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MEMORANDUM

TO: OSBA Board of Governors

FROM: Carol Seubert Marx, Unincorporated Association Task Force Chair

DATE: September 1, 2011

RE: Unincorporated Association Task Force Report

I am pleased to submit to you the final report of the 2011 Unincorporated Association Task Force that I was privileged to chair. As you know, the Council of Delegates recommended adoption of an amended version of the Revised Uniform Unincorporated Nonprofit Association Act in May 2010. This proposed legislation will alter the existing unincorporated association statute, R.C. 1745. To prepare the OSBA for the likely changes, President Carmen V. Roberto appointed the Unincorporated Association Task Force to review the proposed legislation and determine what measures, if any, needed to be taken in response to the amendments.

Upon passage of the Act, the Task Force recommends that the Board of Governors submit the amendments identified in the Unincorporated Association Task Force Report for a vote of the OSBA General Assembly.

I very much appreciated the opportunity to chair the Task Force and work with a very talented and dedicated group of OSBA members.



**Unincorporated Association
Task Force Report
2011**

Unincorporated Association Task Force Report

Introduction

In May, 2010, the Council of Delegates recommended adoption of an amended version of the Revised Uniform Unincorporated Nonprofit Association Act (Act). This proposed legislation will alter the existing unincorporated association statute, R.C. 1745. Changes to this statute are particularly relevant to the OSBA because it is currently organized as an unincorporated association.

To prepare for the likely changes, OSBA President Carmen V. Roberto appointed the Unincorporated Association Task Force (Task Force) with President-elect Carol S. Marx as chair in September 2010 to review the proposed legislation and determine what measures, if any, needed to be taken in response to the amendments. After reviewing their charge, including the potential for OSBA organizational changes beyond the changes that could occur as a result of the Act, the Task Force members limited their focus to a review of Act and how our Constitution would be required to be amended to provide for the Act's changes. The Task Force also addressed constitutional provisions that needed to be clarified to reflect OSBA practices. The Task Force did not address issues regarding possible changes to the organizational structure for the OSBA or the reconfiguration of OSBA affiliates. A roster of Task Force members is attached as Exhibit A.

The Unincorporated Nonprofit Association Act

In 2008, the National Conference of Commissioners on Uniform State Laws promulgated the Revised Uniform Unincorporated Nonprofit Association Act. While many states have chosen not to adopt this Act, the OSBA believes it will improve the law of Ohio. The amendments to R.C. 1745 provide for the organization, authority, internal governance and dissolution of unincorporated associations, as well as providing rules for their merger or consolidation with other associations or other types of entities. Many of the Act's provisions are default provisions which can be superseded by an organization's governing principles. See attached Exhibit B for the current version of the Act.

Constitutional Changes to Comply with the Act as proposed in Ohio

Members of the Task Force were asked to identify provisions of the OSBA Constitution that conflicted with the proposed Act and to determine if any of the Act's default provisions are or should be superseded by OSBA organizational documents.

Under proposed R.C. 1745.32, the affairs of an unincorporated association are to be managed by "managers" who are given plenary powers. When Task Force members attempted to identify the "managers" of the OSBA, they found a significant ambiguity created by OSBA Constitution Sections 10.2.1 and 11.5.5. In part, §10.2.1 states, "[t]he Board of Governors shall manage the affairs of the Association, including but not limited to budgetary matters, subject to the Constitution and Bylaws...."

Section 11.5.5, however, provides, "[s]ubject to the provision (sic) of article X and §11.7 the Council of Delegates shall have the authority to determine general policies of this Association, except as otherwise limited by this Constitution." The consistent interpretation of these less than clear provisions has been that the Board of Governors ("managers" under the new Act) is responsible for managing the business affairs of the Association. The Council of Delegates (except as noted in §11.7) is responsible for

determining the Association’s policy or position regarding changes in the substantive law or administration of justice. (The issue of approval of the dues under §18.3 is another matter—the Council has clearly indicated that it desires to retain this authority.)

The Task Force recommends §10.2.1, §11.5.3 , and §11.5.5 be amended to clarify that the members of the Board of Governors are the managers of the Association. The proposed amendment is as follows:

§10.2.1 Except where the law or this constitution requires that action be otherwise authorized or taken, all of the authority of this Association shall be exercised by or under the direction of the Board of Governors as the managers of the Association. The Board of Governors shall manage the affairs of the Association, including but not limited to budgetary matters, subject to the Constitution and Bylaws; shall make provision for maintaining and administering the offices of the Association; and shall have full power and authority to do all acts and perform all functions of the Association in the intervals between regular meetings of Association members, except that the Board shall not have power to amend the Constitution.

§11.5.3 The Council of Delegates shall consider and act upon any and all resolutions properly submitted to the Council by any of its members, by an Association member, or by any local bar association of the State, providing the same has been timely reported in writing to the secretary of the Association and published pursuant to the provisions of §8.2. Nothing contained herein shall prevent the Council from considering amendments or substitute measures during the deliberative process.

§11.5.5 Subject to the provision of Article X and §11.7, the Council of Delegates shall have the authority to determine general policies of this Association, except as otherwise limited by this Constitution recommend changes in the substantive law of Ohio, in the administration of justice, and to consider and act upon resolutions submitted pursuant to §11.5.3.

Task Force members found additional ambiguities and inconsistencies in the Constitution, unrelated to the changes proposed by the Act, which should be addressed. The Task Force recommends the following amendments to the Constitution.

In Article V, Section 5.3, line two, the words “duly registered and” should be deleted to comply with the fact that the OSBA no longer requires members to register to attend the Annual Meeting to vote in the election. The proposed amendment is as follows:

§5.3 The president-elect shall be elected by the regular members of the Association duly registered and in attendance at the regular meeting of the Association next preceding the commencement of the term of office.

In Article IX, Section 9.1, lines 3-4, the language related to the treasurer giving bond should be deleted. The treasurer does not give bond; however, the OSBA does have a fidelity bond covering defalcation. The proposed amendment is as follows:

§9.1 The treasurer shall collect and, by order of the Board of Governors, disburse all funds of the Association and keep regular accounts which at all times shall be open to the inspection of all members of the Board of Governors. ~~The treasurer shall give bond in such sum as shall be set by the Board of Governors.~~

In Article X, Section 10.4, lines 4-10, the language regarding authorization to execute real estate documents should be deleted. The proposed amendment is as follows:

§10.4 All property of the Association, real, personal, and mixed, shall be held in the name of the Association. The Association is authorized to rent, lease, own, buy, sell, mortgage, or pledge real or personal property. ~~Any one of the following officers: president, president-elect, secretary, treasurer, or executive director, shall be authorized to execute all documents in connection therewith other than the sale of real estate which shall require the signature of at least two of those officials.~~ No lease, purchase, sale or mortgage of Association real estate or pledge of personal property shall be completed without the express authorization of the Board of Governors.

In Article X, Section 10.6, the language regarding Board of Governors term limits should be amended. The proposed amendment is as follows:

§ 10.6 Except as otherwise authorized, no person shall serve more than one term as an elected or appointed member of the Board of Governors. Notwithstanding the foregoing, a member of the Board of Governors may run for and be elected president-elect of the Association, and if elected, shall serve as a member of the Board of Governors concurrent with his or her terms as president-elect, president and immediate past president as provided in Articles VII, VI and X respectively. In the event that such person is elected president-elect prior to the expiration of such person's elected or appointed term as a member of the Board of Governors, a vacancy shall be thereby created and shall be filled as provided in Section 17.1 ~~No person who has been elected or appointed to a full term pursuant to §10.1 to the Executive Committee or the Board of Governors shall thereafter be eligible to be elected or appointed to the Board of Governors.~~

[Note: The Board of Governors was called the Executive Committee. There are still former Executive Committee members practicing law.]

