

## Report of the Corporation Law Committee

1 *To the Council of Delegates:*

2 The Corporation Law Committee respectfully requests your favorable consideration of  
3 the following legislative proposals, marked as Exhibits A, B, C and D.

4 A. A proposal to amend the dissolution provisions of R.C. 1701 to establish more  
5 specific statutes of repose and to establish a process to determine and settle  
6 claims.

7 B. A proposal to amend the dissenters' rights provisions of R.C. 1701 to (1) codify  
8 that the fair value for publicly traded stock is its market value, (2) provide that if a  
9 demand for dissenters' rights is made by an agent, evidence of the agent's  
10 authority may be required within 20 days, (3) eliminate dissenters' rights for  
11 shareholders if they hold publicly traded shares and the transaction currency to be  
12 received by them will also be publicly traded securities, and (4) provide a notice  
13 procedure by which a corporation can accelerate the time by which a shareholder  
14 must give notice of whether the shareholder will exercise dissenters' rights in  
15 connection with a transaction.

16 C. A proposal to adopt an amendment to R.C. 1705.61 to insert language omitted in  
17 the adoption of R.C. 1705.61 through H.B. 301 of the 128th General Assembly.

18 D. A proposal to amend R.C. 1705.55 and R.C. 1782.52 to delete the requirement  
19 that a certificate of correction of a registration application as a foreign limited  
20 liability company and foreign partnership be filed "promptly" with the Ohio  
21 Secretary of State.

22 Respectfully Submitted,

23 **David P. Porter**, *Cleveland*  
24 Chair

### 25 **EXHIBIT A**

26 **A. A proposal to amend the dissolution provisions of R.C. 1701 to establish**  
27 **more specific statutes of repose and to establish a process to determine and settle**  
28 **claims.**

#### 29 **§ 1701.86. Voluntary dissolution.**

30 (A) A corporation may be dissolved voluntarily ~~in the manner~~ as provided in this  
31 section, ~~provided the provisions of~~ if Chapter 1704: of the Revised Code ~~do~~ does  
32 not prevent the dissolution ~~from being effected~~.

33 (B) A resolution of dissolution for a corporation ~~shall~~ must set forth that the  
34 corporation elects to be dissolved. The resolution may also include:

- 35 (1) ~~That the corporation elects date on which the certificate of dissolution is to~~  
36 ~~be dissolved filed, or the conditions precedent or other events that are to~~  
37 ~~cause the certificate to be filed;~~
- 38 (2) authorization for the officers or directors to abandon the proposed  
39 dissolution before the filing of the certificate of dissolution; or
- 40 (23) ~~Any~~ any additional provision considered necessary with respect to the  
41 proposed dissolution and winding up.
- 42 (C) If an initial stated capital is not set forth in the articles then before the corporation  
43 begins business, or if an initial stated capital is set forth in the articles then before  
44 subscriptions to shares shall have been received in the amount of that initial stated  
45 capital, the incorporators or a majority of them may ~~adopt~~, cause the dissolution  
46 by adopting, in a writing signed by each of them, a resolution of dissolution.
- 47 (D) The directors may ~~adopt~~ cause the dissolution by adopting a resolution of  
48 dissolution in the following cases:
- 49 (1) ~~When~~ when the corporation has been adjudged bankrupt or has made a  
50 general assignment for the benefit of its creditors;
- 51 (2) ~~By~~ by leave of the court, when a receiver has been appointed in a general  
52 creditors' suit or in any suit in which the affairs of the corporation are to be  
53 wound up;
- 54 (3) ~~When~~ when substantially all of the assets have been sold at judicial sale or  
55 otherwise;
- 56 (4) ~~When~~ when the articles have been canceled for failure to file annual  
57 franchise or excise tax returns or for failure to pay franchise or excise  
58 taxes and the corporation has not been reinstated or does not desire to be  
59 reinstated; or
- 60 (5) ~~When~~ when the period of existence of the corporation specified in its  
61 articles has expired.
- 62 (E) The shareholders may cause the dissolution at a meeting held for such purpose  
63 ~~may adopt~~ by adopting of a resolution of dissolution by the affirmative vote of the  
64 holders of shares entitling them to exercise two-thirds of the voting power of the  
65 corporation on such proposal or, if the articles provide or permit, by the  
66 affirmative vote of a greater or lesser proportion, though not less than a majority,  
67 of such voting power, and by ~~such the~~ affirmative vote of the holders of shares of  
68 any particular class as is required by the articles. Notice of the meeting of the  
69 shareholders shall be given to all the shareholders whether or not entitled to vote  
70 ~~at it.~~

71

72 **§ 1701.87. Certificate of Dissolution**

73 (FA) ~~Upon~~ After the adoption of a resolution of dissolution, a certificate shall be  
74 prepared, on a form prescribed by the secretary of state, setting forth the  
75 following:

76 (1) ~~The~~ the name of the corporation;

77 (2) ~~A~~ a statement that a resolution of dissolution has been adopted;

78 (3) ~~A~~ a statement of the manner of adoption of such resolution, and, ~~in the case~~  
79 ~~of its adoption~~ if adopted by the incorporators or directors, ~~a statement of~~  
80 the basis for such adoption;

81 (4) ~~The~~ the place in this state where its principal office is, or is to be, located;

82 (5) ~~The names and addresses of its directors and officers, unless the resolution~~  
83 ~~of dissolution is adopted by the incorporators, in which event the names~~  
84 ~~and addresses of the incorporators shall be set forth in the certificate;~~

85 (65) ~~The~~ the name and address of its statutory agent;

86 (6) the address for each domain name held or maintained by or on behalf of  
87 the corporation; and

88 (7) ~~The~~ the date of dissolution, if other than the filing date, which date shall  
89 not be more than 90 days after the filing of the certificate of dissolution.

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

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

94 (2B) ~~When the incorporators adopt a resolution is adopted by of dissolution, the~~  
95 ~~directors or certificate shall be signed by the shareholders, not less than a majority~~  
96 ~~of them. Otherwise the certificate shall be signed by any authorized officer,~~  
97 ~~unless the officer fails to execute and file such certificate within thirty days after~~  
98 ~~the adoption of the resolution or upon any date specified in the resolution as the~~  
99 ~~date upon which such certificate is to be filed or upon the expiration of any period~~  
100 ~~specified in the resolution as the period within which such certificate is to be~~  
101 ~~filed, whichever is latest, in which event the certificate of dissolution may be~~  
102 ~~signed by any three shareholders, or if there are less than three shareholders then~~  
103 ~~by all the shareholders, and shall set forth a statement that the persons signing the~~  
104 ~~certificate are shareholders and are filing the certificate because of the failure of~~  
105 ~~the officers to do so.~~

