

**As Reported by the Senate Judiciary Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Sub. H. B. No. 556**

**Representative Swearingen**

**Cosponsors: Representatives Carruthers, Galonski, Hillyer, Jones, Lanese, LaRe,  
Patton, Schmidt, Seitz, Stephens, Wilkin**

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**A BILL**

To amend sections 1702.27, 1702.30, 1702.33, 1  
1702.38, 1702.521, 1702.53, 1702.55, 1745.05, 2  
and 2305.37 and to enact sections 1702.341 and 3  
1702.531 of the Revised Code to amend the 4  
Nonprofit Corporation Law. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1702.27, 1702.30, 1702.33, 6  
1702.38, 1702.521, 1702.53, 1702.55, 1745.05, and 2305.37 be 7  
amended and sections 1702.341 and 1702.531 of the Revised Code 8  
be enacted to read as follows: 9

**Sec. 1702.27.** (A) Except as provided in division (B) of 10  
this section and section 1702.521 of the Revised Code: 11

(1) The number of directors as fixed by the articles or 12  
the regulations shall be not less than three or, if not so 13  
fixed, the number shall be three, except that if there are only 14  
one or two members of the corporation, the number of directors 15  
may be less than three but not less than the number of members. 16

(2) (a) Subject to division (A) (2) (c) of this section, 17

unless the articles or the regulations fix the number of 18  
directors or provide the manner in which that number may be 19  
fixed or changed by the voting members, the number may be fixed 20  
or changed at a meeting of the voting members called for the 21  
purpose of electing directors, if a quorum is present, by the 22  
affirmative vote of a majority of the voting members present in 23  
person, by the use of authorized communications equipment, by 24  
mail, or, if permitted, by proxy. 25

(b) For purposes of division (A) (2) (a) of this section, 26  
participation by a voting member in a meeting through the use of 27  
any of the means of communication described in that division 28  
constitutes presence in person of that voting member at the 29  
meeting for purposes of determining a quorum. 30

(c) No reduction in the number of directors shall of 31  
itself have the effect of shortening the term of any incumbent 32  
director. 33

(3) ~~The~~ Each director shall be a natural person and shall 34  
have the qualifications, if any, that are stated in the articles 35  
or the regulations. 36

(4) The articles or the regulations may provide that 37  
persons occupying certain positions within or without the 38  
corporation shall be ex officio directors, but, unless otherwise 39  
provided in the articles or the regulations, such ex officio 40  
directors shall not be considered for quorum purposes and shall 41  
have no vote. 42

(B) The court of common pleas of the county in which the 43  
corporation maintains its principal office may, pursuant to 44  
division (A) of section 1702.521 of the Revised Code, order the 45  
appointment of a provisional director for the corporation 46

without regard to the number or qualifications of directors 47  
stated in the articles or regulations of the corporation. 48

**Sec. 1702.30.** (A) Except where the law, the articles, or 49  
the regulations require that action be otherwise authorized or 50  
taken, all of the authority of a corporation shall be exercised 51  
by or under the direction of its directors. For their own 52  
government, the directors may adopt bylaws that are not 53  
inconsistent with the articles or the regulations. 54

(B) A director shall perform the director's duties ~~of as a~~ 55  
director, including the duties as a member of any committee of 56  
the directors upon which the director may serve, in good faith, 57  
in a manner the director reasonably believes to be in or not 58  
opposed to the best interests of the corporation, and with the 59  
care that an ordinarily prudent person in a like position would 60  
use under similar circumstances. A director serving on a 61  
committee of directors is acting as a director. 62

(C) In performing ~~the duties of a director~~ director's 63  
duties, a director is entitled to rely on information, opinions, 64  
reports, or statements, including financial statements and other 65  
financial data, that are prepared or presented by any of the 66  
following: 67

(1) One or more directors, officers, or employees of the 68  
corporation who the director reasonably believes are reliable 69  
and competent in the matters prepared or presented; 70

(2) Counsel, public accountants, or other persons as to 71  
matters that the director reasonably believes are within the 72  
person's professional or expert competence; 73

(3) A committee of the directors upon which the director 74  
does not serve, duly established in accordance with a provision 75

of the articles or the regulations, as to matters within its 76  
designated authority, which committee the director reasonably 77  
believes to merit confidence. 78

(D) For purposes of division (B) of this section, the 79  
following apply: 80

(1) A director shall not be found to have ~~failed to~~ 81  
~~perform~~ violated the director's duties ~~in accordance with that~~ 82  
under division (B) of this section, unless it is proved, by 83  
clear and convincing evidence, ~~in an action brought against the~~ 84  
~~director~~ that the director has not acted in good faith, in a 85  
manner the director reasonably believes to be in or not opposed 86  
to the best interests of the corporation, or with the care that 87  
an ordinarily prudent person in a like position would use under 88  
similar circumstances. ~~Such an action includes, but is not~~ 89  
~~limited to, an action that involves or affects~~ in any action 90  
brought against a director, including actions involving or 91  
affecting any of the following: 92