In Article XI, Section 11.4, the language "One third...." should be changed to "A majority...." A simple majority is the preferred method by which to establish a quorum. The proposed amendment is as follows:

§11.4 A majority ~~One third~~ of the members of the Council of Delegates shall constitute a quorum.

In Article XV, Section 15.1, the language used to refer to OSBA section councils should be changed to reflect that they are now called councils and not boards of governors. This amendment also reflects the ongoing practice of the method of appointing members of all committees. The proposed amendment is as follows:

15.1 The president, subject to the approval and confirmation of the Board of Governors, shall appoint ~~a members of a committee on legal ethics and professional conduct, and such other committees and boards of governors of such sections as may be approved and provided for by the Board of Governors~~ a committee on unauthorized practice of law, and all section councils. For each committee and section the president of the Association shall designate a chairperson.

In Article XX, Section 20.1, the language should be amended to authorize a majority voice vote of the Board of Governors in order to pursue a Constitutional Amendment. The Constitution currently provides that a majority of the Board of Governors must sign such a proposal. This amendment recognizes that the Board of Governors approval may occur by vote at a meeting. The proposed amendment is as follows:

§20.1 This Constitution may be amended only by the vote of a majority of the regular members in attendance at a regular or special meeting of the Association. Any such amendment shall be proposed by the filing with the secretary of the Association of a petition containing the full text of the proposed amendment(s) ~~signed by~~ either (i) approved by a majority of the members of the Board of Governors; or signed by (ii) one-half of the members of the Council of Delegates; or (iii) as many regular members of the Association in good standing as there are members of the Council of Delegates at the time the proposed amendment(s) is filed, not more than two-thirds of such signers being from any one district.

OSBA Board of Governors Bylaws

In the course of its evaluation of the Constitution, the Task Force found that it is largely silent on Board of Governors procedures. To provide these procedures, the Task Force drafted proposed Board of Governors by-laws. The by-laws are attached as Exhibit C. These by-laws were submitted to the Board of Governors for their approval and comments at the May 2011 meeting and were adopted at the June 2011 meeting.

Conclusions

Upon passage of the Act, the Task Force recommends that the Board of Governors submit the above amendments for a vote of the General Assembly of the OSBA.

Respectfully submitted,

Carol Seubert Marx, Chair

OSBA UNINCORPORATED NON-PROFIT ASSOCIATION TASK FORCE ROSTER

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As Introduced

129th General Assembly
Regular Session
2011-2012

H. B. No. 267

Representative McKenney

Cosponsors: Representatives Combs, Letson, Stebelton

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A B I L L

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| To amend sections 9.231, 169.01, 1702.01, 1702.05, | 1 |
| 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, | 2 |
| 2901.23, 3955.06, 3956.06, 4121.70, 4303.201, | 3 |
| 4303.204, 4303.207, 5111.151, and 5701.13; to | 4 |
| enact sections 1702.411, 1745.05 to 1745.46, | 5 |
| 1745.461, and 1745.47 to 1745.57; and to repeal | 6 |
| sections 1702.45, 1745.01, 1745.02, and 1745.04 of | 7 |
| the Revised Code to adopt the Revised Uniform | 8 |
| Unincorporated Nonprofit Association Act and to | 9 |
| revise the merger and consolidation provisions of | 10 |
| the Nonprofit Corporation Law. | 11 |

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

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| Section 1. That sections 9.231, 169.01, 1702.01, 1702.05, | 12 |
| 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, 2901.23, 3955.06, | 13 |
| 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, and | 14 |
| 5701.13 be amended, and sections 1702.411, 1745.05, 1745.06, | 15 |
| 1745.07, 1745.08, 1745.09, 1745.10, 1745.11, 1745.12, 1745.13, | 16 |
| 1745.14, 1745.15, 1745.16, 1745.17, 1745.18, 1745.19, 1745.20, | 17 |
| 1745.21, 1745.22, 1745.23, 1745.24, 1745.25, 1745.26, 1745.27, | 18 |
| 1745.28, 1745.29, 1745.30, 1745.31, 1745.32, 1745.33, 1745.34, | 19 |
| 1745.35, 1745.36, 1745.37, 1745.38, 1745.39, 1745.40, 1745.41, | 20 |

1745.42, 1745.43, 1745.44, 1745.45, 1745.46, 1745.461, 1745.47, 21
1745.48, 1745.49, 1745.50, 1745.51, 1745.52, 1745.53, 1745.54, 22
1745.55, 1745.56, and 1745.57 of the Revised Code be enacted to 23
read as follows: 24

Sec. 9.231. (A)(1) Subject to divisions (A)(2) and (3) of 25
this section, a governmental entity shall not disburse money 26
totaling twenty-five thousand dollars or more to any person for 27
the provision of services for the primary benefit of individuals 28
or the public and not for the primary benefit of a governmental 29
entity or the employees of a governmental entity, unless the 30
contracting authority of the governmental entity first enters into 31
a written contract with the person that is signed by the person or 32
by an officer or agent of the person authorized to legally bind 33
the person and that embodies all of the requirements and 34
conditions set forth in sections 9.23 to 9.236 of the Revised 35
Code. If the disbursement of money occurs over the course of a 36
governmental entity's fiscal year, rather than in a lump sum, the 37
contracting authority of the governmental entity shall enter into 38
the written contract with the person at the point during the 39
governmental entity's fiscal year that at least seventy-five 40
thousand dollars has been disbursed by the governmental entity to 41
the person. Thereafter, the contracting authority of the 42
governmental entity shall enter into the written contract with the 43
person at the beginning of the governmental entity's fiscal year, 44
if, during the immediately preceding fiscal year, the governmental 45
entity disbursed to that person an aggregate amount totaling at 46
least seventy-five thousand dollars. 47

(2) If the money referred to in division (A)(1) of this 48
section is disbursed by or through more than one state agency to 49
the person for the provision of services to the same population, 50
the contracting authorities of those agencies shall determine 51

which one of them will enter into the written contract with the 52
person. 53

(3) The requirements and conditions set forth in divisions 54
(A), (B), (C), and (F) of section 9.232, divisions (A)(1) and (2) 55
and (B) of section 9.234, divisions (A)(2) and (B) of section 56
9.235, and sections 9.233 and 9.236 of the Revised Code do not 57
apply with respect to the following: 58

(a) Contracts to which all of the following apply: 59

(i) The amount received for the services is a set fee for 60
each time the services are provided, is determined in accordance 61
with a fixed rate per unit of time or per service, or is a 62
capitated rate, and the fee or rate is established by competitive 63
bidding or by a market rate survey of similar services provided in 64
a defined market area. The market rate survey may be one conducted 65
by or on behalf of the governmental entity or an independent 66
survey accepted by the governmental entity as statistically valid 67
and reliable. 68

(ii) The services are provided in accordance with standards 69
established by state or federal law, or by rules or regulations 70
adopted thereunder, for their delivery, which standards are 71
enforced by the federal government, a governmental entity, or an 72
accrediting organization recognized by the federal government or a 73
governmental entity. 74

(iii) Payment for the services is made after the services are 75
delivered and upon submission to the governmental entity of an 76
invoice or other claim for payment as required by any applicable 77
local, state, or federal law or, if no such law applies, by the 78
terms of the contract. 79

(b) Contracts under which the services are reimbursed through 80
or in a manner consistent with a federal program that meets all of 81
the following requirements: 82