- 106 (HC) A certificate of dissolution, filed with the secretary of state, shall be accompanied  
107 by:
- 108 (1) ~~An~~ an affidavit of one or more of the persons executing the certificate of  
109 dissolution or of an officer of the corporation containing a statement of the  
110 counties, if any, in this state in which the corporation has personal  
111 property or a statement that the corporation is of a type required to pay  
112 personal property taxes to state authorities only;
- 113 (2) ~~A~~ an affidavit of one or more of the persons executing the certificate of  
114 dissolution or of an officer of the corporation containing a statement that  
115 the corporation is not required to pay some or all the taxes described in  
116 this division (C)(2), or a receipt, certificate, or other evidence showing the  
117 payment of all franchise, sales, use, and highway use taxes accruing up to  
118 the date of such filing or, if applicable, to the later date specified in the  
119 certificate of dissolution in accordance with division (F) of this section, or  
120 that such payment has been adequately guaranteed;
- 121 (3) ~~A~~ an affidavit of one or more of the persons executing the certificate of  
122 dissolution or of an officer of the corporation containing a statement that  
123 the corporation is not required to pay some or all the taxes described in  
124 this division (C)(3), or a receipt, certificate, or other evidence showing the  
125 payment of all personal property and commercial activity taxes accruing  
126 up to the date of such filing or, if applicable, to the later date specified in  
127 the certificate of dissolution in accordance with division (F) of this  
128 section, or that such payment has been adequately guaranteed;
- 129 (4) ~~A~~ a receipt, certificate, or other evidence from the director of job and  
130 family services showing that all contributions due from the corporation as  
131 an employer have been paid, or that such payment has been adequately  
132 guaranteed, or that the corporation is not subject to such contributions; and
- 133 (5) ~~A~~ a receipt, certificate, or other evidence from the bureau of workers'  
134 compensation showing that all premiums due from the corporation as an  
135 employer have been paid, or that such payment has been adequately  
136 guaranteed, or that the corporation is not subject to such premium  
137 payments;
- 138 (6D) In lieu of the receipt, certificate, or other evidence described in division (HC)(2),  
139 (3), (4), or (5) of this section, an affidavit of ~~one or more persons~~ a person  
140 executing the certificate of dissolution or of an officer of the corporation  
141 containing a statement of stating the date upon which the particular department,  
142 agency, or authority was advised in writing of the scheduled effective date of the  
143 dissolution and was advised in writing ~~of the acknowledgment by that~~ the  
144 corporation of acknowledged the applicability ~~of the provisions~~ of section  
145 1701.95 of the Revised Code.

146 (E) ~~Upon~~ The corporation shall be dissolved upon the filing of a certificate of  
147 dissolution and such the accompanying documents or on a the later date specified  
148 in the certificate that is not more than ninety90 days after the filing, the  
149 corporation shall be dissolved.

150 **§ 1701.871701.871. Public notice Notice of voluntary dissolution.**

151 (A) The corporation shall give notice of the dissolution by certified or registered mail,  
152 return receipt requested, to each known creditor and to each person having a claim  
153 against the corporation, including those contingent upon the occurrence or  
154 nonoccurrence of future events or otherwise conditional or unmatured.

155 (B) The notice shall state:

156 (1) that all claims must be presented in writing and must identify the claimant  
157 and contain sufficient information to reasonably inform the corporation of  
158 the substance of the claim;

159 (2) the mailing address to which a claim must be sent;

160 (3) the deadline, which shall be not less than 60 days after the date the notice  
161 is given, by which the corporation must receive the claim;

162 (4) that the claim will be barred if not received by the deadline; and

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

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

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

173 (E) The corporation shall post the notice described in division (B) of this section on  
174 any website it maintains in its name and shall provide a copy to the Secretary of  
175 State to be posted on the website maintained by the secretary of state pursuant to  
176 division (F) of this section.

177 (F) The secretary of state shall make available online to the public in a format that is  
178 searchable, viewable and accessible through the internet (1) a list of the domestic  
179 corporations that have filed a certificate of dissolution, (2) for each corporation on  
180 the list a copy of both the certificate of dissolution and the notice delivered under  
181 division (B) of this section. If the materials relating to any dissolved corporation

182 have been posted for a four-year period, the secretary of state may remove the  
183 name and other materials that were required to be made available under this  
184 division (E).

185 ~~Following the filing of the certificate of dissolution, the directors or the incorporators, as~~  
186 ~~the case may be, (G) The corporation shall forthwith cause a publish the notice~~  
187 ~~described in division (B) of voluntary dissolution to be published this section at~~  
188 ~~least once a week on the same day of each week for two successive consecutive~~  
189 ~~weeks, in a newspaper published and of general circulation in the county in which~~  
190 ~~the principal office of the corporation was to be or is located, and shall forthwith~~  
191 ~~cause written notice. If a certificate of dissolution to be given either personally or~~  
192 ~~by mail to all known creditors of, and to all known claimants against, is filed~~  
193 ~~more than five years after the dissolved corporation effective date of division (E)~~  
194 ~~of this section, no publication is required by this division (G).~~

195 **§ 1701.88. Winding up or obtaining reinstatement; powers and duties of directors:**

196 (A) ~~When a A corporation is, whether it has been dissolved voluntarily, when the~~  
197 ~~articles of a corporation have been canceled, or when the period of existence of~~  
198 ~~the corporation specified in its articles has expired, the corporation or its articles~~  
199 ~~have been cancelled, shall cease to carry on business and shall do only be~~  
200 ~~continued for a term of four years from such acts as are required dissolution,~~  
201 ~~expiration or cancellation to wind up its affairs, or to obtain reinstatement of the~~  
202 ~~articles in accordance with section 1701.07, 1701.921 [1701.92.1], 1785.06, or~~  
203 ~~5733.22 of the Revised Code, or to do such acts as are permitted upon~~  
204 ~~reinstatement by division (C) of section 1701.922 [1701.92.2] of the Revised~~  
205 ~~Code, and for such purposes it but shall continue as a corporation otherwise cease~~  
206 ~~to carry on business. A court acting pursuant to section 1701.89 may extend the~~  
207 ~~period stated in this division (A).~~

208 (B) The voluntary dissolution of a corporation, cancellation of the articles of a  
209 corporation, expiration of the period of existence of a corporation, appointment of  
210 a receiver to wind up the affairs of the corporation or other action to dissolve a  
211 corporation under this chapter shall not eliminate or impair any remedy available  
212 to or against the corporation or its directors, officers or shareholder for any right  
213 or claim existing, or liability incurred, prior to the dissolution, if an action or  
214 proceeding thereon is brought:

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

216 (2) by any other person before four years after the date of the dissolution or  
217 within the time limits otherwise required by section 1701.881 or other  
218 provision of law, whichever is less.

219 (BC) Any claim existing, or action or proceeding pending, by or against the corporation  
220 or which would have accrued against it may be prosecuted to judgment, with right  
221 of appeal as in other cases, but any proceeding, execution, or process, or the

222 satisfaction or performance of any order, judgment, or decree, may be stayed as  
223 provided in section 1701.89 ~~of~~. Any action, suit or proceeding begun by or  
224 against the Revised Code corporation within the time limits set forth in division  
225 (B) of this section, shall not abate and the corporation shall, solely for the purpose  
226 of such action, suit or proceeding, be continued as a body corporate beyond the  
227 four-year period and until any judgments, orders or decrees therein shall be fully  
228 executed, without the necessity for any court order.

