to dividends mailed more than six years prior to an action for dividends.

Section 1701.35. *Purchase by corporation of its shares.*

This section is based on old section 1701.46, with four major changes.

1. This section now recognizes that offerings of shares to employees may be made through the grant of options.

2. A change is made in paragraph (A)(5) to permit the corpo-

ration, by director action, to repurchase shares which have been purchased by any person under an agreement under which the corporation enjoys the right of repurchase, rather than limiting such repurchase right to situations involving agreements with employees.

3. Paragraph (A) (7) is altered to permit a corporation, by director action, to repurchase shares when the articles provide for such repurchase; the old requirement that such repurchase be effected only for the purpose of resale to shareholders or others has been eliminated.

4. Paragraph (B) (9) has been changed through the elimination of words in old section 1701.46 which made it impossible, upon the repurchase of shares, to make use of the stated capital applicable to such shares. The change not only permits the use of the stated capital applicable to the shares being repurchased but also eliminates accounting problems which arose under the old limitation.

Section 1701.36. *Retirement of shares by corporation.*

This section is based on old section 1701.23 and on portions of old sections 1701.21, 1701.22, and 1701.31, with no substantive change.

Section 1701.37. *Keeping books, records, and list of shareholders.*

This section is based on old section 1701.72 and on a portion of old section 1701.54, with two changes.

1. Under division (B) a corporation is authorized to produce at meetings of shareholders classified lists of shareholders, which may consist of geographical listings or listings of holders of shares of particular classes. This is in contrast with the requirement of old section 1701.54 that there be produced a list of shareholders, alphabetically arranged.

2. Division (C), respecting the right of shareholders to inspect books and records, has been altered to require that the shareholder wishing to examine the material first make a written demand upon the corporation stating the specific purpose of the examination. This division is designed to change the Ohio case law which appeared to permit a shareholder to examine the books and records and lists of shareholders without giving any reason for his exercise of the privilege, unless and until the corporation was able to prove that the shareholder's purpose was unreasonable or improper. The change merely requires that the shareholder furnish the written statement; although this addition would justify a corporation's refusing an examination of records wholly irrelevant to the stated purpose, the new provision does not go beyond this. The shareholder who furnishes the proper written statement will be presumed to be acting in good faith and the corporation will continue to have the burden of rebutting that presumption by proving that his actual purpose is unreasonable or improper.

Section 1701.38. *Annual financial statement.*

This section is based on old section 1701.73, with two major changes.

1. The period during which a shareholder, after receiving notice

of a meeting, may request that a copy of the annual financial statement be mailed to him has been extended from 30 days to 60 days.

2. In recognition of the fact that the annual financial statement must be ready for presentation at the annual meeting, this section provides that the corporation must mail the statement not later than the fifth day after receiving a proper request from a shareholder or the fifth day before the meeting, whichever date is later in time. This is a change from the old provision which merely required that the corporation promptly mail a copy of the financial statement after receiving the written request from a shareholder.

Section 1701.39. *Annual meeting of shareholders.*

This section is based on old section 1701.47, with no substantive change; however, the first Monday of April as the annual meeting date in the absence of other provision in the articles or the regulations has been changed to the first Monday of the fourth month of each fiscal year, to provide for fiscal-year corporations.

Section 1701.40. *Calling meeting of shareholders; place of meeting.*

This section is based on a portion of old section 1701.48, with three minor changes.

1. The chairman of the board has been added to those authorized to call a meeting of shareholders.

2. The old law required that a majority of the members of the board act to call a meeting of shareholders. Under the new section, a majority of the directors present at a meeting at which a quorum is present may call the meeting; the old provision to the effect that a majority of the directors, acting without a meeting, may call a meeting of shareholders has been retained.

3. Paragraph (A)(3) provides that the articles or the regulations may not specify, as the portion of voting shareholders who may call a meeting, a portion greater than 50%, on a shareholding basis, thus eliminating the possibility that the articles or regulations could provide that holders of 75% or 80% of the shares would need to act together to call a special meeting of the shareholders.