(i) The program calculates the reimbursement rate on the 83
basis of the previous year's experience or in accordance with an 84
alternative method set forth in rules adopted by the Ohio 85
department of job and family services. 86

(ii) The reimbursement rate is derived from a breakdown of 87
direct and indirect costs. 88

(iii) The program's guidelines describe types of expenditures 89
that are allowable and not allowable under the program and 90
delineate which costs are acceptable as direct costs for purposes 91
of calculating the reimbursement rate. 92

(iv) The program includes a uniform cost reporting system 93
with specific audit requirements. 94

(c) Contracts under which the services are reimbursed through 95
or in a manner consistent with a federal program that calculates 96
the reimbursement rate on a fee for service basis in compliance 97
with United States office of management and budget Circular A-87, 98
as revised May 10, 2004. 99

(d) Contracts for services that are paid pursuant to the 100
earmarking of an appropriation made by the general assembly for 101
that purpose. 102

(B) Division (A) of this section does not apply if the money 103
is disbursed to a person pursuant to a contract with the United 104
States or a governmental entity under any of the following 105
circumstances: 106

(1) The person receives the money directly or indirectly from 107
the United States, and no governmental entity exercises any 108
oversight or control over the use of the money. 109

(2) The person receives the money solely in return for the 110
performance of one or more of the following types of services: 111

(a) Medical, therapeutic, or other health-related services 112

provided by a person if the amount received is a set fee for each 113
time the person provides the services, is determined in accordance 114
with a fixed rate per unit of time, or is a capitated rate, and 115
the fee or rate is reasonable and customary in the person's trade 116
or profession; 117

(b) Medicaid-funded services, including administrative and 118
management services, provided pursuant to a contract or medicaid 119
provider agreement that meets the requirements of the medicaid 120
program established under Chapter 5111. of the Revised Code. 121

(c) Services, other than administrative or management 122
services or any of the services described in division (B)(2)(a) or 123
(b) of this section, that are commonly purchased by the public at 124
an hourly rate or at a set fee for each time the services are 125
provided, unless the services are performed for the benefit of 126
children, persons who are eligible for the services by reason of 127
advanced age, medical condition, or financial need, or persons who 128
are confined in a detention facility as defined in section 2921.01 129
of the Revised Code, and the services are intended to help promote 130
the health, safety, or welfare of those children or persons; 131

(d) Educational services provided by a school to children 132
eligible to attend that school. For purposes of division (B)(2)(d) 133
of this section, "school" means any school operated by a school 134
district board of education, any community school established 135
under Chapter 3314. of the Revised Code, or any nonpublic school 136
for which the state board of education prescribes minimum 137
education standards under section 3301.07 of the Revised Code. 138

(e) Services provided by a foster home as defined in section 139
5103.02 of the Revised Code; 140

(f) "Routine business services other than administrative or 141
management services," as that term is defined by the attorney 142
general by rule adopted in accordance with Chapter 119. of the 143

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| Revised Code; | 144 |
| (g) Services to protect the environment or promote environmental education that are provided by a nonprofit entity or services to protect the environment that are funded with federal grants or revolving loan funds and administered in accordance with federal law; | 145 146 147 148 149 |
| (h) Services, including administrative and management services, provided under the children's buy-in program established under sections 5101.5211 to 5101.5216 of the Revised Code. | 150 151 152 |
| (3) The person receives the money solely in return for the performance of services intended to help preserve public health or safety under circumstances requiring immediate action as a result of a natural or man-made emergency. | 153 154 155 156 |
| (C) With respect to a <u>an unincorporated</u> nonprofit association, corporation, or organization established for the purpose of providing educational, technical, consulting, training, financial, or other services to its members in exchange for membership dues and other fees, any of the services provided to a member that is a governmental entity shall, for purposes of this section, be considered services "for the primary benefit of a governmental entity or the employees of a governmental entity. | 157 158 159 160 161 162 163 164 |
| Sec. 169.01. As used in this chapter, unless the context otherwise requires: | 165 166 |
| (A) "Financial organization" means any bank, trust company, savings bank, safe deposit company, mutual savings bank without mutual stock, savings and loan association, credit union, or investment company. | 167 168 169 170 |
| (B)(1) "Unclaimed funds" means any moneys, rights to moneys, or intangible property, described in section 169.02 of the Revised Code, when, as shown by the records of the holder, the owner has | 171 172 173 |

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| not, within the times provided in section 169.02 of the Revised Code, done any of the following: | 174 175 |
| (a) Increased, decreased, or adjusted the amount of such funds; | 176 177 |
| (b) Assigned, paid premiums, or encumbered such funds; | 178 |
| (c) Presented an appropriate record for the crediting of such funds or received payment of such funds by check, draft, or otherwise; | 179 180 181 |
| (d) Corresponded with the holder concerning such funds; | 182 |
| (e) Otherwise indicated an interest in or knowledge of such funds; | 183 184 |
| (f) Transacted business with the holder. | 185 |
| (2) "Unclaimed funds" does not include any of the following: | 186 |
| (a) Money received or collected under section 9.39 of the Revised Code; | 187 188 |
| (b) Any payment or credit due to a business association from a business association representing sums payable to suppliers, or payment for services rendered, in the course of business, including, but not limited to, checks or memoranda, overpayments, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates; | 189 190 191 192 193 194 |
| (c) Any payment or credit received by a business association from a business association for tangible goods sold, or services performed, in the course of business, including, but not limited to, checks or memoranda, overpayments, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates; | 195 196 197 198 199 |
| (d) Any credit due a retail customer that is represented by a gift certificate, gift card, merchandise credit, or merchandise credit card, redeemable only for merchandise. | 200 201 202 |

For purposes of divisions (B)(2)(b) and (c) of this section, 203
"business association" means any corporation, joint venture, 204
business trust, limited liability company, partnership, 205
association, or other business entity composed of one or more 206
individuals, whether or not the entity is for profit. 207

(C) "Owner" means any person, or the person's legal 208
representative, entitled to receive or having a legal or equitable 209
interest in or claim against moneys, rights to moneys, or other 210
intangible property, subject to this chapter. 211

(D)(1) "Holder" means any person that has possession, 212
custody, or control of moneys, rights to moneys, or other 213
intangible property, or that is indebted to another, if any of the 214
following applies: 215

(a) Such person resides in this state; 216

(b) Such person is formed under the laws of this state; 217

(c) Such person is formed under the laws of the United States 218
and has an office or principal place of business in this state; 219

(d) The records of such person indicate that the last known 220
address of the owner of such moneys, rights to moneys, or other 221
intangible property is in this state; 222

(e) The records of such person do not indicate the last known 223
address of the owner of the moneys, rights to moneys, or other 224
intangible property and the entity originating or issuing the 225
moneys, rights to moneys, or other intangible property is this 226
state or any political subdivision of this state, or is 227
incorporated, organized, created, or otherwise located in this 228
state. Division (D)(1)(e) of this section applies to all moneys, 229
rights to moneys, or other intangible property that is in the 230
possession, custody, or control of such person on or after July 231
22, 1994, whether the moneys, rights to moneys, or other 232
intangible property becomes unclaimed funds prior to or on or 233

after that date. 234

(2) "Holder" does not mean any hospital granted tax-exempt 235
status under section 501(c)(3) of the Internal Revenue Code or any 236
hospital owned or operated by the state or by any political 237
subdivision. Any entity in order to be exempt from the definition 238
of "holder" pursuant to this division shall make a reasonable, 239
good-faith effort to contact the owner of the unclaimed funds. 240