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

232 (D) The directors of the corporation and their ~~survivors or~~ successors shall act as a  
233 board of directors in accordance with the ~~regulations~~ articles and bylaws  
234 regulations until the affairs of the corporation are completely wound up. Subject  
235 to the orders of ~~courts of this state having jurisdiction over the corporation~~ court  
236 acting pursuant to section 1701.89, the directors shall proceed as speedily as is  
237 practicable to a complete winding up of the affairs of the corporation ~~and, to~~. In  
238 the extent necessary or expedient to that end winding up, ~~shall the directors may~~  
239 exercise all the authority of the corporation. Without limiting the generality of  
240 such authority, they may fill vacancies, elect officers, appoint agents, liquidators  
241 or other entities or persons to carry out the winding up of the corporation's  
242 business, carry out contracts of the corporation, make new contracts, borrow  
243 money, mortgage or pledge the property of the corporation as security, sell its  
244 assets at public or private sale, make conveyances in the corporate name, lease  
245 real estate for any term, including ninety-nine years renewable forever, settle or  
246 compromise claims in favor of or against the corporation, employ one or more  
247 persons as liquidators to wind up the affairs of the corporation with such authority  
248 as the directors see fit to grant, cause the title to any of the assets of the  
249 corporation to be conveyed to such liquidators for that purpose, apply assets to the  
250 payment of obligations, and, after paying or adequately providing for the payment  
251 of all known obligations of the corporation under section 1701.882 and for claims  
252 that have not been made known to the corporation or that have not arisen but that,  
253 based on facts known to the corporation, are likely to arise or to become known to  
254 the corporation within five years after the date of dissolution or such longer  
255 period of time as the directors or a court acting under section 1701.89 may  
256 determine, not to exceed ten years after the date of dissolution, distribute the  
257 remainder of the assets either in cash or in kind among the shareholders according  
258 to their respective rights and interests. In addition, they may perform all other  
259 acts necessary or expedient to the winding up of the affairs of the corporation.  
260 Division (E) of section 1701.76 of the Revised Code applies to the disposition of  
261 a voluntarily dissolved corporation's assets by its directors.

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

- 264 (E) ~~Without limiting the authority of the directors and subject to division (E) of~~  
265 ~~section 1701.76 of the Revised Code, any action within the purview of this~~  
266 ~~section which is authorized or approved at a meeting held for such purpose by the~~  
267 ~~holders of shares entitling them to receive two thirds of the value of the remaining~~  
268 ~~assets shall be conclusive for all purposes upon all shareholders of the~~  
269 ~~corporation.~~
- 270 (F) ~~All deeds and other instruments of the corporation shall be in the name of the~~  
271 ~~corporation and shall be executed, acknowledged, and delivered by the officers~~  
272 ~~appointed by the directors.~~
- 273 (GE) ~~At any time during the winding up of its affairs, the corporation, by its directors,~~  
274 ~~may make application to the court of common pleas of the county in this state in~~  
275 ~~which the principal office of the corporation is located to have the winding up~~  
276 ~~continued under supervision of the court, as provided in section 1701.89 of the~~  
277 ~~Revised Code.~~
- 278 (F) Should any property right of a corporation be discovered after its winding up, any  
279 member or members of the board of directors that wound up the affairs of the  
280 corporation, or a receiver appointed by the court, shall have authority to enforce  
281 the property right and to collect and divide the assets discovered among the  
282 persons entitled thereto and to prosecute action or proceedings in the corporate  
283 name of the corporation. Any assets so collected shall be distributed and disposed  
284 of in accordance with the applicable order of the court, if any, and otherwise in  
285 accordance with this section.

286 **§ 1701.881 Disposition of claims**

- 287 (A) A corporation that has given notice under section 1701.871(A) may reject, in  
288 whole or in part, any matured claim made by a claimant by sending notice of the  
289 rejection by certified or registered mail, return receipt requested, to the claimant  
290 within 90 days after receipt of the claim and, in all events, at least 30 days before  
291 the expiration of the four-year period specified in section 1701.88(A). A notice  
292 sent pursuant to this section shall include or be accompanied by a copy of this  
293 division of this section and of section 1701.89. A claim against a corporation is  
294 barred if a claimant whose claim is rejected by the corporation does not  
295 commence an action to enforce the claim within 30 days after mailing of the  
296 rejection notice.
- 297 (B) The corporation that has given notice under section 1701.871(A) may offer  
298 security to any claimant whose claim is contingent, conditional or unmatured, as  
299 the corporation determines is sufficient to provide compensation to the claimant if  
300 the claim matures. The corporation shall send its offer to the claimant by certified  
301 or registered mail, return receipt requested, within 90 days after receipt of the  
302 claim and, in all events, at least 30 days before the expiration of the four-year  
303 period specified in section 1701.88(A). A notice sent pursuant to this section  
304 shall include or be accompanied by a copy of this division to this section and of

305 section 1701.89. If the claimant offered the security does not deliver to the  
306 corporation a written notice rejecting the offer within 30 days after mailing of the  
307 offer for security, the claimant shall be deemed to have accepted the security as  
308 the sole source from which to satisfy his claim against the corporation.

309 (C) A business corporation that has given notice under section 1701.871(A) may file  
310 an application with the court having jurisdiction under section 1701.89 for a  
311 determination of the amount and form of insurance or other security:

312 (1) that will be sufficient to provide compensation to any claimant who has  
313 rejected the offer for security made pursuant to this section; and

314 (2) that will be reasonably likely to be sufficient to provide compensation for  
315 claims that have not been made known to the corporation or that have not  
316 arisen but that, based on the facts known to the corporation, are likely to  
317 arise or to become known to the corporation within five years after the  
318 date of dissolution or such longer period of time as the directors or a court  
319 acting under section 1701.89 may determine, not to exceed ten years after  
320 the date of dissolution.

321 **§ 1701.882 Payments and distributions**

322 (A) A dissolved business corporation shall:

323 (1) Pay the claims made and not rejected under section 1701.881(A).

324 (2) Post the security offered and not rejected under section 1701.881(B).

325 (3) Post security ordered by the court in any proceeding under section  
326 1701.881(C).

327 (4) Make any payment required by a court acting under section 1701.89.

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

332 (B) Claims and liabilities shall be paid in full and any provision by insurance or  
333 otherwise for payment shall be made in full if there are sufficient assets. If there  
334 are insufficient assets, claims and liabilities shall be paid or provided for by  
335 insurance or otherwise in order of their priority, and, among claims of equal  
336 priority, ratably to the extent of funds legally available therefore. Any remaining  
337 assets shall be distributed to the shareholders of the corporation according to their  
338 respective rights and preferences.