(a) A change or potential change in control of the 93  
corporation; 94

(b) A termination or potential termination of the 95  
director's service to the corporation as a director; 96

(c) The director's service in any other position or 97  
relationship with the corporation. 98

(2) A director shall not be considered to be acting in 99  
good faith if the director has knowledge concerning the matter 100  
in question that would cause reliance on information, opinions, 101  
reports, or statements that are prepared or presented by the 102  
persons described in divisions (C) (1) to (3) of this section, to 103  
be unwarranted. 104

(3) ~~The provisions of~~ Nothing in this division ~~do not~~ 105  
~~limit~~ limits relief available under section 1702.301 of the 106  
Revised Code. 107

~~(E) (1) Subject to divisions (E) (2) and (3) of this~~ 108  
~~section, a~~ (E) A director is ~~shall be~~ liable in damages for any 109  
~~act~~ action that the director takes or fails to take as a 110  
director only if it is proved, by clear and convincing evidence, 111  
in a court ~~with~~ of competent jurisdiction that the director's 112  
action or failure to act involved an act or omission ~~of the~~ 113  
~~director was one~~ undertaken with a deliberate intent to cause 114  
injury to the corporation or ~~was one~~ undertaken with a reckless 115  
disregard for the best interests of the corporation. 116

~~(2) Division (E) (1) of this section does not affect~~ 117  
Nothing in this division affects the liability of a ~~director~~ 118  
directors under section 1702.55 of the Revised Code. 119

~~(3) Subject to~~ This division ~~(E) (2) of this section,~~ 120  
~~division (E) (1) of this section~~ does not apply if, and only to 121  
the extent that, at the time of ~~an~~ a director's act or omission 122  
~~of a director~~ that is the subject of complaint, the articles or 123  
the regulations of the corporation state, by specific reference 124  
to ~~that~~ this division, that ~~its~~ the provisions of this division 125  
do not apply to the corporation. 126

(F) For purposes of this section, a director, in 127  
determining what ~~a~~ the director reasonably believes to be in ~~or~~ 128  
~~not opposed to~~ the best interests of the corporation, ~~a director~~ 129  
shall consider the purposes of the corporation and, in the 130  
director's discretion, may consider any of the following: 131

(1) The interests of the corporation's employees, 132  
suppliers, creditors, and customers ~~of the corporation;~~ 133

(2) The economy of this state and <del>of the nation;</del>	134
(3) Community and societal considerations;	135
(4) The long-term <del>and as well as</del> short-term <del>best</del> interests	136
of the corporation, including, <del>but not limited to,</del> the	137
possibility that <del>those</del> <u>these</u> interests may be best served by the	138
continued independence of the corporation.	139
(G) <del>Divisions</del>	140
<u>Nothing in division (D) and or (E)</u> <del>of this section do not</del>	141
<del>affect</del> <u>affects</u> the duties of a director who acts in any capacity	142
other than in the capacity as a director.	143
<b>Sec. 1702.33.</b> (A) The regulations may provide for the	144
creation by the directors of an executive committee or any other	145
committee of the directors, to consist of one or more directors,	146
and may authorize the delegation to any such committee of any of	147
the authority of the directors, however conferred.	148
(B) The directors may appoint one or more directors as	149
alternate members of any committee described in division (A) of	150
this section, who may take the place of any absent member or	151
members at any meeting of the particular committee.	152
(C) Each committee described in division (A) of this	153
section shall serve at the pleasure of the directors, shall act	154
only in the intervals between meetings of the directors, and	155
shall be subject to the control and direction of the directors.	156
(D) Unless otherwise provided in the regulations or	157
ordered by the directors, any committee described in division	158
(A) of this section may act by a majority of its members at a	159
meeting or by a writing or writings signed by all of its	160
members.	161

(E) Meetings of committees described in division (A) of 162  
this section may be held by any means of authorized 163  
communications equipment, unless participation by members of the 164  
committee at a meeting by means of authorized communications 165  
equipment is prohibited by the articles, the regulations, or an 166  
order of the directors. Participation in a meeting pursuant to 167  
this division constitutes presence at the meeting. 168

(F) An act or authorization of an act by any committee 169  
described in division (A) of this section within the authority 170  
delegated to it shall be as effective for all purposes as the 171  
act or authorization of the directors. 172

(G) Unless otherwise provided in the articles, the 173  
regulations, or the resolution of the directors creating a 174  
committee described in division (A) of this section, a committee 175  
described in division (A) of this section may do both of the 176  
following: 177

(1) Create one or more subcommittees, each of which 178  
consists of one or more members of the committee; 179

(2) Delegate to a subcommittee any or all of the powers 180  
and authority of the committee. 181