(E) "Person" includes a natural person; corporation, whether 241
for profit or not for profit; copartnership; unincorporated 242
nonprofit association ~~or organization~~; public authority; estate; 243
trust; two or more persons having a joint or common interest; 244
eleemosynary organization; fraternal or cooperative association; 245
other legal or community entity; the United States government, 246
including any district, territory, possession, officer, agency, 247
department, authority, instrumentality, board, bureau, or court; 248
or any state or political subdivision thereof, including any 249
officer, agency, board, bureau, commission, division, department, 250
authority, court, or instrumentality. 251

(F) "Mortgage funds" means the mortgage insurance fund 252
created by section 122.561 of the Revised Code, and the housing 253
guarantee fund created by division (D) of section 128.11 of the 254
Revised Code. 255

(G) "Lawful claims" means any vested right a holder of 256
unclaimed funds has against the owner of such unclaimed funds. 257

(H) "Public utility" means any entity defined as such by 258
division (A) of section 745.01 or by section 4905.02 of the 259
Revised Code. 260

(I) "Deposit" means to place money in the custody of a 261
financial organization for the purpose of establishing an 262
income-bearing account by purchase or otherwise. 263

(J) "Income-bearing account" means a time or savings account, 264

whether or not evidenced by a certificate of deposit, or an 265
investment account through which investments are made solely in 266
obligations of the United States or its agencies or 267
instrumentalities or guaranteed as to principal and interest by 268
the United States or its agencies or instrumentalities, debt 269
securities rated as investment grade by at least two nationally 270
recognized rating services, debt securities which the director of 271
commerce has determined to have been issued for the safety and 272
welfare of the residents of this state, and equity interests in 273
mutual funds that invest solely in some or all of the above-listed 274
securities and involve no general liability, without regard to 275
whether income earned on such accounts, securities, or interests 276
is paid periodically or at the end of a term. 277

(K) "Director of commerce" may be read as the "division of 278
unclaimed funds" or the "superintendent of unclaimed funds." 279

Sec. 1702.01. As used in this chapter, unless the context 280
otherwise requires: 281

(A) "Corporation" or "domestic corporation" means a nonprofit 282
corporation formed under the laws of this state, or a business 283
corporation formed under the laws of this state that, by amendment 284
to its articles as provided by law, becomes a nonprofit 285
corporation. 286

(B) "Foreign corporation" means a nonprofit corporation 287
formed under the laws of another state. 288

(C) "Nonprofit corporation" means a domestic or foreign 289
corporation that is formed otherwise than for the pecuniary gain 290
or profit of, and whose net earnings or any part of them is not 291
distributable to, its members, directors, officers, or other 292
private persons, except that the payment of reasonable 293
compensation for services rendered and the distribution of assets 294
on dissolution as permitted by section 1702.49 of the Revised Code 295

is not pecuniary gain or profit or distribution of net earnings. 296
In a corporation all of whose members are nonprofit corporations, 297
distribution to members does not deprive it of the status of a 298
nonprofit corporation. 299

(D) "State" means the United States; any state, territory, 300
insular possession, or other political subdivision of the United 301
States, including the District of Columbia; any foreign country or 302
nation; and any province, territory, or other political 303
subdivision of a foreign country or nation. 304

(E) "Articles" includes original articles of incorporation, 305
agreements of merger or consolidation if and only to the extent 306
that articles of incorporation are adopted or amended in the 307
agreements, amended articles, and amendments to any of these, and, 308
in the case of a corporation created before September 1, 1851, the 309
special charter and any amendments to it made by special act of 310
the general assembly or pursuant to general law. 311

(F) "Incorporator" means a person who signed the original 312
articles of incorporation. 313

(G) "Member" means one having membership rights and 314
privileges in a corporation in accordance with its articles or 315
regulations. 316

(H) "Voting member" means a member possessing voting rights, 317
either generally or in respect of the particular question 318
involved, as the case may be. 319

(I) "Person" includes, but is not limited to, a nonprofit 320
corporation, a business corporation, a partnership, an 321
unincorporated society or association, and two or more persons 322
having a joint or common interest. 323

(J) The location of the "principal office" of a corporation 324
is the place named as such in its articles. 325

(K) "Directors" means the persons vested with the authority 326
to conduct the affairs of the corporation irrespective of the 327
name, such as trustees, by which they are designated. 328

(L) "Insolvent" means that the corporation is unable to pay 329
its obligations as they become due in the usual course of its 330
affairs. 331

(M)(1) Subject to division (M)(2) of this section, 332
"volunteer" means a director, officer, or agent of a corporation, 333
or another person associated with a corporation, who satisfies 334
both of the following: 335

(a) Performs services for or on behalf of, and under the 336
authority or auspices of, that corporation; 337

(b) Does not receive compensation, either directly or 338
indirectly, for performing those services. 339

(2) For purposes of division (M)(1) of this section, 340
"compensation" does not include any of the following: 341

(a) Actual and necessary expenses that are incurred by a 342
volunteer in connection with the services performed for a 343
corporation, and that are reimbursed to the volunteer or otherwise 344
paid; 345

(b) Insurance premiums paid on behalf of a volunteer, and 346
amounts paid or reimbursed, pursuant to division (E) of section 347
1702.12 of the Revised Code; 348

(c) Modest perquisites. 349

(N) "Business corporation" means any entity, ~~as defined in~~ 350
~~section 1701.01 of the Revised Code, other than a public benefit~~ 351
~~corporation or a mutual benefit corporation,~~ that is organized 352
pursuant to Chapter 1701. of the Revised Code other than a public 353
benefit entity. 354

(O) "Mutual benefit corporation" means any corporation 355

organized under this chapter other than a public benefit corporation. 356
357

(P) "Public benefit corporation" means a corporation that is 358
recognized as exempt from federal income taxation under section 359
501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 360
26 U.S.C. 1, as amended, or is organized for a public or 361
charitable purpose and that upon dissolution must distribute its 362
assets to a public benefit corporation, the United States, a state 363
or any political subdivision of a state, or a person that is 364
recognized as exempt from federal income taxation under section 365
501(c)(3) of the "Internal Revenue Code of 1986," as amended. 366
"Public benefit corporation" does not include a nonprofit 367
corporation that is organized by one or more municipal 368
corporations to further a public purpose that is not a charitable 369
purpose. 370

(Q) "Authorized communications equipment" means any 371
communications equipment that provides a transmission, including, 372
but not limited to, by telephone, telecopy, or any electronic 373
means, from which it can be determined that the transmission was 374
authorized by, and accurately reflects the intention of, the 375
member or director involved and, with respect to meetings, allows 376
all persons participating in the meeting to contemporaneously 377
communicate with each other. 378

(R) "Entity" means any of the following: 379

(1) A corporation existing under the laws of this state or 380
any other state; 381

(2) A business corporation existing under the laws of this 382
state or any other state; 383

(3) Any of the following organizations existing under the 384
laws of this state, the United States, or any other state: 385