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

342 **§ 1701.883. Shareholder liability**

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

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

352 (C) A shareholder of a dissolved corporation, the assets of which were distributed  
353 pursuant to this chapter, can only be liable for a claim against the corporation if an  
354 action on that claim is commenced before expiration of the period specified in  
355 division (B)(2) of section 1701.88.

356 **§ 1701.89. Jurisdiction of court over winding up of affairs of voluntarily dissolved**  
357 **corporation.**

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

367 (1) Any proceedings or actions pursuant to division (C) of section 1701.881;

368 (2) The presentation and proof of all claims and demands against the  
369 corporation and of all rights, interests, or liens in or on any of its property,  
370 including property described in division (F) of section 1701.88; the fixing  
371 of the time within which and the manner in which such proof shall be  
372 made and the person to whom such presentation shall be made; and the  
373 barring from participation in any distribution of assets of all persons  
374 failing to make and present proofs as required by the order of the court;

375 (3) The stay of the ~~prosecution~~ of any proceeding against the corporation or  
376 involving any of its property, and the requirement that the parties to ~~it~~ that  
377 proceeding present and prove their claims, demands, rights, interests, or

- 378 liens at the time and in the manner required of creditors or others; or the  
379 grant ~~to~~ of leave to bring or maintain an independent proceeding to  
380 enforce liens;
- 381 (~~34~~) The settlement or determination of all claims of every nature against the  
382 corporation or any of its property; the determination of the assets required  
383 to be retained or insurance to be obtained to pay or provide for the  
384 payment of such claims or any claim; the determination of the assets  
385 available for distribution among shareholders; and the making of new  
386 parties to the proceeding so far as the court considers proper for the  
387 determination of all matters;
- 388 (~~45~~) The determination of the rights of holders of shares of all classes in and to  
389 the assets of the corporation;
- 390 (~~56~~) The presentation and filing of intermediate and final accounts of the  
391 directors or of the liquidators and hearings on them; the allowance,  
392 disallowance, or settlement of such accounts; and the discharge of the  
393 directors, the liquidators, or any of them from their duties and liabilities;
- 394 (~~67~~) The appointment of a special master commissioner or guardian ad litem to  
395 hear and determine any such matters with such authority as the court  
396 considers proper, and the reasonable fees and expenses of the special  
397 master commissioner or guardian ad litem, including all reasonable expert  
398 witness fees, shall be paid by the applicant in the proceeding unless  
399 otherwise ordered by the court;
- 400 (~~78~~) The filling of any vacancies in the number of directors or liquidators when  
401 the directors are unable to act on the vacancies for want of a quorum or for  
402 any other reason;
- 403 (~~89~~) The appointment of a receiver, in accordance with the usages of a court in  
404 equitable matters, to wind up the affairs of the corporation, to take custody  
405 of any of its property, or for any other purpose;
- 406 (~~910~~) The issuance or entry of any injunction or any other order which the court  
407 considers proper in the administration of the trust involved in the winding  
408 up of the affairs of the corporation and the giving of notice of it;
- 409 (~~1011~~) The allowance and payment of compensation to the directors or any of  
410 them, ~~to liquidators, to a receiver, to the attorney for the complainant,~~ or to  
411 any person ~~properly~~ rendering services beneficial to the corporation or to  
412 those interested in it; and
- 413 (~~1112~~) The entry of a judgment or decree which, if it so provides, may operate as  
414 the deed or other instrument ordered to be executed, or the appointment of  
415 a master or guardian ad litem to execute such deed or instrument in the  
416 name of the corporation with the same effect as if executed by an

417 authorized officer pursuant to authority conferred by the directors or the  
418 shareholders of the corporation, whenever there is no officer or agent  
419 competent to execute such deed or instrument, whenever the corporation  
420 or its officers do not perform or comply with a judgment or decree of  
421 court, or whenever the court considers it proper.

422 (B) A judicial proceeding under this section concerning the winding up of the affairs  
423 of a corporation is a special proceeding, and final orders in the proceeding may be  
424 vacated, modified, or reversed on appeal pursuant to the Rules of Appellate  
425 Procedure and, to the extent not in conflict with those rules, Chapter 2505 of the  
426 Revised Code.

427 **§ 1701.90. Receiver for winding up affairs of corporation.**

428 (A) Whenever, after a corporation is dissolved voluntarily or the articles of a  
429 corporation have been cancelled or the period of existence of a corporation has  
430 expired, a receiver is appointed to wind up the affairs of the corporation, all the  
431 claims, demands, rights, interests, or liens of creditors, claimants, and  
432 shareholders shall be determined as of the day on which the receiver was  
433 appointed, unless such item has been previously determined pursuant to Section  
434 1701.881. Unless it is otherwise ordered, such appointment vests in the receiver  
435 and his successors the right to the immediate possession of all the property of the  
436 corporation, which shall, if so ordered, execute and deliver conveyances of such  
437 property to the receiver or his nominee.

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

440 (C) ~~The~~ Unless it is otherwise ordered, the receiver shall have all the authority vested  
441 in the directors and officers of the corporation, and shall exercise such authority  
442 subject to such orders as are made by the court, ~~and~~ The receiver may be  
443 required to qualify by giving bond to the state in such amount as the court fixes,  
444 with surety to the satisfaction of the clerk of the court, conditioned for the faithful  
445 discharge of ~~his~~ the receiver's duties and for a due accounting for all money or  
446 property received by ~~him~~ the receiver.

447 **§ 1701.91. Judicial dissolution.**

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

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

- 456 (2) By an order of the court of common pleas of the county in this state in  
457 which such corporation has its principal office, in an action brought by  
458 holders of shares entitled to dissolve the corporation voluntarily, when it is  
459 established:
- 460 (a) ~~That~~ that its articles have been canceled or its period of existence  
461 has expired ~~and that it is necessary in order to protect the~~  
462 ~~shareholders that the corporation be judicially dissolved;~~
- 463 (b) ~~That~~ that the corporation is insolvent or is unable to afford  
464 reasonable security to those who may deal with it and that it is  
465 necessary in order to protect the creditors of the corporation that  
466 the corporation be judicially dissolved; or
- 467 (c) ~~That~~ that the objects of the corporation have wholly failed or are  
468 entirely abandoned or that their accomplishment is impracticable; ;
- 469 (3) By an order of the court of common pleas of the county in this state in  
470 which the corporation has its principal office, in an action brought by ~~the~~  
471 ~~holders of shares entitling them to exercise a majority of the voting power~~  
472 ~~of the corporation on such proposal, or the holders of such lesser~~  
473 ~~proportion as are entitled by the articles to dissolve the corporation~~  
474 ~~voluntarily, when it is established that it is beneficial to the shareholders~~  
475 ~~that the corporation be judicially dissolved;:~~
- 476 (a) the holders of shares entitling them to exercise at least two-thirds  
477 of the voting power of the corporation on such proposal when it is  
478 established that it is beneficial to the shareholders that the  
479 corporation be judicially dissolved; or
- 480 (b) the holders of such proportion of the shares of the corporation as  
481 are entitled by the articles to dissolve the corporation voluntarily.
- 482 (4) By an order of the court of common pleas of the county in this state in  
483 which the corporation has its principal office, in an action brought by one-  
484 half of the directors when there is an even number of directors or by the  
485 holders of shares entitling them to exercise ~~one~~ at least two-half thirds of  
486 the voting power, when it is established that the corporation has an even  
487 number of directors who are deadlocked in the management of the  
488 corporate affairs and the shareholders are unable to break the deadlock, or  
489 when it is established that the corporation has an uneven number of  
490 directors and that the shareholders are deadlocked in voting power and  
491 unable to agree upon or vote for the election of directors as successors to  
492 directors whose terms normally would expire upon the election of their  
493 successors. Under these circumstances, dissolution of the corporation shall  
494 not be denied on the ground that the corporation is solvent or on the