Section 1701.41. *Notice of meeting of shareholders.*

This section is based on portions of old sections 1701.48 and 1701.49, with three major changes.

1. In contrast with the old law which provided no absolute minimum period for notice of meetings of shareholders, this section now specifies that the shortest period of time for the giving of notice of meetings of shareholders is seven days.

2. Under this section, notice need be given only to those shareholders entitled to notice. This change eliminates the provision in old section 1701.49 requiring that notice be given to each shareholder entitled to vote. If no record date is fixed for notice or voting purposes, the old provisions and the new sections specify that the record date for notice is the day before the giving of notice and the record date for voting purposes is

the day before the meeting at which the votes are to be taken. If, under the old law, a person became a shareholder after the giving of notice and before the meeting, such person would be entitled to vote at the meeting, but it might be impossible to furnish to such person a notice the required number of days in advance of the meeting.

3. This section now provides that notice may be given not more than 60 days, instead of 45 days, before the date of the meeting, unless the articles or regulations specify a longer period.

Section 1701.42. *Waiver of notice of meeting of shareholders or directors.*

This section is based on old section 1701.50 and on a portion of old section 1701.66, with only one substantive change. This section now provides that protest of improper notice by a person attending a meeting of shareholders or directors must be made prior to or at the commencement of the meeting, with the thought that other persons attending should be afforded timely warning.

Section 1701.43. *Dispensing with notice to shareholders or directors.*

This section is based on old section 1701.51, with no substantive change.

Section 1701.44. *Voting rights of shares.*

This section is based on a portion of old section 1701.57, with no substantive change.

Section 1701.45. *Record date of shareholders.*

This section is based on old section 1701.53 and on portions of old sections 1701.49 and 1701.57, with one minor change. The maximum interval between the record date and the date of a meeting or the date for the payment of dividends and the like has been increased from 45 to 60 days, although the articles or the regulations may still specify a shorter or longer period as the maximum interval period.

Section 1701.46. *Voting of shares by fiduciary or minor.*

This section is based on old section 1701.59, with one major change. Under this section, a minor is given specific authority to vote, in contrast with the old provisions merely immunizing the corporation against liability for permitting him to vote.

Section 1701.47. *Voting of shares by corporation.*

This section is based on old section 1701.60, with no substantive change.

Section 1701.48. *Voting of shares by proxy.*

This section is based on old section 1701.61, with one minor change. In contrast with the language in old section 1701.61 to the effect that a shareholder of record may exercise his rights by proxy, the language has been changed in the new section in recognition of situations where a person not a shareholder of record, as for example a fiduciary who has established his authority, may exercise the rights of a shareholder of record and, in doing so, may act by proxy.

Section 1701.49. *Voting trust.*

This section is based on old section 1701.39, with no substantive change.

Section 1701.50. *Inspectors of election.*

This section is based on old section 1701.62, with no substantive change.

Section 1701.51. *Quorum for shareholders' meeting.*

This section is based on a portion of old section 1701.54, with one minor change. Under this section, the right of the holders of a majority of shares represented at a meeting to adjourn the meeting has been made subject to contrary provision in the articles or the regulations, instead of being independent of the articles or the regulations.

Section 1701.52. *Special voting requirements for shareholders.*

This section is based on old section 1701.55, with no substantive change.

Section 1701.53. *Vote of shareholders required for rescission.*

This section is based on old section 1701.56, with no substantive change.

Section 1701.54. *Action by shareholders or directors without a meeting.*

This section is based on old section 1701.52, but there has been a change to permit the directors, as well as the shareholders, to take action without a meeting by having all of the directors sign a writing or writings. This change is the result of a long-standing demand from small corporations and practicing attorneys. Although the section is now preceded by reference to contrary provisions in the articles or the regulations, the draftsman of this section had in mind a corporation the shareholders of which desired that the shareholders or the directors take action as a group at a meeting and the introductory clause was not intended to permit shareholders to provide in the articles or the regulations that action could be taken without a meeting by the shareholders or directors upon the written approval of less than all of the shareholders or directors. Support for this interpretation of the introductory clause is found in comparable section 1702.25 of the new Ohio Non-Profit Corporation Law.