**Sec. 1702.341. (A) Unless the articles, the regulations, 182**  
**or a written agreement with an officer establishes additional 183**  
**fiduciary duties, the only fiduciary duties of an officer are 184**  
**the duties to the corporation set forth in division (B) of this 185**  
**section. 186**

(B) An officer shall perform the officer's duties to the 187  
corporation in good faith, in a manner the officer reasonably 188  
believes to be in or not opposed to the best interests of the 189  
corporation, and with the care that an ordinarily prudent person 190

in a like position would use under similar circumstances. In 191  
performing an officer's duties, an officer is entitled to rely 192  
on information, opinions, reports, or statements, including 193  
financial statements and other financial data, that are prepared 194  
or presented by any of the following: 195

(1) One or more directors, officers, or employees of the 196  
corporation who the officer reasonably believes are reliable and 197  
competent in the matters prepared or presented; 198

(2) Counsel, public accountants, or other persons as to 199  
matters that the officer reasonably believes are within the 200  
person's professional or expert competence. 201

(C) For purposes of this section, both of the following 202  
apply: 203

(1) In any action brought against an officer, the officer 204  
shall not be found to have violated the officer's duties under 205  
division (B) of this section unless it is proved by clear and 206  
convincing evidence that the officer has not acted in good 207  
faith, in a manner the officer reasonably believes to be in or 208  
not opposed to the best interests of the corporation, or with 209  
the care that an ordinarily prudent person in a like position 210  
would use under similar circumstances. 211

(2) An officer shall not be considered to be acting in 212  
good faith if the officer has knowledge concerning the matter in 213  
question that would cause reliance on information, opinions, 214  
reports, or statements that are prepared or presented by any of 215  
the persons described in division (B)(1) or (2) of this section 216  
to be unwarranted. 217

(D) An officer shall be liable in damages for a violation 218  
of the officer's duties under division (B) of this section only 219



if it is proved by clear and convincing evidence in a court of 220  
competent jurisdiction that the officer's action or failure to 221  
act involved an act or omission undertaken with deliberate 222  
intent to cause injury to the corporation or undertaken with 223  
reckless disregard for the best interests of the corporation. 224  
This division does not apply if, and only to the extent that, at 225  
the time of an officer's act or omission that is the subject of 226  
the complaint, either of the following is true: 227

(1) The articles or the regulations of the corporation 228  
state by specific reference to division (D) of this section that 229  
the provisions of division (D) of this section do not apply to 230  
the corporation. 231

(2) A written agreement between the officer and the 232  
corporation states by specific reference to division (D) of this 233  
section that the provisions of division (D) of this section do 234  
not apply to the officer. 235

(E) Nothing in this section affects the duties of an 236  
officer who acts in any capacity other than the officer's 237  
capacity as an officer. Nothing in this section affects any 238  
contractual obligations of an officer to the corporation. 239

**Sec. 1702.38.** (A) The articles may be amended from time to 240  
time in any respect if the articles as amended set forth all the 241  
provisions that are required in, and only those provisions that 242  
may properly be in, original articles filed at the time of 243  
adopting the amendment, other than with respect to the initial 244  
directors, except that a public benefit corporation shall not 245  
amend its articles in such manner that it will cease to be a 246  
public benefit corporation. 247

(B) Without limiting the generality of the authority 248

described in division (A) of this section, the articles may be	249
amended to:	250
(1) Change the name of the corporation;	251
(2) Change the place in this state where its principal office is to be located;	252 253
(3) Change, enlarge, or diminish its purpose or purposes;	254
(4) Change any provision of the articles or add any provision that may properly be included in the articles.	255 256
(C) (1) <u>If initial directors are not named in the articles,</u> <u>at any time prior to a meeting of voting members and before the</u> <u>incorporators have elected directors, the incorporators or a</u> <u>majority of them, at a meeting, may adopt an amendment.</u>	257 258 259 260
<u>(2) The voting members present in person, by use of</u> authorized communications equipment, by mail, or, if permitted, by proxy at a meeting held for that purpose, may adopt an amendment by the affirmative vote of a majority of the voting members present if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations.	261 262 263 264 265 266 267 268 269 270
<del>(2)</del> <u>(3) For purposes of division (C) (1) or (2) of this</u> 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.	271 272 273 274 275
(D) In addition to or in lieu of adopting an amendment to	276

the articles, the voting members may adopt amended articles by 277  
the same action or vote as that required to adopt the amendment. 278

(E) The directors may adopt amended articles to 279  
consolidate the original articles and all previously adopted 280  
amendments to the articles that are in force at the time, or the 281  
voting members at a meeting held for that purpose may adopt the 282  
amended articles by the same vote as that required to adopt an 283  
amendment. 284