495 ground that the business of the corporation has been or could be conducted  
496 at a profit.

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

505 (B) A complaint for judicial dissolution shall be verified by any of the complainants  
506 and shall set forth facts showing that the case is ~~one of those~~ specified in this  
507 section. Unless the complainants set forth in the complaint that they are unable to  
508 annex a list of shareholders, a schedule shall be annexed to the complaint setting  
509 forth the name of each shareholder, his address if it is known or the fact that it is  
510 not known, the number of shares owned by him, and any balance unpaid on his  
511 shares.

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

523 (D) After a hearing ~~had~~ upon such notice as the court may direct to be given to all  
524 parties to the proceeding and to any other parties in interest designated by the  
525 court, a final order based either upon the evidence, or upon the report of the  
526 special master commissioner if one has been appointed, shall be made either  
527 dissolving the corporation or dismissing the complaint. An order or judgment for  
528 the judicial dissolution of a corporation shall contain a concise statement of the  
529 proceedings leading up to the order or judgment; the name of the corporation; the  
530 place in this state where its principal office is located; the names and addresses of  
531 its directors and officers; the name and address of a statutory agent; and, if  
532 desired, such other provisions with respect to the judicial dissolution and winding  
533 up as are considered necessary or desirable. A certified copy of such order  
534 forthwith shall be filed in the office of the secretary of state, whereupon the  
535 corporation shall be dissolved. To the extent consistent with orders entered in  
536 such proceeding, the effect of ~~such~~ judicial dissolution shall be the same as in the  
537 case of voluntary dissolution, and the provisions of sections 1701.871, 1701.88,

538 1701.89, and 1701.90 of the Revised Code relating to the authority and duties of  
539 directors during the winding up of the affairs of a corporation dissolved  
540 voluntarily, with respect to the jurisdiction of courts over the winding up of the  
541 affairs of a corporation, and with respect to receivers for winding up the affairs of  
542 a corporation shall be applicable to corporations judicially dissolved.

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

548 ~~§ 1701.91.1~~ § 1701.911. **Provisional director; appointment, duties, qualifications.**

549 (A) Upon the complaint of not less than one-fourth of the directors of a corporation or  
550 upon the complaint of the holders of shares entitling them to exercise not less than  
551 one-fifth of the voting power of a corporation in the election of directors, the  
552 court of common pleas of the county in which the corporation maintains its  
553 principal office may order the appointment of a provisional director for that  
554 corporation if the articles or regulations of the corporation expressly provide for  
555 such an appointment. No appointment shall be made until a hearing is held by the  
556 court. Notice of the hearing shall be given to each director and the secretary of the  
557 corporation in any manner that the court may direct and, if directed by the court,  
558 to each of the shareholders. The complainants shall establish at the hearing that,  
559 because of irreconcilable differences among the existing directors, or because  
560 there are no directors and the shareholders are unable to elect any directors, the  
561 continued operation of the corporation has been substantially impeded or made  
562 impossible.

563 (B) A provisional director shall have the same rights and duties as other directors and  
564 shall serve until removed by the appointing court or by the holders of shares  
565 entitling them to exercise a majority of the voting power of the corporation in the  
566 election of directors, or until ~~his~~ the director's earlier resignation or death. If the  
567 provisional director dies or resigns, the court, pursuant to divisions (A) and (C) of  
568 this section, may appoint a replacement provisional director, upon its own motion  
569 and without the filing of a complaint for the appointment of a provisional director.  
570 If the appointing court finds that the irreconcilable differences no longer exist, it  
571 shall order the removal of the provisional director.

572 (C) No person shall be appointed as a provisional director unless ~~he~~ the individual is  
573 generally conversant with corporate affairs, has no legal or equitable interest in  
574 the shares or obligations of the corporation of which ~~he~~ the individual is to be  
575 appointed a director, and is not indebted to such corporation. The compensation of  
576 a provisional director shall be determined by agreement with the corporation for  
577 which ~~he~~ the director is serving, subject to the approval of the appointing court,  
578 except that the appointing court may fix ~~his~~ the director's compensation in the

579 absence of agreement or in the event of disagreement between the provisional  
580 director and the corporation.

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

586 **Rationale for Adoption:**

587 The Ohio provisions for dissolution of corporations have been largely untouched  
588 in recent years. In fact, they apparently date from the enactment of the “new”  
589 corporation act in 1927. *See Cay Machine Co. v. Firestone Tire & Rubber Co.*, 175 Ohio  
590 St. 295 at 297. More modern dissolution provisions recognize that 21<sup>st</sup> century  
591 corporations have myriad claimants, and that claims may arise long after the event or  
592 occurrence that gives rise to the liability.

593 Therefore, the Corporation Law Committee recommends the following key  
594 changes to modernize our statute:

- 595 • To establish a process, outside of court, to determine and pay claims;
- 596 • To create a general statute of repose and clarify potential shareholder liability;  
597 and
- 598 • To provide standards for the claims that should be anticipated and addressed.

599 In addition, the Corporation Law Committee identified several other key  
600 provisions that are reflected in the proposed legislation:

- 601 • Clarify that a corporation can adopt a plan of dissolution that does not  
602 need to be fully implemented in 90 days.
- 603 • Clarify that a corporation continues post-dissolution to allow winding up,  
604 but provide a clear end point.
- 605 • Permit abandonment of dissolution.
- 606 • Preserve director ability to sell assets in dissolution.
- 607 • Conform the statutory provisions for giving notice in a judicial dissolution  
608 to those in a voluntary dissolution.