Section 1701.55. *Election of directors; cumulative voting.*

This section is based on old section 1701.58, with one minor change. This section increases from 24 hours to 48 hours the period of notice required to be given by a shareholder if he intends to vote cumulatively, so long as the corporation shall have given at least ten days notice of the meeting.

Section 1701.56. *Number and qualifications of directors.*

This section is based on old section 1701.68 and on a portion of old section 1701.63, with no substantive change.

Section 1701.57. *Term and classification of directors.*

This section is based on old section 1701.64, with one major change.

This section now provides that the number of directors in a given class may not be less than three. This assures that shareholders holding shares sufficient to entitle them to elect one of three directors may not be deprived of their voting power through the classification of a three-man board into classes of one or two directors only.

Section 1701.58. *Removal of directors and filling vacancies.*

This section is based on old section 1701.65, with two minor changes.

1. In division (A) it is made clear that a director may present a resignation in which the effective date is specified, so that no acceptance of the resignation is necessary.

2. In division (D) a defect in the old law has been removed and it is made clear that directors may be removed only by the shareholders who are entitled to elect the successors. There are situations in which holders of preferred shares may elect all or certain of the directors, but this right may cease when arrearages in dividends are made up or when the preferred stock is redeemed. In such a situation, this section now clearly states that removal of directors may be made by the shareholders who possess the voting power to elect successor directors.

Section 1701.59. *Authority of directors; bylaws.*

This section is based on old section 1701.70 and on a portion of old section 1701.63, with no substantive change.

Section 1701.60. *Authority of directors to establish compensation.*

This is an entirely new section designed to overcome some of the case law difficulties involved in establishing compensation for officer-directors of corporations where a majority of the directors are salaried officers or employees. Under this section directors have authority to establish reasonable compensation irrespective of any personal interest of any of the directors.

Section 1701.61. *Meeting of directors; call, place, and notice.*

This section is based on a portion of old section 1701.66, with one minor change. The chairman of the board has been included among those authorized to call meetings of directors.

Section 1701.62. *Quorum for directors' meeting.*

This section is based on old section 1701.67, with one minor change. This section now clarifies what constitutes a quorum of the directors for the purpose of filling vacancies in the board.

Section 1701.63. *Executive and other committees.*

This section is based on old section 1701.69, with three major changes.

1. This section now provides that no board committee may have fewer than three members.

2. Under division (B) of this section, the directors are expressly authorized to appoint alternate committee members.

3. Contrary to the old provision which called for a definition by the directors of the extent of the powers delegated to a committee, this

section now implies that all authority of the directors may be exercised by an executive committee unless expressly restricted by the regulations or orders of the directors, with the sole exception that a committee may not be authorized to fill vacancies among the directors or among the members of any committee.

Section 1701.64. *Officers; authority and removal.*

This section is based on old section 1701.71, with the addition of a new sentence in paragraph (B)(2) to provide expressly that an officer acquires no contract rights entitling him to continue in office merely because the articles or the regulations carry a general provision to the effect that officers shall be elected to serve until the next organization meeting of the directors and until their successors are elected.

Section 1701.65. *Corporate mortgages.*

This section is based on old section 1701.81, with no substantive change.

Section 1701.66. *Recording public utility mortgages.*

This section is based on old section 1701.82, with a minor change to provide for the inclusion within the provisions of this section of trolley bus transportation systems and municipally owned airports and other utilities.

Section 1701.67. *Facsimile signatures on debt instruments.*

This is an entirely new section to facilitate the execution and delivery of bonds and debentures, through permitting the use of facsimile signatures when the instrument is countersigned by an incorporated trustee. This provision is similar to the provision in section 1701.24 permitting the use of facsimile signatures on stock certificates countersigned by an incorporated transfer agent or registrar.