(F) Amended articles shall set forth all the provisions 285  
that are required in, and only the provisions that may properly 286  
be in, original articles filed at the time of adopting the 287  
amended articles, other than with respect to the initial 288  
directors, and shall contain a statement that they supersede the 289  
existing articles. 290

(G) Upon the adoption of any amendment or amended 291  
articles, a certificate containing a copy of the resolution 292  
adopting the amendment or amended articles, a statement of the 293  
manner of its adoption, and, in the case of adoption of the 294  
resolution by the directors, a statement of the basis for such 295  
adoption, shall be filed with the secretary of state, and upon 296  
that filing the articles shall be amended accordingly, and the 297  
amended articles shall supersede the existing articles. The 298  
certificate shall be signed by any authorized officer of the 299  
corporation. 300

(H) A copy of an amendment or amended articles changing 301  
the name of a corporation or its principal office in this state, 302  
certified by the secretary of state, may be filed for record in 303  
the office of the county recorder of any county in this state, 304  
and for that recording the county recorder shall charge and 305  
collect the same fee as provided for in division (A) (1) of 306

section 317.32 of the Revised Code. That copy shall be recorded 307  
in the official records of the county recorder. 308

**Sec. 1702.521.** (A) Upon the complaint of not less than 309  
one-fourth of the directors of the corporation or upon the 310  
complaint of not less than one-fourth of the voting members of 311  
the corporation, the court of common pleas of the county in 312  
which the corporation maintains its principal office may order 313  
the appointment of a provisional director for that corporation 314  
if the articles or regulations of the corporation expressly 315  
provide for such an appointment. No appointment shall be made 316  
until a hearing is held by the court. Notice of the hearing 317  
shall be given to each director and the secretary of the 318  
corporation in any manner that the court directs. The 319  
complainants shall establish at the hearing that, because of 320  
irreconcilable differences among the existing directors or 321  
because there are no directors and the voting members are unable 322  
to elect any directors, the continued operation of the 323  
corporation has been substantially impeded or made impossible. 324

(B) A provisional director shall have the same rights and 325  
duties as other directors and shall serve until removed by the 326  
appointing court or by the members of the corporation entitled 327  
to exercise a majority of the voting power of the corporation in 328  
the election of directors or until the provisional director's 329  
earlier resignation or death. If the provisional director dies 330  
or resigns, the court, pursuant to division (A) of this section, 331  
may appoint a replacement provisional director, upon its own 332  
motion and without the filing of a complaint for the appointment 333  
of a provisional director. If the appointing court finds that 334  
the irreconcilable differences no longer exist, it shall order 335  
the removal of the provisional director. 336

(C) No person shall be appointed as a provisional director 337  
unless the person is generally conversant with corporate 338  
affairs, has no legal or equitable interest in the obligations 339  
of the corporation of which the person is to be appointed a 340  
director, and is not indebted to such corporation. The 341  
compensation of a provisional director shall be determined by 342  
agreement with the corporation for which the provisional 343  
director is serving, subject to the approval of the appointing 344  
court, except that the appointing court may fix the provisional 345  
director's compensation in the absence of agreement or in the 346  
event of disagreement between the provisional director and the 347  
corporation. 348

(D) A proceeding concerning the appointment of a 349  
provisional director of a corporation is a special proceeding, 350  
and final orders issued in the proceeding may be vacated, 351  
modified, or reversed on appeal pursuant to the Rules of 352  
Appellate Procedure and, to the extent not in conflict with 353  
those rules, Chapter 2505. of the Revised Code. 354

**Sec. 1702.53.** (A) A copy of the articles or amended 355  
articles filed in the office of the secretary of state, 356  
certified by the secretary of state, shall be conclusive 357  
evidence, except as against the state, that the corporation has 358  
been incorporated under the laws of this state; and a copy duly 359  
certified by the secretary of state of any certificate of 360  
amendment or other certificate filed in the secretary of state's 361  
office shall be prima-facie evidence of such amendment or of the 362  
facts stated in any such certificate, and of the observance and 363  
performance of all antecedent conditions necessary to the action 364  
which such certificate purports to evidence. 365

(B) A copy of amended articles filed in the office of the 366

secretary of state, certified by the secretary of state, shall 367  
be accepted in this state and other jurisdictions in lieu of the 368  
original articles, amendments thereto, and prior amended 369  
articles. 370

(C) The original or a copy of the record of minutes of the 371  
proceedings of the incorporators of a corporation, or of the 372  
proceedings or meetings of the members or any class of members, 373  
or of the directors, or of any committee thereof, including any 374  
written consent, waiver, release, or agreement entered in such 375  
record or minutes, or the original or a copy of a statement that 376  
no specified proceeding was had or that no specified consent, 377  
waiver, release, or agreement exists, shall, when certified to 378  
be true by the secretary or an assistant secretary of a 379  
corporation, be received in the courts as prima-facie evidence 380  
of the facts stated therein. Every meeting referred to in such 381  
certified original or copy shall be deemed duly called and held, 382  
and all motions and resolutions adopted and proceedings had at 383  
such meeting shall be deemed duly adopted and had, and all 384  
elections of directors and all elections or appointments of 385  
officers chosen at such meeting shall be deemed valid, until the 386  
contrary is proved; and whenever a person who is not a member of 387  
a corporation has acted in good faith in reliance upon any such 388  
certified original or copy, it is conclusive in the person's 389  
favor. 390