(a) An unincorporated business or for profit organization, 386

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| <u>including a general or limited partnership;</u> | 387 |
| <u>(b) A limited liability company;</u> | 388 |
| <u>(c) An unincorporated nonprofit association.</u> | 389 |
| <u>(S) "Public benefit entity" means any entity that is</u> | 390 |
| <u>recognized as exempt from federal income taxation under section</u> | 391 |
| <u>501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085,</u> | 392 |
| <u>26 U.S.C. 1, as amended, or is organized for a public or</u> | 393 |
| <u>charitable purpose and that upon dissolution must distribute its</u> | 394 |
| <u>assets to a public benefit entity, the United States, a state or</u> | 395 |
| <u>any political subdivision of a state, or a person that is</u> | 396 |
| <u>recognized as exempt from federal income taxation under section</u> | 397 |
| <u>501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085,</u> | 398 |
| <u>26 U.S.C. 1, as amended. "Public benefit entity" does not include</u> | 399 |
| <u>an entity that is organized by one or more municipal corporations</u> | 400 |
| <u>to further a public purpose that is not a charitable purpose.</u> | 401 |
| <u>(T) "Unincorporated nonprofit association" has the same</u> | 402 |
| <u>meaning as in section 1745.05 of the Revised Code.</u> | 403 |
| | |
| Sec. 1702.05. (A) Except as provided in this section and in | 404 |
| sections 1702.41 and 1702.45 <u>1702.411</u> of the Revised Code, the | 405 |
| secretary of state shall not accept for filing in the secretary of | 406 |
| state's office any articles if the corporate name set forth in the | 407 |
| articles is not distinguishable upon the secretary of state's | 408 |
| records from any of the following: | 409 |
| | |
| (1) The name of any other corporation, whether a nonprofit | 410 |
| corporation or a business corporation and whether that of a | 411 |
| domestic or of a foreign corporation authorized to do business in | 412 |
| this state; | 413 |
| | |
| (2) The name of any limited liability company registered in | 414 |
| the office of the secretary of state pursuant to Chapter 1705. of | 415 |
| the Revised Code, whether domestic or foreign; | 416 |

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| (3) The name of any limited liability partnership registered | 417 |
| in the office of the secretary of state pursuant to Chapter 1775. | 418 |
| or 1776. of the Revised Code, whether domestic or foreign; | 419 |
| (4) The name of any limited partnership registered in the | 420 |
| office of the secretary of state pursuant to Chapter 1782. of the | 421 |
| Revised Code, whether domestic or foreign; | 422 |
| (5) Any trade name, the exclusive right to which is at the | 423 |
| time in question registered in the office of the secretary of | 424 |
| state pursuant to Chapter 1329. of the Revised Code. | 425 |
| (B) The secretary of state shall determine for purposes of | 426 |
| this section whether a name is "distinguishable" from another name | 427 |
| upon the secretary of state's records. Without excluding other | 428 |
| names that may not constitute distinguishable names in this state, | 429 |
| a name is not considered distinguishable from another name for | 430 |
| purposes of this section solely because it differs from the other | 431 |
| name in only one or more of the following manners: | 432 |
| (1) The use of the word "corporation," "company," | 433 |
| "incorporated," "limited," or any abbreviation of any of those | 434 |
| words; | 435 |
| (2) The use of any article, conjunction, contraction, | 436 |
| abbreviation, or punctuation; | 437 |
| (3) The use of a different tense or number of the same word. | 438 |
| (C) A corporation may apply to the secretary of state for | 439 |
| authorization to use a name that is not distinguishable upon the | 440 |
| secretary of state's records from the name of any other | 441 |
| corporation, any limited liability company, limited liability | 442 |
| partnership, or limited partnership, or from a registered trade | 443 |
| name, if there also is filed in the office of the secretary of | 444 |
| state, on a form prescribed by the secretary of state, the consent | 445 |
| of the other entity, or, in the case of a registered trade name, | 446 |
| the person in whose name is registered the exclusive right to use | 447 |

the name, which consent is evidenced in a writing signed by any 448
authorized officer or authorized representative of the other 449
entity or person. 450

(D) In case of judicial sale or judicial transfer, by sale or 451
transfer of good will or otherwise, of the right to use the name 452
of a nonprofit corporation or business corporation, whether that 453
of a domestic corporation or of a foreign corporation authorized 454
to exercise its corporate privileges in this state or to do 455
business in this state, the secretary of state, at the instance of 456
the purchaser or transferee of such right, shall accept for filing 457
articles of a corporation with a name the same as or similar to 458
the name of such other corporation, if there also is filed in the 459
office of the secretary of state a certified copy of the decree or 460
order of court confirming or otherwise evidencing the purchase or 461
transfer. 462

(E) Any person who wishes to reserve a name for a proposed 463
new corporation, or any corporation intending to change its name, 464
may submit to the secretary of state a written application, on a 465
form prescribed by the secretary of state, for the exclusive right 466
to use a specified name as the name of a corporation. If the 467
secretary of state finds that, under this section, the specified 468
name is available for such use, the secretary of state shall file 469
such application, and, from the date of such filing, such 470
applicant shall have the exclusive right for one hundred eighty 471
days to use the specified name as the name of a corporation, 472
counting the date of such filing as the first of the one hundred 473
eighty days. The right so obtained may be transferred by the 474
applicant or other holder of the right by the filing in the office 475
of the secretary of state of a written transfer, on a form 476
prescribed by the secretary of state, stating the name and address 477
of the transferee. 478

Sec. 1702.41. (A)(1) ~~Any two or more corporations may merge~~ 479
~~into a single corporation which shall be one of the constituent~~ 480
~~corporations, or may consolidate into a single corporation which~~ 481
~~shall be a new corporation to be formed by the consolidation~~ 482
Pursuant to an agreement of merger, a domestic corporation and one 483
or more additional domestic or foreign entities may be merged into 484
a surviving domestic corporation. Pursuant to an agreement of 485
consolidation, one or more domestic or foreign entities may be 486
consolidated into a new domestic corporation. If any constituent 487
entity is formed or organized under the laws of any state other 488
than this state or under any chapter of the Revised Code other 489
than this chapter, the merger or consolidation also must be 490
permitted by the chapter of the Revised Code under which each 491
domestic constituent entity exists and by the laws under which 492
each foreign constituent entity exists. 493

(2) To effect ~~such a~~ merger or consolidation under this 494
section, the directors of each constituent domestic corporation 495
shall approve an agreement of merger or consolidation to be signed 496
by the chairperson of the board of directors, the president, or a 497
vice-president and by the secretary or an assistant secretary, 498
~~which.~~ The agreement of merger or consolidation shall be approved 499
or otherwise authorized by or on behalf of each other constituent 500
entity in accordance with the laws under which it exists. 501

(3) The agreement of merger or consolidation shall set forth 502
all of the following: 503

(a) The name and the form of entity of each constituent 504
entity and the state under the laws of which each constituent 505
entity exists; 506

(b) That the named constituent ~~corporations~~ entities have 507
agreed to merge into a specified constituent corporation, ~~herein~~ 508
designated in this section as the surviving corporation, or that 509

the named constituent ~~corporations~~ entities have agreed to 510
consolidate into a new corporation to be formed by the 511
consolidation, ~~herein~~ designated in this section as the new 512
corporation; 513

~~(b)~~(c) All statements and matters required to be set forth in 514
an agreement of merger or consolidation by the laws under which 515
each constituent entity exists; 516

(d) The name of the surviving or new corporation, which may 517
be the same as or similar to that of any constituent corporation; 518

~~(e)~~(e) The place in this state where the principal office of 519
the surviving or new corporation is to be located; 520

~~(d)~~(f) The names and addresses of the first directors and 521
officers of the surviving or new corporation, and, if desired, 522
their term or terms of office; 523

~~(e)~~(g) The name and address of the statutory agent upon whom 524
any process, notice, or demand against any constituent ~~corporation~~ 525
entity or the surviving or new corporation may be served; 526

~~(f)~~(h) The terms of the merger or consolidation and the mode 527
of carrying ~~the same~~ those terms into effect; 528

~~(g)~~(i) The regulations of the surviving or new corporation or 529
a provision to the effect that the regulations of ~~one of the a~~ 530
specified constituent ~~corporations~~ corporation shall be the 531
regulations of the surviving or new corporation or to the effect 532
that the voting members or the directors of the surviving or new 533
corporation may adopt regulations, or any combination ~~thereof of~~ 534
them. 535