Section 1701.68. *Usury.*

This section is based on old section 1701.85, with no substantive change.

Section 1701.69. *Amendments to articles.*

This section is based on a portion of old section 1701.17, with two major changes.

1. In paragraph (B)(8) recognition has been taken of the new concept of stated capital of par value shares. Under this concept, an amendment to the articles which has the effect of reducing the par value of each outstanding share with par value does not necessarily result in a reduction of stated capital; similarly, a change of a no par share into a par value share with par value less than the stated capital represented by the no par share so changed does not necessarily result in a reduction of stated capital. Under paragraph (B)(8), provision is made for action by the shareholders, through the amendment route, to increase or reduce stated capital consistent with the provisions of section 1701.30. Provision is made in section 1701.71 for the vote by shareholders of every class on an amendment which provides for the reduction of stated capital.

2. A new provision is found in paragraph (B)(10) authorizing the change of a business corporation into a non-profit corporation through the adoption of an amendment.

Section 1701.70. *Adoption of amendments by incorporators or directors.*

This section is based on a portion of old section 1701.18, with one minor change. Old section 1701.18 permitted the directors to adopt an amendment to reduce the authorized number of shares or to eliminate any reference to shares of a particular class only when the shares in question had been reacquired by the corporation and when the articles required that the shares be cancelled or prohibited their being reissued. Paragraph (B)(3) of the new section authorizes the adoption of such an amendment by directors on any reacquisition of shares, even though the articles do not require that the shares be cancelled.

Section 1701.71. *Adoption of amendments by shareholders.*

This section is based on a portion of old section 1701.18, with three major changes.

1. Any amendment which has the effect of reducing the stated capital of the corporation requires a vote by the holders of shares of every class. This change accords with the reduction of stated capital provision found in section 1701.31.

2. A new provision is found in paragraph (B)(7) to permit the adoption of a general amendment pursuant to which future amendments may be adopted changing the purposes of the corporation. If such action is taken, however, a vote by holders of shares of every class is required.

3. Under paragraph (B)(8) the holders of shares of every class have the right to vote upon an amendment changing a business corporation into a non-profit corporation. In addition to this new provision, division (C) outlines the contents of such an amendment. It will be noted that a business corporation formed on or after June 9, 1927, must cancel its outstanding shares. This date has long been established as the date after which newly formed non-profit corporations may not provide for the issuance of shares.

Section 1701.72. *Amended articles.*

This section is based on a portion of old section 1701.18, with two changes.

1. The requirement of the old section that amended articles must set forth the amount of stated capital of the corporation at the time of the adoption of the amendment has been eliminated as unnecessary.

2. Division (D) is a new division to enumerate the contents of amended articles effecting the change of a business corporation into a non-profit corporation.

Section 1701.73. *Signing and filing amendments.*

This section is based on a portion of old section 1701.18, with no substantive change.

Section 1701.74. *Shareholders dissenting from certain amendments.*

This section is based on a portion of old section 1701.17, with two additions.

1. Paragraph (C)(2) is new and provides that an amendment authorizing subsequent changes in the purposes of a corporation gives rise to dissenting shareholder action. This addition is in line with the addition made in section 1701.71 and eliminates the old provision which emphasized the necessity of inserting in the original articles, rather than in an amendment, the reservation of the right to change the purposes of the corporation.

2. Division (D) is a new provision, providing that every shareholder who is opposed to the change of a business corporation into a non-profit corporation may dissent.

Section 1701.75. *Judicial reorganization of corporation.*

This section is based on old section 1701.19, with two major changes.

1. The provisions in old section 1701.19 respecting voluntary, non-judicial reorganizations have been eliminated, as all matters provided for in those provisions may be effected by the directors, the shareholders, or both pursuant to other sections of this chapter.