(D) (1) A certificate issued by the secretary of state 391  
confirming that a corporation is in good standing is, for seven 392  
days after the date on the certificate, conclusive evidence of 393  
both of the following: 394

(a) That the authority of a domestic corporation has not 395  
been limited as described in section 1702.49 or 1702.52 of the 396

<u>Revised Code, provided that both of the following apply:</u>	397
<u>(i) The person relying on the certificate had no knowledge</u>	398
<u>that the corporation's articles had been canceled.</u>	399
<u>(ii) The certificate is not presented as evidence against</u>	400
<u>the state.</u>	401
<u>(b) That the license authorizing a foreign corporation to</u>	402
<u>transact business in this state has not expired, been canceled,</u>	403
<u>or been surrendered.</u>	404
<u>(2) For purposes of division (D) of this section, "good</u>	405
<u>standing" means that the authority of the corporation to carry</u>	406
<u>on business is not limited by section 1702.49 of the Revised</u>	407
<u>Code.</u>	408
<b>Sec. 1702.531.</b> <u>(A) Absent an express agreement to the</u>	409
<u>contrary, a person providing goods to or performing services for</u>	410
<u>a domestic or foreign corporation owes no duty to, incurs no</u>	411
<u>liability or obligation to, and is not in privity with the</u>	412
<u>members or creditors of the corporation by reason of providing</u>	413
<u>goods to or performing services for the corporation.</u>	414
<u>(B) Absent an express agreement to the contrary, a person</u>	415
<u>providing goods to or performing services for a member or group</u>	416
<u>of members of a domestic or foreign corporation owes no duty to,</u>	417
<u>incurs no liability or obligation to, and is not in privity with</u>	418
<u>the corporation, any other members of the corporation, or the</u>	419
<u>creditors of the corporation by reason of providing goods to or</u>	420
<u>performing services for the member or group of members.</u>	421
<b>Sec. 1702.55.</b> <u>(A) The members, the directors, and the</u>	422
<u>officers of a corporation shall not be personally liable for any</u>	423
<u>obligation of the corporation.</u>	424

~~(B) Directors who~~ In addition to any other liabilities 425  
imposed by law upon directors of a corporation and except as 426  
provided in division (D) of this section, directors shall be 427  
jointly and severally liable to the corporation as provided in 428  
division (C) of this section if they vote for or assent to any 429  
of the following: 430

(1) A distribution of assets to members contrary to law or 431  
the articles; 432

(2) A distribution of assets to persons other than 433  
creditors during the winding up of the affairs of the 434  
corporation, on dissolution or otherwise, without the payment of 435  
all known obligations of the corporation, or without making 436  
adequate provision therefor; 437

(3) The making of loans, other than in the usual conduct 438  
of its affairs or in accordance with provisions therefor in the 439  
articles, to an officer, or director, ~~or member~~ of the 440  
corporation; ~~shall be jointly and severally liable to the~~ 441  
~~corporation as follows: in~~ other than if, at the time of the 442  
making of the loan, a majority of the disinterested directors of 443  
the corporation voted for the loan and, taking into account the 444  
terms and provisions of the loan and other relevant factors, 445  
determined that the making of the loan could reasonably be 446  
expected to benefit the corporation. 447

(C) (1) In cases under division (B) (1) of this section, up 448  
to the amount of such distribution in excess of the amount that 449  
could have been distributed without violation of law or the 450  
articles, but not in excess of the amount that would inure to 451  
the benefit of the creditors of the corporation if it was 452  
insolvent at the time of the distribution or there was 453  
reasonable ground to believe that by such action it would be 454



rendered insolvent, or to the benefit of the members other than 455  
members of the class in respect of which the distribution was 456  
made; ~~and in~~ 457

(2) In cases under division (B) (2) of this section, to the 458  
extent that such obligations (not otherwise barred by statute) 459  
are not paid, or for the payment of which adequate provision has 460  
not been made; ~~and in~~ 461

(3) In cases under division (B) (3) of this section, for 462  
the amount of the loan with interest thereon at the rate ~~of six~~ 463  
~~per cent per annum until such~~ specified in section 1343.03 of 464  
the Revised Code until the amount has been paid, ~~except that a.~~ 465