~~(3)~~(4) The agreement of merger or consolidation may also set 536
forth any of the following: 537

(a) The specification of a date, which may be the date of the 538
filing of the agreement or a date subsequent ~~thereto~~ to that date 539

of filing, upon which the merger or consolidation shall become 540
effective; 541

(b) A provision conferring upon the directors of one or more 542
of the constituent corporations or the comparable representatives 543
of any other constituent entity the power to abandon the merger or 544
consolidation prior to the filing of the agreement; 545

(c) Any additional provision permitted to be included in the 546
articles of a newly formed corporation; 547

(d) Any additional provision ~~deemed~~ considered necessary or 548
desirable with respect to the proposed merger or consolidation. 549

(B)(1) ~~Without the prior approval of A merger or~~ 550
consolidation in which a domestic public benefit corporation is 551
one of the constituent entities shall be approved by the court of 552
common pleas of the county in this state in which the principal 553
office of the public benefit corporation is located, in a 554
proceeding of which the attorney general's charitable law section 555
has been given written notice by certified mail within three days 556
of the initiation of the proceeding, and in which proceeding the 557
attorney general may intervene as of right, ~~a public benefit~~ 558
~~corporation may merge or consolidate only with any of the~~ 559
following. No approval by the court under division (B)(1) of this 560
section is required if either of the following applies: 561

(a) A domestic public benefit corporation ~~is the surviving~~ 562
entity in the case of a merger and continues to be a public 563
benefit corporation or is the new corporation in the case of a 564
consolidation and continues to be a public benefit corporation. 565

(b) ~~A foreign corporation that would qualify under the~~ 566
~~Revised Code as a public benefit corporation;~~ 567

~~(c) A mutual benefit corporation or a business corporation,~~ 568
~~provided that the domestic public benefit corporation is not the~~ 569
~~surviving corporation~~ entity in the case of a merger and continues 570

~~to be a public benefit corporation or that a public benefit corporation or is not the new corporation in the case of a consolidation.~~ 571
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~~(d) A business corporation or mutual benefit corporation, provided that, and~~ all of the following apply: 574
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(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the domestic public benefit corporation or the fair market value of the domestic public benefit corporation if it is to be operated as a business concern, are transferred or conveyed to one or more persons that would have received its assets under section 1702.49 of the Revised Code had it voluntarily dissolved. 576
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(ii) ~~It~~ The domestic public benefit corporation returns, transfers, or conveys any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger or consolidation, in accordance with that condition. 585
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(iii) The merger or consolidation is approved by a majority of directors of the domestic public benefit corporation who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, ~~or~~ directors, officers, managers, employees, agents, or other representatives of, or consultants ~~of~~ to, the surviving or new ~~business corporation or mutual benefit corporation~~ entity. 590
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(2) At least twenty days before consummation of any merger or consolidation of a domestic public benefit corporation pursuant to 600
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division (B)(1)~~(d)~~(b) of this section, written notice, including a
copy of the proposed plan of merger or consolidation, shall be
delivered to the attorney general's charitable law section. The
attorney general's charitable law section may review a proposed
merger or consolidation of a domestic public benefit corporation
under division (B)(1)~~(d)~~(b) of this section. The attorney general
may require, pursuant to section 109.24 of the Revised Code, the
production of the documents necessary for review of a proposed
merger or consolidation under division (B)(1)~~(d)~~(b) of this
section. The attorney general may retain, at the expense of the
domestic public benefit corporation, one or more experts,
including an investment banker, actuary, appraiser, certified
public accountant, or other expert, that the attorney general
considers reasonably necessary to provide assistance in reviewing
a proposed merger or consolidation under division (B)(1)~~(d)~~(b) of
this section. The attorney general may extend the date of any
merger or consolidation of a domestic public benefit corporation
under division (B)(1)~~(d)~~(b) of this section for a period not to
exceed sixty days and shall provide notice of that extension to
the domestic public benefit corporation. The notice shall set
forth the reasons necessitating the extension.

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

~~intervene as of right, no member or director of a public benefit corporation in that person's capacity as a member or director may receive or keep anything as a result of a merger of consolidation other than membership or directorship in the surviving or new public benefit corporation. The court shall approve the transaction if it is in the public interest.~~ 635
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(4) The attorney general may institute a civil action to enforce the requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies. 641
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~~(C) A corporation may be the surviving or new entity in a merger or consolidation with one or more business corporations, or a corporation may merge or consolidate into one or more business corporations with a business corporation, a mutual benefit corporation, or a foreign corporation as the surviving or new entity, provided that the corporation complies with the provisions of this section and sections 1702.42 and 1702.43 of the Revised Code, as applicable to the corporation, and that the business corporation complies with the provisions of section 1701.781 or 1701.791 of the Revised Code, as applicable to the business corporation.~~ 650
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Sec. 1702.411. (A)(1) Pursuant to an agreement of merger between the constituent entities as provided in this section, a domestic corporation and, if so provided, one or more additional domestic or foreign entities, may be merged into a surviving entity other than a domestic corporation. Pursuant to an agreement 661
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of consolidation, a domestic corporation together with one or more 666
additional domestic or foreign entities may be consolidated into a 667
new entity other than a domestic corporation, to be formed by that 668
consolidation. The merger or consolidation must be permitted by 669
the chapter of the Revised Code under which each domestic 670
constituent entity exists and by the laws under which each foreign 671
constituent entity exists. The name of the surviving or new entity 672
may be the same as or similar to that of any constituent entity. 673

(2) To effect a merger or consolidation under this section, 674
the directors of each constituent domestic corporation shall 675
approve an agreement of merger or consolidation to be signed by 676
the chairperson of the board of directors, the president, or a 677
vice-president and by the secretary or an assistant secretary. The 678
agreement of merger or consolidation shall be approved or 679
otherwise authorized by or on behalf of each other constituent 680
entity in accordance with the laws under which it exists. 681

(3) The agreement of merger or consolidation shall set forth 682
all of the following: 683

(a) The name and the form of entity of each constituent 684
entity and the state under the laws of which each constituent 685
entity exists; 686

(b) In the case of a merger, that one or more specified 687
constituent entities will be merged into a specified surviving 688
foreign entity or surviving domestic entity other than a domestic 689
corporation or, in the case of a consolidation, that the 690
constituent entities will be consolidated into a new foreign 691
entity or domestic entity other than a domestic corporation. 692

(c) The terms of the merger or consolidation and the mode of 693
carrying those terms into effect; 694