2. This section has been expanded so as to apply not only to judicial reorganizations under the Federal Bankruptcy Act, but to reorganizations under any federal reorganization statute.

Section 1701.76. *Sale or other disposition of entire assets.*

This section is based on old sections 1701.74 and 1701.75, with two minor changes.

1. A new sentence at the end of division (A) requires that the notice sent to shareholders be accompanied by a copy or summary of the terms of the proposed sale or other transaction.

2. Under division (B) of this section it is clearly provided that the shareholders, at the same meeting as that at which they authorize the sale, may expressly authorize the directors to abandon the sale.

In addition, the provision for the limitation of the period of time within which action may be taken to set aside such a sale has been transferred from a separate section to this section, so as to bring the limitation provision directly to the attention of persons carrying out a sale or other disposition involving the shareholder vote required by this section.

Section 1701.77. *Judicial sale of assets.*

This section is based on old section 1702.27, with no substantive change.

Section 1701.78. *Procedure for merger or consolidation of domestic corporations.* Section 1701.79. *Adoption of agreement of merger or consolidation of domestic corporations by shareholders.* Section 1701.80. *Filing of agreement of merger or consolidation of domestic corporations and effective date.* Section 1701.81. *Effect of merger or consolidation of domestic corporations.* Section 1701.82. *Procedure for merger or consolidation of domestic and foreign corporations.* Section 1701.83.

Effective date and effect of merger or consolidation of domestic and foreign corporations. Section 1701.84. *Merger of subsidiary into parent.*

New sections 1701.78 through 1701.84 are based on old sections 1701.76 through 1701.79. In addition to providing for a more systematic arrangement of material, there are seven major changes in the new sections.

1. Under paragraph (B)(10) of section 1701.78, the agreement of merger or consolidation must provide for or authorize the adoption of regulations.

2. Under paragraph (C)(5) of section 1701.78, there may be inserted in the agreement of merger or consolidation a provision conferring upon the directors of one or more of the constituent corporations the power to abandon the merger or consolidation.

3. Division (A) of section 1701.79 carries the new requirement that the notice sent to shareholders be accompanied by a copy or a summary of the agreement of merger or consolidation.

4. New material has been inserted in division (B) of section 1701.79, comparable to the material found in the old and new amendment sections, to preserve to holders of shares of a particular class the same voting rights which they would enjoy if changes proposed to be effected through a merger or consolidation were effected through an amendment to the articles.

5. The old requirement that the agreement of merger or consolidation be acknowledged has been eliminated and the form of instrument required to be filed in this state is materially simplified.

6. In contrast with the old provision that shareholders were entitled to dissent only if substantially prejudiced by the merger or consolidation, the new sections give to every shareholder the right to dissent.

7. Section 1701.84 is a new section, to authorize the merger of a wholly owned subsidiary into its corporate parent without the necessity of a vote by the holders of shares of the parent. A merger under this section gives rise to no dissenting shareholder rights.

Section 1701.85. *Rights of and proceedings concerning dissenting shareholders.*

This section is based on old section 1701.80, with 12 major changes.

1. The introductory phrase of the old section, "Unless the articles of incorporation otherwise provide", has been eliminated so as to forestall any possibility that dissenting shareholder rights may be eliminated or reduced through the insertion of special provisions in the articles.

2. A shareholder, in order to be entitled to invoke his appraisal right, must be a holder of record as of the record date fixed for the giving of notice of the meeting.

3. In elaboration of the above change, this section is further changed to confine the dissenting right to those shares which were held by the dissenter on the record date. This change is designed to preclude

a subsequent purchase by such shareholder of shares for speculative purposes.

4. The time within which the dissenter must make his demand has been changed to provide that each demand must be made by the later of the 30 days after the giving of notice of the meeting or 10 days after the taking of the vote.

5. A new provision permits the corporation to request that the dissenting shareholder deliver his certificates so that an appropriate legend may be endorsed thereon. This change is designed to earmark those certificates which have come to represent merely an unliquidated monetary claim against the corporation.