(D) A director shall not be liable under ~~division~~ 466  
~~divisions~~ (B) (1) and (C) (1) or ~~(2)~~ divisions (B) (2) and (C) (2) 467  
of this section if in determining the amount available for any 468  
such distribution, the director in good faith relied on a 469  
financial statement of the corporation prepared by an officer or 470  
employee of the corporation in charge of its accounts or 471  
certified by a public accountant or firm of public accountants, 472  
or in good faith the director considered the assets to be of 473  
their book value, or the director followed what the director 474  
believed to be sound accounting and business practice. 475

~~(C)~~ (E) A director who is present at a meeting of the 476  
directors or a committee thereof at which action on any matter 477  
is authorized or taken and who has not voted for or against such 478  
action shall be presumed to have voted for the action unless the 479  
director's written dissent therefrom is filed either during the 480  
meeting or within a reasonable time after the adjournment 481  
thereof, with the person acting as secretary of the meeting or 482  
with the secretary of the corporation. 483

~~(D)~~ (F) A member who knowingly receives any distribution 484  
made contrary to law or the articles shall be liable to the 485  
corporation for the amount received by the member that is in 486  
excess of the amount that could have been distributed without 487  
violation of law or the articles. 488

~~(E)~~ (G) A director against whom a claim is asserted under 489  
or pursuant to this section and who is held liable thereon shall 490  
be entitled to contribution, on equitable principles, from other 491  
directors who also are liable; and in addition, any director 492  
against whom a claim is asserted under or pursuant to this 493  
section or who is held liable shall have a right of contribution 494  
from the members who knowingly received any distribution made 495  
contrary to law or the articles, and such members as among 496  
themselves shall also be entitled to contribution in proportion 497  
to the amounts received by them respectively. 498

~~(F)~~ (H) The fact that a loan is made in violation of this 499  
section does not affect the borrower's liability on the loan. 500

(I) No action shall be brought by or on behalf of a 501  
corporation upon any cause of action arising under division (B) 502  
(1) or (2) of this section at any time after two years from the 503  
day on which the violation occurs. 504

~~(G)~~ (J) Nothing contained in this section shall preclude 505  
any creditor whose claim is unpaid from exercising such rights 506  
as the creditor otherwise would have by law to enforce the 507  
creditor's claim against assets of the corporation distributed 508  
to members or other persons. 509

**Sec. 1745.05.** As used in this chapter, unless the context 510  
otherwise requires: 511

(A) "Authorized communications equipment" means any 512

communications equipment that provides a transmission, 513  
including, but not limited to, by telephone, telecopy, or any 514  
electronic means, from which it can be determined that the 515  
transmission was authorized by, and accurately reflects the 516  
intention of, the member or manager involved and, with respect 517  
to meetings, allows all persons participating in the meeting to 518  
contemporaneously communicate with each other. 519

(B) (1) "Entity" means any of the following: 520

(a) An unincorporated nonprofit association existing under 521  
the laws of this state or any other state; 522

(b) A nonprofit corporation existing under the laws of 523  
this state or any other state; 524

(c) A for profit corporation existing under the laws of 525  
this state or any other state; 526

(d) Any of the following organizations existing under the 527  
laws of this state, the United States, or any other state: 528

(i) An unincorporated business or for profit organization, 529  
including a general or limited partnership; 530

(ii) A limited liability company; 531

(iii) Any other legal or commercial entity the formation 532  
and operation of which is governed by statute. 533

(2) "Entity" includes a domestic or foreign entity. 534

(C) "Established practices" means the practices used by an 535  
unincorporated nonprofit association without material change 536  
during the most recent five years of its existence or, if it has 537  
existed for less than five years, during its entire existence. 538

(D) "Governing principles" means all agreements, whether 539

oral, in a record, or implied from its established practices, or 540  
any combination of them, that govern the purpose or operation of 541  
an unincorporated nonprofit association and the rights and 542  
obligations of its members and managers. "Governing principles" 543  
includes any amendment or restatement of the agreements 544  
constituting the governing principles. 545

(E) "Internal Revenue Code" means the "Internal Revenue 546  
Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 547

(F) "Manager" means a person, irrespective of the person's 548  
designation as director or other designation, that is 549  
responsible, alone or in concert with others, for the management 550  
of an unincorporated nonprofit association as stated in division 551  
(E) of section 1745.32 of the Revised Code. 552

(G) "Member" means a person that, under the governing 553  
principles of an unincorporated nonprofit association, is 554  
entitled to participate in the selection of persons authorized 555  
to manage the affairs of the association or in the adoption of 556  
the policies and activities of the association. 557

(H) "Mutual benefit association" means any unincorporated 558  
nonprofit association organized under this chapter other than a 559  
public benefit association. 560

(I) "Person" means an individual, corporation, business 561  
trust, statutory entity trust, estate, trust, partnership, 562  
limited liability company, cooperative, association, joint 563  
venture, public corporation, government or governmental 564  
subdivision, agency, or instrumentality, two or more persons 565  
having a joint or common interest, or any other legal or 566  
commercial entity. 567