609

610 **EXHIBIT B**

611 **B. A proposal to amend the dissenters' rights provisions of R.C. 1701 to (1)**  
612 **codify that the fair value for publicly traded stock is its market value, (2) provide**  
613 **that if a demand for dissenters' rights is made by an agent, evidence of the agent's**  
614 **authority may be required within 20 days, (3) eliminate dissenters' rights for**  
615 **shareholders if they hold publicly traded shares and the transaction currency to be**  
616 **received by them will also be publicly traded securities, and (4) provide a notice**  
617 **procedure by which a corporation can accelerate the time by which a shareholder**  
618 **must give notice of whether the shareholder will exercise dissenters' rights in**  
619 **connection with a transaction**

620 **§ 1701.74 Dissenting shareholders.**

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

623 (1) Changes issued shares of a particular class that have preference in dividends or  
624 distributions or on liquidation over shares of any other class into shares of any other  
625 class, or changes any of the express terms of issued shares of such particular class, and  
626 the holders of the shares of such particular class are substantially prejudiced thereby and  
627 the articles do not expressly or by implication provide for or permit such amendment;

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

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

634 (4) Changes the corporation into a nonprofit corporation.

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

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

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

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

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

657 **§ 1701.76 Sale or other disposition of assets of corporation - limitations.**

658 (A)(1) Provided the provisions of Chapter 1704. of the Revised Code do not prevent the  
659 transaction from being effected, a lease, sale, exchange, transfer, or other disposition of  
660 all, or substantially all, of the assets, with or without the good will, of a corporation, if not  
661 made in the usual and regular course of its business, may be made upon the terms and  
662 conditions and for the consideration, that may consist, in whole or in part, of money or  
663 other property of any description, including shares or other securities or promissory  
664 obligations of any other corporation, domestic or foreign, that may be authorized as  
665 follows:

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

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

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

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

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

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

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

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

695 (C) Dissenting holders of shares of any class, whether or not entitled to vote, shall be  
696 entitled to relief under section 1701.85 of the Revised Code-, except that no relief as a  
697 dissenting shareholder shall be available if both of the following apply:

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

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

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

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

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

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

720 (1) The former subsidiary is a party to one or more agreements pursuant to which it is  
721 obligated to engage in an additional transaction that, if the transaction were authorized

722 after the time at which the distribution becomes effective, would require the approval of  
723 its shareholders.

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

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

731 **§ 1701.84 Dissenting shareholders entitled to relief.**

732 ~~(A) The following are entitled to relief as dissenting shareholders under section 1701.85~~  
733 ~~of the Revised Code:~~ (A) Shareholders of a domestic corporation that is being merged or  
734 consolidated into a surviving or new entity, domestic or foreign, pursuant to section  
735 1701.78, 1701.781, 1701.79, 1701.791, or 1701.801 of the Revised Code are entitled to  
736 relief as dissenting shareholders under section 1701.85 of the Revised Code unless both  
737 of the following apply:

738 (1) The shares of the corporation for which the dissenting shareholder would  
739 otherwise be entitled to relief in the cases described in division (A) of this section are  
740 listed on a national securities exchange as of the day before the date on which the vote on  
741 the proposal is taken at the meeting of the shareholders;

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

747 (B) In the case of a merger into a domestic corporation, shareholders of the surviving  
748 corporation who under section 1701.78 or 1701.781 of the Revised Code are entitled to  
749 vote on the adoption of an agreement of merger, are entitled to relief as dissenting  
750 shareholders under section 1701.85 of the Revised Code but only as to the shares so  
751 entitling them to vote, unless the shares so entitling them to vote are listed on a national  
752 securities exchange both as of the day before the date on which the vote on the proposal  
753 is taken at the meeting of the shareholders and immediately following the effective time  
754 of the merger, and there are no proceedings pending to delist the shares from the national  
755 securities exchange as of the effective time of the merger or consolidation ;

756 (C) Shareholders, other than the parent corporation, of a domestic subsidiary corporation  
757 that is being merged into the domestic or foreign parent corporation pursuant to section  
758 1701.80 of the Revised Code are entitled to relief as dissenting shareholders under  
759 section 1701.85 of the Revised Code;

760 (D) In the case of a combination or a majority share acquisition, shareholders of the  
761 acquiring corporation who under section 1701.83 of the Revised Code are entitled to vote  
762 on such transaction are entitled to relief as dissenting shareholders under section 1701.85  
763 of the Revised Code ~~but only~~ as to the shares so entitling them to vote, unless the shares  
764 so entitling them to vote are listed on a national securities exchange both as of the day  
765 before the date on which the vote on the proposal is taken at the meeting of the  
766 shareholders and immediately following the effective time of the combination or majority  
767 share acquisition, and there are no proceedings pending to delist the shares from the  
768 national securities exchange as of the effective time of the combination or majority share  
769 acquisition;

770 (E) Shareholders of a domestic subsidiary corporation into which one or more domestic  
771 or foreign corporations are being merged pursuant to section 1701.801 of the Revised  
772 Code are entitled to relief as dissenting shareholders under section 1701.85 of the  
773 Revised Code;

774 (F) Shareholders of a domestic corporation that is being converted pursuant to section  
775 1701.792 of the Revised Code are entitled to relief as dissenting shareholders under  
776 section 1701.85 of the Revised Code unless both of the following apply:

777 (1) The shares of the corporation for which the dissenting shareholder would  
778 otherwise be entitled to relief in the cases described in division (F) of this section are  
779 listed on a national securities exchange as of the day before the date on which the vote on  
780 the proposal is taken at the meeting of the shareholders;

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

786 **§ 1701.85 Dissenting shareholders - compliance with section - fair cash value of**  
787 **shares.**

788 (A) (1) A shareholder of a domestic corporation is entitled to relief as a dissenting  
789 shareholder in respect of the proposals described in sections 1701.74, 1701.76, and  
790 1701.84 of the Revised Code, only in compliance with this section.

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

796 (3) Not less than twenty days before the date of the meeting at which the proposal is to be  
797 submitted to the shareholders, the corporation may notify its shareholders that relief  
798 under this section is available. The notice shall include or be accompanied by both of the  
799 following:

800 (a) A copy of this section of the Revised Code;

801 (b) A statement that the proposal can give rise to rights under this section if the proposal  
802 is approved by the required vote, and that the shareholder will be eligible as a dissenting  
803 shareholder under this section only if the shareholder delivers to the corporation before  
804 the taking of the vote on the proposal a written demand with the information provided for  
805 in division (A)(4) of this section, and the shareholder does not vote in favor of the  
806 proposal.

807 (4) If the corporation delivers notice to its shareholders as provided in division (A)(3) of  
808 this section, a shareholder electing to be eligible as a dissenting shareholder under this  
809 section shall deliver to the corporation before the taking of the vote on the proposal a  
810 written demand for payment of the fair cash value of the shares as to which the  
811 shareholder seeks relief, which demand shall state the shareholder's address, the number  
812 and class of such shares, and the amount claimed by the shareholder as the fair cash value  
813 of the shares.