6. The old section required that the counteroffer by the corporation be made within ten days after the receipt of the particular demand. Under the new section, all counteroffers may be made at the same time, as the counteroffer may now be made at any time within ten days after the expiration of the period within which original demands may be made.

7. If it is necessary for the shareholder or the corporation to go to court, the court action must be commenced within three months instead of six months. The new section expressly provides that no answer to the petition filed by the corporation or the shareholder is required.

8. The old law provided for interest on the judgment at 6% per annum. The new section permits the court to fix the rate of interest and, presumably, such rate would be more commensurate with the rate of return on the shares with respect to which the dissent was made.

9. The new section contains a new definition of "fair cash value", namely the "amount which a willing seller, under no compulsion to sell, would be willing to accept and a willing buyer, under no compulsion to purchase, would be willing to pay". It is thought that this definition will furnish a clearer test of "fair cash value" than the "intrinsic value test" established by the Ohio Supreme Court.

10. The new section also provides that the amount demanded by the dissenting shareholder shall in all events be the maximum amount he may receive through the dissent route.

11. A new provision is inserted to the effect that the failure of a dissenting shareholder to surrender his certificate upon request, for endorsement as above noted, permits the corporation to treat such shareholder's dissenting right as terminated.

12. Provision is made in this section to provide expressly for the termination of the obligation of the corporation to pay fair cash value in the event the corporation is enjoined from effecting the particular corporate transaction giving rise to the dissenting shareholder's right. Similarly, express provision is made to the effect that the right of the dissenting shareholder terminates in the event the particular corporate transaction is abandoned.

Section 1701.86. *Voluntary dissolution.*

This section is based on old sections 1701.86 and 1701.88 and on

a portion of old section 1701.87, with no substantive change.

Section 1701.87. *Notice of voluntary dissolution.*

This section is based on old section 1701.89, with no substantive change; however, the old requirement that notice of dissolution be given by mail to all shareholders has been eliminated as unnecessary.

Section 1701.88. *Effect of voluntary dissolution and authority and duties of directors during winding up.*

This section is based on old sections 1701.90, 1701.91, and 1702.02 and on portions of old sections 1701.87 and 1701.92, with no substantive change.

Section 1701.89. *Jurisdiction of court over winding up of affairs of voluntarily dissolved corporation.*

This section is based on old section 1701.93 and on a portion of old section 1702.03, with no substantive change.

Section 1701.90. *Receiver for winding up affairs of corporation.*

This section is based on old section 1701.98, with no substantive change.

Section 1701.91. *Judicial dissolution.*

This section is based on old sections 1701.94, 1701.95, 1701.96, 1701.97, and 1702.01 and on a portion of old section 1702.03, with no substantive change.

Section 1701.92. *Certified copies as evidence.*

This section is based on old sections 1702.24 and 1702.25, with no substantive change.

Section 1701.93. *False statement or entry.*

This section is based on old section 1702.28, with no substantive change.

Section 1701.94. *Forfeiture for failure to maintain or furnish certain records.*

This section is based on old sections 1702.35 and 1702.36, with one major change. The provision in old section 1702.35 imposing a penalty for failure to do any act required by the chapter in addition to five enumerated acts was deleted because of the lack of definiteness. Improper refusal to permit an inspection of books and records is still not included in the enumerated acts.

Section 1701.95. *Liability of directors and shareholders.*

This section is based on old sections 1702.29, 1702.30, 1702.31, and 1702.32 and on a portion of old section 1701.92, with two minor changes.

1. The two-year limitation on actions against directors for making loans to officers, directors, or shareholders has been eliminated, with the thought that directors who make unauthorized loans should remain liable until the loan is paid.

2. Provision is made in the new section to assure that a director who dissents from a particular action may make his dissent a matter of record.

Section 1701.96. *Prohibition against false reports.*

This section is based on old section 1702.33, with no substantive change.