(d) If the surviving or new entity is a foreign corporation, 695

all additional statements and matters, other than the name and address of the statutory agent, that would be required by section 1702.41 of the Revised Code if the surviving or new corporation were a domestic corporation; 696
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(e) The name and the form of entity of the surviving or new entity, the state under the laws of which the surviving entity exists or the new entity is to exist, and the location of the principal office of the surviving or new entity in that state; 700
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(f) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists and, in the case of a consolidation, the new entity is to exist; 704
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(g) The consent of the surviving or the new entity to be sued and served with process in this state and the irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding in this state to enforce against the surviving or new entity any obligation of any domestic constituent corporation; 708
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(h) If the surviving or new entity is a foreign corporation that desires to transact business in this state as a foreign corporation, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the secretary of state, as required when a foreign corporation applies for a license to transact business in this state; 714
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(i) If the surviving or new entity is a foreign limited partnership that desires to transact business in this state as a foreign limited partnership, a statement to that effect, together with all of the information required under section 1782.49 of the Revised Code when a foreign limited partnership registers to transact business in this state; 721
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(j) If the surviving or new entity is a foreign limited liability company that desires to transact business in this state as a foreign limited liability company, a statement to that effect, together with all of the information required under section 1705.54 of the Revised Code when a foreign limited liability company registers to transact business in this state; 727
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(k) If the surviving or new entity is a foreign unincorporated association that desires to transact business in this state as a foreign unincorporated association, a statement to that effect, together with all of the information required under section 1745.461 of the Revised Code when a foreign unincorporated association registers to transact business in this state. 733
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(4) The agreement of merger or consolidation also may set forth any additional provision permitted by the laws of any state under the laws of which any constituent entity exists, consistent with the laws under which the surviving entity exists or the new entity is to exist. 739
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(B)(1) A merger or consolidation in which a domestic public benefit corporation is one of the constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding and in which proceeding the attorney general may intervene as of right. No approval by the court under division (B)(1) of this section is required if either of the following applies: 744
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(a) A public benefit entity is the surviving entity in the case of a merger and continues to be a public benefit entity or is the new entity in the case of a consolidation and continues to be a public benefit entity. 755
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(b) A public benefit entity is not the surviving entity in the case of a merger or is not the new entity in the case of a consolidation, and all of the following apply: 759
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(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the domestic public benefit corporation or the fair market value of the domestic public benefit corporation if it is to be operated as a business concern are transferred or conveyed to one or more persons that would have received its assets under section 1702.49 of the Revised Code had it voluntarily dissolved. 762
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(ii) The domestic public benefit corporation returns, transfers, or conveys any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger or consolidation, in accordance with that condition. 771
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(iii) The merger or consolidation is approved by a majority of directors of the domestic public benefit corporation who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, directors, officers, managers, employees, agents, or other representatives of, or consultants to, the surviving or new entity. 776
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(2) At least twenty days before consummation of any merger or consolidation of a domestic public benefit corporation pursuant to division (B)(1)(b) of this section, written notice, including a copy of the proposed plan of merger or consolidation, shall be delivered to the attorney general's charitable law section. The attorney general's charitable law section may review a proposed 785
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merger or consolidation of a domestic public benefit corporation 791
under division (B)(1)(b) of this section. The attorney general may 792
require pursuant to section 109.24 of the Revised Code the 793
production of the documents necessary for review of a proposed 794
merger or consolidation under division (B)(1)(b) of this section. 795
The attorney general may retain at the expense of the domestic 796
public benefit corporation one or more experts, including an 797
investment banker, actuary, appraiser, certified public 798
accountant, or other expert, that the attorney general considers 799
reasonably necessary to provide assistance in reviewing a proposed 800
merger or consolidation under division (B)(1)(b) of this section. 801
The attorney general may extend the date of any merger or 802
consolidation of a domestic public benefit corporation under 803
division (B)(1)(b) of this section for a period not to exceed 804
sixty days and shall provide notice of that extension to the 805
domestic public benefit corporation. The notice shall set forth 806
the reasons necessitating the extension. 807

(3) No member, other than a member that is a public benefit 808
entity, or director of a domestic public benefit corporation in 809
that person's capacity as a member or director may receive or keep 810
anything as a result of a merger or consolidation other than 811
membership or directorship in the surviving or new public benefit 812
entity without the prior written consent of the attorney general 813
or of the court of common pleas of the county in this state in 814
which the principal office of the domestic public benefit 815
corporation is located that is obtained in a proceeding in which 816
the attorney general's charitable law section has been given 817
written notice by certified mail within three days of the 818
initiation of the proceeding and in which proceeding the attorney 819
general may intervene as of right. The court shall approve the 820
transaction if it is in the public interest. 821

(4) The attorney general may institute a civil action to 822

enforce the requirements of divisions (B)(1), (2), and (3) of this 823
section in the court of common pleas of the county in this state 824
in which the principal office of the domestic public benefit 825
corporation is located or in the Franklin county court of common 826
pleas. In addition to any civil remedies that may exist under 827
common law or the Revised Code, a court may rescind the 828
transaction or grant injunctive relief or impose any combination 829
of these remedies. 830

Sec. 1702.42. (A) The directors of each constituent domestic 831
corporation, upon approving an agreement of merger or 832
consolidation, shall direct that the agreement be submitted to the 833
voting members entitled to vote on it at a meeting of voting 834
members of ~~such that~~ corporation held for that purpose, ~~and~~ 835
~~notice.~~ Notice of the meeting shall be given to all members of the 836
constituent domestic corporation entitled to vote at the meeting. 837
The notice shall be accompanied by a copy or summary of the 838
material terms of the agreement. 839

(B)(1) At each meeting described in division (A) of this 840
section, a vote of the members shall be taken on the proposed 841
agreement. In order to be adopted, the agreement (~~including any~~ 842
amendments or additions to the agreement proposed at each such 843
meeting) ~~must, shall~~ receive the affirmative vote of a majority of 844
the voting members of each constituent domestic corporation 845
present at that meeting in person, by the use of authorized 846
communications equipment, by mail, or, if permitted, by proxy if a 847
quorum is present, or, if the articles or the regulations of that 848
corporation provide or permit, the affirmative vote of a greater 849
or lesser proportion or number of the voting members, and the 850
affirmative vote of the voting members of any particular class 851
that is required by the articles or the regulations of ~~such that~~ 852
corporation. If the agreement would effect or authorize any 853
particular corporate action that, under any applicable provision 854

of law or under the ~~existing~~ articles of ~~one or more of the~~ 855
~~constituent corporations~~, could be effected or authorized only by 856
or pursuant to a specified vote of ~~voting the~~ members, the 857
agreement ~~(, including any amendments or additions to the~~ 858
~~agreement proposed at each such meeting)~~ in order to, shall be 859
adopted ~~must receive~~ by the same affirmative vote ~~so specified as~~ 860
would be required for that action. 861

(2) For purposes of division (B)(1) of this section, 862
participation by a voting member at a meeting through the use of 863
any of the means of communication described in that division 864
constitutes presence in person of that voting member at the 865
meeting for purposes of determining a quorum. 866

(C) At any time prior to the filing of the agreement, the 867
merger or consolidation may be abandoned by the directors of one 868
or more of the constituent domestic corporations or the comparable 869
representatives of any other constituent entity, if the power of 870
abandonment is conferred ~~upon those directors~~ either by the 871
agreement or by the same vote ~~of voting members of each of the~~ 872
~~constituent corporations and at the same meetings as those~~ 873
~~referred to in division (B) of this section or at subsequent~~ 874
meetings or action as is required to adopt that agreement. 875

Sec. 1702.43. (A) Upon adoption by each constituent 876
~~corporation~~ entity of an agreement of merger or consolidation 877
pursuant to section ~~1702.42~~ 1702.41 or ~~1702.45~~ 1702.411 of the 878
Revised Code, a certificate of merger or consolidation, signed by 879
any authorized representative of each constituent ~~corporation~~ 880
entity, shall be filed with the secretary of state. The 881
certificate shall be on a form prescribed by the secretary of 882
state and shall set forth only the information required by this 883
section. 884

(1) The certificate of merger or consolidation shall set 885

forth all of the following: 886

(a) The name of each constituent entity and the state under 887
whose laws each constituent entity exists; 888

(b) A statement that each constituent entity has complied 889
with all of the laws under which it exists and that the laws 890
permit the merger or consolidation; 891

(c) The name and mailing address of the person or entity that 892
is to provide, in response to any written request made by a member 893
or other person, a copy of the agreement of merger or 894
consolidation; 895

(d) The effective date of the merger or consolidation, which 896
date may be on or after the date of the filing of the certificate; 897