(J) "Public benefit association" means an unincorporated 568

nonprofit association that is exempt from federal income 569  
taxation under section 501(c)(3) of the Internal Revenue Code or 570  
is organized for a public or charitable purpose and that upon 571  
dissolution must distribute its assets to a public benefit 572  
association, the United States, a state or any political 573  
subdivision of a state, or a person that is recognized as exempt 574  
from federal income taxation under section 501(c)(3) of the 575  
Internal Revenue Code. 576

(K) "Public benefit entity" means an entity that is 577  
recognized as exempt from federal income taxation under section 578  
501(c)(3) of the Internal Revenue Code or is organized for a 579  
public or charitable purpose and that upon dissolution must 580  
distribute its assets to a public benefit entity, the United 581  
States, a state or any political subdivision of a state, or a 582  
person that is recognized as exempt from federal income taxation 583  
under section 501(c)(3) of the Internal Revenue Code. "Public 584  
benefit entity" does not include an entity that is organized by 585  
one or more municipal corporations to further a public purpose 586  
that is not a charitable purpose. 587

(L) "Record" means information that is inscribed on a 588  
tangible medium or that is stored in an electronic or other 589  
medium and is retrievable in perceivable form. 590

(M) "Unincorporated nonprofit association" means an 591  
unincorporated organization, consisting of two or more members 592  
joined by mutual consent pursuant to an agreement, written, 593  
oral, or inferred from conduct, for one or more common, 594  
nonprofit purposes. "Unincorporated nonprofit association" does 595  
not include any of the following: 596

(1) A trust; 597

(2) A marriage, domestic partnership, common law relationship, or other domestic living arrangement; 598  
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(3) An organization that is formed under any other statute that governs the organization and operation of unincorporated associations; 600  
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(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; 603  
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(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, unless the governing principles of such organization specifically provide that division (M) (5) of this section does not apply to such organization. 606  
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(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: 613  
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(a) Performs services for or on behalf of, and under the authority or auspices of, that unincorporated nonprofit association; 617  
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(b) Does not receive compensation, either directly or indirectly, for performing those services. 620  
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(2) For purposes of division (N) (1) of this section, "compensation" does not include any of the following: 622  
623

(a) Actual and necessary expenses that are incurred by a volunteer in connection with the services performed for an 624  
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unincorporated nonprofit association and that are reimbursed to 626  
the volunteer or otherwise paid; 627

(b) Insurance premiums paid on behalf of a volunteer, and 628  
amounts paid or reimbursed, pursuant to divisions (A) and (G) of 629  
section 1745.43 of the Revised Code; 630

(c) Modest perquisites. 631

**Sec. 2305.37.** (A) As used in this section: 632

(1) "Agency" means any nonhospital, charitable nonprofit 633  
corporation that is organized and operated pursuant to Chapter 634  
1702. of the Revised Code and that satisfies ~~both~~ all of the 635  
following, or any nonhospital, charitable association, group, 636  
institution, organization, or society that is not organized and 637  
not operated for profit and that satisfies ~~both~~ all of the 638  
following: 639

(a) It distributes consumer goods or perishable food, 640  
directly or indirectly, to individuals in need. 641

(b) It does not charge or accept any form of compensation 642  
from the individuals in need for the distribution of the 643  
consumer goods ~~or~~ to them. 644

(c) It does not charge for the distribution of perishable 645  
food to individuals in need, or it does not charge individuals 646  
in need more than an amount sufficient to cover the cost of 647  
handling the perishable food distributed to them. 648

(2) "At-cost" means the perishable food handling costs 649  
incurred by an agency. 650

(3) "Consumer goods" means items of tangible personal 651  
property other than food that are used primarily for personal, 652  
family, or household purposes. 653

~~(3)~~ (4) "Food service operation" has the same meaning as 654  
in section 3717.01 of the Revised Code. 655

~~(4)~~ (5) "Food that is gleaned" means perishable food that 656  
remains on a farm or other real property and that the owner, 657  
lessee, renter, or operator of the property permits one or more 658  
persons to salvage free-of-charge for subsequent donation to one 659  
or more agencies. 660

~~(5)~~ (6) "Harm" means injury, death, or loss to person or 661  
property. 662

~~(6)~~ (7) "Hospital" has the same meaning as in section 663  
3701.01, 3727.01, or 5122.01 of the Revised Code. 664

~~(7)~~ (8) "Individuals in need" means those persons who an 665  
agency determines are eligible to receive free distributions of 666  
consumer goods or free or at-cost distributions of perishable 667  
food because of poverty, illness, disability, infancy, or other 668  
conditions or circumstances that may result in persons having a 669  
need to receive ~~free such distributions of consumer goods or~~ 670  
~~perishable food.~~ 671