Section 1701.97. *Prohibition against exercise of corporate authority.*

This section is based on old section 1702.34, with no substantive change.

Section 1701.98. *Applicability of chapter.*

This section is based on old sections 1701.03, 1702.38, and 1702.39, with one minor change. Division (B) consists of a reinstatement of material formerly found in the first paragraph of old General Code Section 8623-132, making it clear that special provisions in the Revised Code relating to designated classes of corporations govern to the exclusion of the provisions in Chapter 1701 on the same subject, unless it appears that the special provision is cumulative, in which case both provisions apply.

Section 1701.99. *Penalties.*

This section is based on old section 1702.99, with no substantive change.

Sections deleted from old Chapter 1701.

Old sections 1701.25 ("Shares to be equal."), 1701.32 ("Shareholders' liability to creditors."), 1701.45 ("Distribution of excess assets."), 1701.84 ("Conferring voting power on bondholders."), 1702.04 ("Record of proceedings."), 1702.40 ("Building companies."), 1702.41 ("Old real estate corporations may have perpetual succession."), and 1702.43 ("Rights of the state.") have all been excluded from revised Chapter 1701, because these old sections were considered to be either unnecessary or obsolete.

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OHIO NON-PROFIT CORPORATION LAW

Amended House Bill 70 has made a substantial change in the old non-profit provisions of Chapters 1701 and 1702 and very little of what appeared in the old chapters has been retained in new Chapter 1702. Of more importance than a section-by-section comparison with the old sections is the recognition that, to the extent possible, each section of Chapter 1702 matches a section or group of sections of Chapter 1701. The same titles, the same language, and the same phraseology are used wherever possible, except that Chapter 1702 refers to "members" and "trustees" while Chapter 1701 necessarily refers to "shareholders" and "directors", and except that cumulative voting and dissent rights are not applicable to non-profit corporations or their members. In addition, the arrangement of sections in Chapter 1702 is exactly the same as the arrangement in Chapter 1701. There are only six sections of Chapter 1702 which do not have counterparts in Chapter 1701.

The remainder of this portion of this article will be devoted to a reference to those sections of Chapter 1702 which represent a material departure from old concepts or which contain provisions dissimilar to those found in the comparable sections of Chapter 1701.

General title of Chapter 1702.

The Committee has suggested, and it is to be expected, that Chapter 1702 will carry the unofficial title of the "Ohio Non-Profit Corporation Law".

Section 1702.01. *Definitions.*

This section is a counterpart of section 1701.01, with important deviations found only in the definitions of "non-profit corporation", "charitable corporations", and "member". The definitions of "non-profit corporation" and "charitable corporation" are based on section 501(c)(3) of the 1950 Internal Revenue Code and are of importance in that provisions in other sections of Chapter 1702 prevent the siphoning off of assets of a charitable corporation through amendment, merger, or dissolution. The definition of "member" provides for a permitted distinction between "voting members" and non-voting members.

Section 1702.04. *Forming a corporation; contents of articles.*

This section represents a departure from old section 1702.06 in that the old requirement that incorporators be among the initial members has been eliminated.

Section 1702.10. *Organization meeting of incorporators.*

This section represents a departure from old section 1702.08 in that the new section permits the incorporators to adopt the initial regulations.

Section 1702.11. *Adoption, contents, and amendment of regulations.*

In contrast with corresponding section 1701.11, paragraph (A)(4) of this new section permits the inclusion in regulations of charitable corporations of provisions limiting the right of their members, but not their trustees, to examine the books and records.

Section 1702.12. *Authority of corporation.*

In contrast with corresponding section 1701.13, this section would permit a non-profit corporation to acquire the control of another corporation irrespective of the purposes of the acquiring corporation. This departure is a recognition of the normal requirement that a non-profit corporation invest its funds in any proper manner so that income may be made available for its non-profit operations.

Section 1702.20. *Voting rights of members.*

In contrast with corresponding section 1701.44 and the old law, voting by mail is expressly authorized under this section.