814 (5) If division (A)(3) of this section does not apply then Nnot later than ten days after the  
815 date on which the vote on the proposal was taken at the meeting of the shareholders, the  
816 dissenting shareholder shall deliver to the corporation a written demand for payment to  
817 the dissenting shareholder of the fair cash value of the shares as to which the dissenting  
818 shareholder seeks relief, which demand shall state the dissenting shareholder's address,  
819 the number and class of such shares, and the amount claimed by the dissenting  
820 shareholder as the fair cash value of the shares. with the same information as that  
821 provided for in division (A)(4) of this section.

822 (6) If the demand is not executed by the dissenting shareholder then at any time after  
823 receiving the demand the corporation may make a written request that the dissenting  
824 shareholder provide evidence of the signatory's authority. The evidence must be  
825 provided within a reasonable time, but not sooner than twenty days after the dissenting  
826 shareholder has received the corporation's written request.

827 (7)(3) The dissenting shareholder entitled to relief under division (B)(1)(C) of section  
828 1701.84 of the Revised Code in the case of a merger pursuant to section 1701.80 of the  
829 Revised Code and a dissenting shareholder entitled to relief under division (B)(2)(E) of  
830 section 1701.84 of the Revised Code in the case of a merger pursuant to section 1701.801  
831 of the Revised Code shall be a record holder of the shares of the corporation as to which  
832 the dissenting shareholder seeks relief as of the date on which the agreement of merger  
833 was adopted by the directors of that corporation. Within twenty days after the dissenting  
834 shareholder has been sent the notice provided in section 1701.80 or 1701.801 of the  
835 Revised Code, the dissenting shareholder shall deliver to the corporation a written  
836 demand for payment with the same information as that provided for in division (A)(4)(2)  
837 of this section.

838 (8)(4) In the case of a merger or consolidation, a demand served on the constituent  
839 corporation involved constitutes service on the surviving or the new entity, whether the  
840 demand is served before, on, or after the effective date of the merger or consolidation. In

841 the case of a conversion, a demand served on the converting corporation constitutes  
842 service on the converted entity, whether the demand is served before, on, or after the  
843 effective date of the conversion.

844 ~~(9)~~(5) If the corporation sends to the dissenting shareholder, at the address specified in  
845 the dissenting shareholder's demand, a request for the certificates representing the shares  
846 as to which the dissenting shareholder seeks relief, the dissenting shareholder, within  
847 fifteen days from the date of the sending of such request, shall deliver to the corporation  
848 the certificates requested so that the corporation may endorse on them a legend to the  
849 effect that demand for the fair cash value of such shares has been made. The corporation  
850 promptly shall return the endorsed certificates to the dissenting shareholder. A dissenting  
851 shareholder's failure to deliver the certificates terminates the dissenting shareholder's  
852 rights as a dissenting shareholder, at the option of the corporation, exercised by written  
853 notice sent to the dissenting shareholder within twenty days after the lapse of the fifteen-  
854 day period, unless a court for good cause shown otherwise directs. If shares represented  
855 by a certificate on which such a legend has been endorsed are transferred, each new  
856 certificate issued for them shall bear a similar legend, together with the name of the  
857 original dissenting holder of the shares. Upon receiving a demand for payment from a  
858 dissenting shareholder who is the record holder of uncertificated securities, the  
859 corporation shall make an appropriate notation of the demand for payment in its  
860 shareholder records. If uncertificated shares for which payment has been demanded are  
861 to be transferred, any new certificate issued for the shares shall bear the legend required  
862 for certificated securities as provided in this paragraph. A transferee of the shares so  
863 endorsed, or of uncertificated securities where such notation has been made, acquires  
864 only the rights in the corporation as the original dissenting holder of such shares had  
865 immediately after the service of a demand for payment of the fair cash value of the  
866 shares. A request under this paragraph by the corporation is not an admission by the  
867 corporation that the shareholder is entitled to relief under this section.

868 (B) Unless the corporation and the dissenting shareholder have come to an agreement on  
869 the fair cash value per share of the shares as to which the dissenting shareholder seeks  
870 relief, the dissenting shareholder or the corporation, which in case of a merger or  
871 consolidation may be the surviving or new entity, or in the case of a conversion may be  
872 the converted entity, within three months after the service of the demand by the  
873 dissenting shareholder, may file a complaint in the court of common pleas of the county  
874 in which the principal office of the corporation that issued the shares is located or was  
875 located when the proposal was adopted by the shareholders of the corporation, or, if the  
876 proposal was not required to be submitted to the shareholders, was approved by the  
877 directors. Other dissenting shareholders, within that three-month period, may join as  
878 plaintiffs or may be joined as defendants in any such proceeding, and any two or more  
879 such proceedings may be consolidated. The complaint shall contain a brief statement of  
880 the facts, including the vote and the facts entitling the dissenting shareholder to the relief  
881 demanded. No answer to a complaint is required. Upon the filing of a complaint, the  
882 court, on motion of the petitioner, shall enter an order fixing a date for a hearing on the  
883 complaint and requiring that a copy of the complaint and a notice of the filing and of the  
884 date for hearing be given to the respondent or defendant in the manner in which summons  
885 is required to be served or substituted service is required to be made in other cases. On

886 the day fixed for the hearing on the complaint or any adjournment of it, the court shall  
887 determine from the complaint and from evidence submitted by either party whether the  
888 dissenting shareholder is entitled to be paid the fair cash value of any shares and, if so,  
889 the number and class of such shares. If the court finds that the dissenting shareholder is  
890 so entitled, the court may appoint one or more persons as appraisers to receive evidence  
891 and to recommend a decision on the amount of the fair cash value. The appraisers have  
892 power and authority specified in the order of their appointment. The court thereupon  
893 shall make a finding as to the fair cash value of a share and shall render judgment against  
894 the corporation for the payment of it, with interest at a rate and from a date as the court  
895 considers equitable. The costs of the proceeding, including reasonable compensation to  
896 the appraisers to be fixed by the court, shall be assessed or apportioned as the court  
897 considers equitable. The proceeding is a special proceeding and final orders in it may be  
898 vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure  
899 and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code. If,  
900 during the pendency of any proceeding instituted under this section, a suit or proceeding  
901 is or has been instituted to enjoin or otherwise to prevent the carrying out of the action as  
902 to which the shareholder has dissented, the proceeding instituted under this section shall  
903 be stayed until the final determination of the other suit or proceeding. Unless any  
904 provision in division (D) of this section is applicable, the fair cash value of the shares that  
905 is agreed upon by the parties or fixed under this section shall be paid within thirty days  
906 after the date of final determination of such value under this division, the effective date of  
907 the amendment to the articles, or the consummation of the other action involved,  
908 whichever occurs last. Upon the occurrence of the last such event, payment shall be  
909 made immediately to a holder of uncertificated securities entitled to payment. In the case  
910 of holders of shares represented by certificates, payment shall be made only upon and  
911 simultaneously with the surrender to the corporation of the certificates representing the  
912 shares for which the payment is made.

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

924 (1) Any appreciation or depreciation in market value resulting from the proposal  
925 submitted to the directors or to the shareholders shall be excluded.