~~(8)~~ (9) "Perishable food" means any food that may spoil or 672  
otherwise become unfit for human consumption because of its 673  
nature, age, or physical condition. "Perishable food" includes, 674  
but is not limited to, fresh meats, processed meats, poultry, 675  
fish and other seafood, dairy products, bakery products, eggs in 676  
the shell, fresh fruits, fresh vegetables, food that is gleaned, 677  
food that is packaged, refrigerated, or frozen, food that is 678  
canned, and prepared or other food that has not been served by a 679  
restaurant, cafeteria, hospital, hotel, caterer, or other food 680  
service operation to any customer, patient, or other person in 681  
the ordinary course of business, by a public or private school, 682



college, university, or other educational institution to a 683  
student or another person on the premises in the ordinary course 684  
of the operation of the institution, or by a fraternal, 685  
veteran's, or other organization to its members or other persons 686  
on the premises in the ordinary course of the operation of the 687  
organization. 688

~~(9)~~ (10) "Person" has the same meaning as in section 1.59 689  
of the Revised Code and additionally includes governmental 690  
entities and federal instrumentalities. 691

~~(10)~~ (11) "Sale date" means the date by which the 692  
manufacturer, processor, or packager of a packaged food product 693  
recommends that the food product be sold for consumption based 694  
on the food product's quality assurance period. 695

~~(11)~~ (12) "Tort action" means a civil action for damages 696  
for injury, death, or loss to person or property. "Tort action" 697  
includes a product liability claim that is subject to sections 698  
2307.71 to 2307.80 of the Revised Code but does not include a 699  
civil action for a breach of contract or another agreement 700  
between persons. 701

(B) Notwithstanding Chapter 3715. of the Revised Code, a 702  
person who, in good faith, donates perishable food to an agency 703  
is not liable in damages in a tort action for harm that 704  
allegedly arises because that perishable food, when distributed 705  
by the agency or any other agency to a particular individual in 706  
need, is not fit for human consumption, if both of the following 707  
apply: 708

(1) Prior to the donation of the perishable food to the 709  
agency, the person determines that the perishable food will be 710  
fit for human consumption at the time of its donation. A 711

presumption favoring liability does not arise because the 712  
perishable food is donated to an agency on or after an 713  
applicable sale date. 714

(2) The person does not make the determination that the 715  
perishable food will be fit for human consumption at the time of 716  
its donation to the agency in a manner that constitutes gross 717  
negligence or willful or wanton misconduct. 718

(C) A person who, in good faith, donates consumer goods to 719  
an agency is not liable in damages in a tort action for harm 720  
that allegedly arises because those consumer goods are not fit 721  
for use at the time the agency or any other agency distributes 722  
them to a particular individual in need, if both of the 723  
following apply: 724

(1) Prior to the donation of the consumer goods to the 725  
agency, the person determines that the consumer goods will be 726  
fit for use at the time of their donation. A presumption 727  
favoring liability does not arise because the consumer goods are 728  
in packaging that has been damaged. 729

(2) The person does not make the determination that the 730  
consumer goods will be fit for use at the time of their donation 731  
to the agency in a manner that constitutes gross negligence or 732  
willful or wanton misconduct. 733

(D) Notwithstanding Chapter 3715. of the Revised Code, an 734  
agency that, in good faith, distributes consumer goods or 735  
perishable food to a particular individual in need is not liable 736  
in damages in a tort action for harm that allegedly arises 737  
because those consumer goods are not fit for use or that 738  
perishable food is not fit for human consumption if both of the 739  
following apply: 740

(1) Prior to the distribution of the consumer goods or 741  
perishable food to the individual, the agency determines that 742  
the consumer goods will be fit for use or the perishable food 743  
will be fit for human consumption at the time of its 744  
distribution. A presumption favoring liability does not arise 745  
because the consumer goods are in packaging that has been 746  
damaged or because the perishable food is distributed to an 747  
individual on or after an applicable sale date. 748

(2) The agency does not make the determination that the 749  
consumer goods will be fit for use or the perishable food will 750  
be fit for human consumption at the time of its distribution to 751  
the individual in a manner that constitutes gross negligence or 752  
willful or wanton misconduct. 753

(E) (1) This section does not create a new cause of action 754  
or substantive legal right against persons who donate consumer 755  
goods or perishable food to an agency or against agencies that 756  
distribute consumer goods or perishable food to an individual in 757  
need. 758

(2) This section does not affect any immunities from or 759  
defenses to tort liability established by another section of the 760  
Revised Code or available at common law to which persons who 761  
donate consumer goods or perishable food other than to agencies, 762  
or to which agencies that distribute consumer goods or 763  
perishable food other than to individuals in need, may be 764  
entitled. 765

**Section 2.** That existing sections 1702.27, 1702.30, 766  
1702.33, 1702.38, 1702.521, 1702.53, 1702.55, 1745.05, and 767  
2305.37 of the Revised Code are hereby repealed. 768