Section 1702.25. *Action by members or trustees without a meeting.*

In contrast with corresponding section 1701.54, this section authorizes the inclusion in the articles or the regulations of a non-profit corporation of a provision permitting action without a meeting by less than all of the members.

Section 1702.27. *Number and qualifications of trustees.*

This section eliminates the old requirement that at least one of the trustees be a resident of Ohio. Similarly, this section eliminates the old requirement that each trustee be a member of the non-profit corporation.

Finally, this section now recognizes the possibility of having ex officio trustees who would not be counted for quorum or other purposes.

Section 1702.28. *Term and classification of trustees.*

In contrast with the old provisions, the term of office of trustees is not limited by statute.

Section 1702.30. *Authority of trustees; bylaws.*

The only important change from the old law is found in a recognition in this section of the possible delegation of authority to a national association of which the Ohio non-profit corporation is a member or associate.

Section 1702.36. *Corporate mortgages.*

This section is an exact counterpart of new section 1701.65 and represents an important departure from old section 1702.22 in that the vote by members is no longer required on the mortgaging of property and, in addition, no court authorization under Revised Code section 1715.39 is required.

Section 1702.38. *Amendments to articles.*

This section follows the general form of the amendment sections of Chapter 1701, except that the vote of members required to adopt an amendment, in the absence of other provisions in the articles or the regulations, continues to be merely the affirmative vote of a majority of the voting members present if a quorum is present. This voting provision is also retained in sections 1702.39, 1702.41, and 1702.47 relating to the sale of substantially all the assets, merger, and dissolution.

Section 1702.39. *Sale or other disposition of assets.*

This section and section 1702.36 are similar in that they both eliminate the old statutory requirement that court authority be obtained under Revised Code section 1715.39 upon the sale or the disposition of substantially all of the assets.

Section 1702.45. *Procedure for merger or consolidation of domestic and foreign corporations.*

This section is a counterpart of section 1701.82 and represents a departure from the old non-profit provisions which did not permit a merger or consolidation into or with foreign corporations.

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New section 1703.041 and 2307.311

New section 1703.041, entitled "Statutory agent," has been inserted for the sole purpose of enabling foreign corporations to designate either a natural person or a corporation as its statutory agent in Ohio.

New section 2307.311, entitled "Derivative suits," is an entirely new section for Ohio and is influenced by the federal rules of civil procedure. The principal reason for the insertion of this section is to furnish a statutory basis for derivative shareholder actions. The statutory provision adopted has the effect of excluding from those authorized to bring such suits persons who have become owners of shares subsequent to

the time of the alleged illegal or improper corporate action. On the other hand, the new section permits the bringing of such suits by an equitable owner as well as by a legal owner, and a person who receives his shares by family gift after the time of the action complained of may also bring suit.

The new section specifically requires that the plaintiff allege his efforts to secure action from the directors and the reasons for failure to obtain the action or the reasons for not making the effort. Nothing is said in the new section respecting the necessity of the plaintiff's alleging his efforts to secure action from the shareholders, although the Committee Comment emphasizes that the absence of any requirement of a demand upon the shareholders was intentional. In this connection, attention must necessarily be directed to the decision of the Ohio Supreme Court in *Glaman v. Robertson*, 164 Ohio St. 61 (1955), decided on July 20, 1955, and to paragraph two of the syllabus. It will be noted that the date of this decision followed the action of the legislature in adopting new section 2307.311 but preceded the effective date of the section, namely January 2, 1956, and preceded the effective date of Amended House Bill 70. Any person intending to make use of this new section will want to examine the recent Supreme Court decision with particular care.

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Paraphrasing the expectations of the Ohio State Bar Association Corporation Law Committee, as recorded in the concluding paragraph of the introductory Committee Comment in *The Ohio Bar* of January 10, 1955, the author believes that the enactment of Amended House Bill 70 provides Ohio with modern corporation laws which are particularly complete, which protect the general, public interest, and which meet the business needs of this state.