926 (2) Any premium associated with control of the corporation, or any discount for lack of  
927 marketability or minority status shall be excluded.

928 (3) For the purposes of this section, the fair cash value of a share that was listed on a  
929 national securities exchange immediately before the effective time of a merger or  
930 consolidation, immediately before the filing of an amendment to the articles of  
931 incorporation as described in division (A) of section 1701.74, or immediately before the  
932 time of the vote described in division (A)(1)(b) of section 1701.76 shall be the closing  
933 sale price on the national securities exchange as of the date provided in division (C) of  
934 this section.

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

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

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

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

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

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

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

967

968 **Rationale for Adoption:**

969 The last major litigation relating to dissenters' rights under Ohio law occurred in  
970 1985 and 1986 in connection with United States Steel Corporation's purchase of  
971 Marathon Oil Company. That litigation revealed some issues that were unclear under the  
972 statute. The Corporation Law Committee has since that time looked at revisions to the  
973 statutory scheme and believes that it is now time to clarify the statute.

974 Delaware law, which governs a majority of public companies in the United States,  
975 does not allow dissenters' or appraisal rights if the corporation has publicly traded  
976 securities and the shareholders will receive only publicly traded securities. With that  
977 market valuation mechanism, there is no need to expend the resources of the court  
978 system, the corporation or the shareholders in court proceedings to determine value.

979 Against this background, the proposed revisions accomplish four principal  
980 changes:

- 981 • First, the changes codify the Supreme Court holding in *Armstrong v.*  
982 *Marathon Oil Company*, 32 Ohio St. 3d 397 (Sup. Ct. 1987), that the fair  
983 value for publicly traded stock is its market value. The changes extend  
984 that logic to the private company context, stating that no control premium  
985 should be included in fair cash value under the statute.
  
- 986 • Second, the changes provide a statutory rule that if a demand for  
987 dissenters' rights is executed by an agent on behalf of the shareholder, the  
988 shareholder may be required to provide evidence in not less than 20 days  
989 of the agent's authority to act. This would overrule *Klein v. United*  
990 *Theaters Co.*, 148 Ohio St. 306 (Sup. Ct. 1947), that said that evidence of  
991 the agent's authority should be submitted with the demand.
  
- 992 • Third, the changes eliminate dissenters' rights for shareholders if they  
993 hold publicly traded shares and the currency received in the transaction  
994 will be publicly traded shares.
  
- 995 • Fourth, the changes provide a notice procedure by which a corporation can  
996 require that a shareholder give notice not later than the time of the vote  
997 whether the shareholder will exercise dissenters' rights in connection with  
998 the transaction. This enables Ohio corporations to have the benefit  
999 available to Delaware corporations of knowing at the time of the vote the  
1000 magnitude of potential dissenters' rights claims.

1001

1002 **EXHIBIT C**

1003 **C. A proposal to adopt a technical amendment to R.C. 1705.61 to insert**  
1004 **language omitted in the adoption of R.C. 1705.61 through H.B. 301 of the 128th**  
1005 **General Assembly.**

1006 **§ 1705.61 Persons performing services to company or members.**

1007 (A) Absent an express agreement to the contrary, a person providing  
1008 goods to or performing services for a limited liability company owes no duty to, incurs no  
1009 liability or obligation to, and is not in privity with the members or creditors of the limited  
1010 liability company by reason of providing goods to or performing services for the limited  
1011 liability company.

1012 (B) Absent an express agreement to the contrary, a person providing goods to or  
1013 performing services for a member or group of members of a limited liability company  
1014 owes no duty to, incurs no liability or obligation to, and is not in privity with the limited  
1015 liability company, any other members of the limited liability company, or the creditors of  
1016 the limited liability company by reason of providing goods to or performing services for  
1017 the member or group of members of the limited liability company.

1018

1019 **Rationale for Adoption:**

1020 When H.B. 301 was adopted in 2006, new R.C. 1705.61 was inserted in the bill to  
1021 clarify that persons providing goods or services to members of a limited liability  
1022 company did not thereby incur liability or obligations to, or join in privity with, the  
1023 limited liability company or its members. Following enactment, the Corporations Law  
1024 Committee identified that the legislation had inadvertently omitted words that would add  
1025 further clarity to the provision.

1026 **EXHIBIT D**

1027 **D. A proposal to amend R.C. 1705.55 and R.C. 1782.52 to delete the**  
1028 **requirement that a certificate of correction of a registration application as a foreign**  
1029 **limited liability company and foreign limited partnership be filed “promptly” with**  
1030 **the Ohio Secretary of State.**

1031 **§ 1705.55 Certificate of correction of registration application.**

1032 (A) If any statement in an application for registration as a foreign limited liability  
1033 company is materially false when made or if any facts described in the application have  
1034 changed making it inaccurate in any material respect, the foreign limited liability  
1035 company shall file ~~promptly~~ with the secretary of state a certificate correcting the  
1036 application that shall be on a form that is prescribed by the secretary of state and be  
1037 signed by an authorized representative of the company.

1038 (B) If the application for registration or a subsequent certificate of correction becomes  
1039 inaccurate because the designated agent resigns or changes the agent’s address from that

1040 appearing in the registration application or any subsequent certificate of correction of the  
1041 registration application, the foreign limited liability company, or the designated agent on  
1042 its behalf, shall file a notice of that resignation or change ~~promptly~~ with the secretary of  
1043 state.

1044 (C) A foreign limited liability company may revoke the appointment of its designated  
1045 agent described in division (A) of section 1705.54 of the Revised Code by filing with the  
1046 secretary of state, on a form prescribed by the secretary of state, a written appointment of  
1047 another agent and an acceptance of appointment in the manner described in division  
1048 (B)(2) of section 1705.06 of the Revised Code and a statement indicating that the  
1049 appointment of the former agent is revoked.

1050 (D) The fee specified in division (R) of section 111.16 of the Revised Code shall  
1051 accompany a filing under division (B) or (C) of this section.

1052

1053 **§ 1782.52 Certificate correcting application information - statement of correction of**  
1054 **agent's address.**

1055 If any statement in the application for registration of a foreign limited partnership was  
1056 materially false when made or if any arrangements or other facts described have changed,  
1057 thereby making the application inaccurate in any material respect, the foreign limited  
1058 partnership shall file ~~promptly~~ with the secretary of state a certificate correcting the  
1059 application on a form prescribed by the secretary of state and ~~shall be~~ signed by a general  
1060 partner.

1061 If the designated agent changes the agent's address from that appearing in the registration  
1062 application or any subsequent correction of the registration application, the foreign  
1063 limited liability partnership, or the designated agent on its behalf, shall file ~~promptly~~ with  
1064 the secretary of state, on a form prescribed by the secretary of state, a statement of  
1065 correction setting forth the new address.

1066 **Rationale for Adoption:**

1067 The requirement for making corrective filings "promptly" has caused practitioners  
1068 concern that the failure to do so endangers the status of the entity until it has made the  
1069 filing.