(e) The signature of each representative authorized to sign 898
the certificate on behalf of each constituent entity and the 899
office each representative authorized to sign holds or the 900
capacity in which the representative is acting; 901

(f) A statement that the agreement of merger or consolidation 902
is authorized on behalf of each constituent entity and that each 903
person who signed the certificate on behalf of each entity is 904
authorized to do so; 905

(g) In the case of a merger, a statement that one or more 906
specified constituent entities will be merged into a specified 907
surviving entity or, in the case of a consolidation, a statement 908
that the constituent entities will be consolidated into a new 909
entity; 910

(h) In the case of a merger, if the surviving entity is a 911
foreign entity not licensed to transact business in this state, 912
the name and address of the statutory agent upon whom any process, 913
notice, or demand may be served; 914

(i) In the case of a consolidation, the name and address of 915

the statutory agent upon whom any process, notice, or demand 916
against any constituent entity or the new entity may be served. 917

(2) In the case of a consolidation into a new domestic 918
corporation, the certificate of consolidation shall be accompanied 919
by a copy of the articles of incorporation of the new domestic 920
corporation. 921

(3) In the case of a merger into a domestic corporation, the 922
certificate of merger shall be accompanied by a copy of any 923
amendments to the articles of incorporation of the surviving 924
domestic corporation. 925

(4) If the surviving or new entity is a foreign entity that 926
desires to transact business in this state as a foreign 927
corporation, limited liability company, limited partnership, or 928
unincorporated association, the certificate of merger or 929
consolidation shall ~~contain a statement to that effect and a~~ 930
~~statement with respect to the appointment of the statutory agent~~ 931
~~and with respect to the consent to service of any process, notice,~~ 932
~~or demand upon that statutory agent or the secretary of state, as~~ 933
~~required when a foreign corporation applies for a certificate~~ 934
~~authorizing it to transact business in this state~~ be accompanied 935
by the information required by division (A)(3)(h), (i), (j), or 936
(k) of section 1702.411 of the Revised Code, whichever is 937
applicable. 938

(5) If a domestic or foreign corporation licensed to transact 939
business in this state is a constituent entity and the surviving 940
or new entity resulting from the merger or consolidation is not a 941
domestic or foreign corporation that is to be licensed to transact 942
business in this state, the certificate of merger or consolidation 943
shall be accompanied by the affidavits, receipts, certificates, or 944
other evidence required by division (G) of section 1702.47 of the 945
Revised Code, with respect to each domestic corporation, and by 946
the affidavits, receipts, certificates, or other evidence required 947

by division (C) or (D) of section 1703.17 of the Revised Code, 948
with respect to each foreign constituent corporation licensed to 949
transact business in this state. 950

(B) If any constituent entity in a merger or consolidation is 951
organized or formed under the laws of a state other than this 952
state or under any chapter of the Revised Code other than this 953
chapter, there also shall be filed in the proper office all 954
documents that are required to be filed in connection with the 955
merger or consolidation by the laws of that state or by that 956
chapter. 957

(C) Upon the filing of a certificate of merger or 958
consolidation and other filings as described in division (B) of 959
this section, or at ~~such a~~ later date as that the certificate of 960
merger or consolidation specifies, the merger or consolidation 961
shall become effective. 962

(D) The secretary of state shall furnish, upon request and 963
payment of the fee specified in division (D) of section 111.16 of 964
the Revised Code, a certificate setting forth the name and form of 965
each constituent entity and the state under whose laws each 966
constituent entity existed prior to the merger or consolidation, 967
the name and form of the surviving or new entity and the state 968
under whose laws the surviving entity exists or the new entity is 969
to exist, the date of filing of the certificate of merger or 970
consolidation with the secretary of state, and the effective date 971
of the merger or consolidation. The certificate of the secretary 972
of state or a copy of the merger or consolidation certified by the 973
secretary of state may be filed for record in the office of the 974
recorder of any county in this state and, if filed, shall be 975
recorded in the records of deeds for that county. For that 976
recording, the county recorder shall charge and collect the same 977
fee as in the case of deeds. 978

Sec. 1702.44. (A) When ~~such~~ a merger or consolidation becomes 979
effective, all of the following apply: 980

~~(A)(1)~~ The separate existence of ~~all the~~ each constituent 981
~~corporations, except~~ entity other than the surviving ~~or new~~ 982
~~corporation,~~ entity in a merger shall cease, except that, whenever 983
a conveyance, assignment, transfer, deed, or other instrument, or 984
act, is necessary to vest property or rights in the surviving or 985
new ~~corporation~~ entity, the officers, general partners, or other 986
authorized representatives of the respective constituent 987
~~corporation~~ entities shall execute, acknowledge, and deliver ~~such~~ 988
those instruments, and do ~~such~~ those acts, ~~and for such.~~ For these 989
purposes, the existence of the constituent ~~corporations~~ entities 990
and the authority of their respective officers ~~and~~ directors 991
~~shall be deemed, general partners, or other authorized~~ 992
representatives is continued notwithstanding the merger or 993
consolidation. 994

~~(B)~~ The constituent corporations shall become a single 995
corporation which, in the case of a merger, shall be that one of 996
the constituent corporations designated in the agreement of merger 997
as the surviving corporation and, in the case of a consolidation, 998
shall be the new corporation provided for in the agreement of 999
consolidation. 1000

~~(C)~~ The surviving or new corporation shall have all the 1001
rights, privileges, immunities, powers, franchises, and authority 1002
and shall be subject to all the obligations of a corporation 1003
formed under this chapter. 1004

~~(D).~~ 1005

(2) In the case of a merger in which the surviving entity is 1006
a domestic corporation, the articles of the domestic surviving 1007
corporation in effect immediately prior to the time the merger 1008
becomes effective shall continue as its articles after the merger 1009

except as otherwise provided in the agreement of merger. In the 1010
case of a consolidation, the new entity exists when the 1011
consolidation becomes effective, and, if it is a domestic 1012
corporation, the articles contained in or provided for in the 1013
agreement of consolidation shall be its original articles. 1014

(3) The surviving or new corporation shall thereupon and 1015
thereafter possess entity possesses all assets and property of 1016
every description and every interest in the assets and property, 1017
wherever located, the rights, privileges, immunities, powers, 1018
franchises, and authority, as well of a public as well as of a 1019
private nature, of each of the constituent corporations; and all 1020
property of every description, and every interest therein entity, 1021
and all obligations, of or belonging to or due to each of the 1022
constituent corporations, shall thereafter be taken and deemed to 1023
be transferred to and entity, all of which are vested in the 1024
surviving or new corporation entity without further act or deed 1025
and any. Any right or interest in respect to any past or future 1026
devise, bequest, conditional gift, or trust, property, or fund 1027
restricted to particular uses, when vested in or claimed by such 1028
the surviving or new corporation entity as a result of such the 1029
merger or consolidation, shall belong to it as a continuation 1030
without interruption of the existence and identity of the 1031
constituent organization entity originally named as taker or 1032
beneficiary; and. The surviving or new entity possesses title to 1033
any real estate, or any interest therein, in the real estate 1034
vested in any of the constituent corporations entities. Title to 1035
any real estate or any interest in the real estate vested in any 1036
constituent entity shall not revert or in any way be impaired by 1037
reason of such the merger or consolidation. 1038

(E) To the extent permitted by the laws of any other state in 1039
which any constituent corporation has property, the provisions of 1040
division (D) of this section apply in such state; 1041

~~(F)(4)~~ The surviving or new ~~corporation shall thenceforth be~~ 1042
entity is liable for all of the obligations of each ~~of the~~ 1043
~~constituent corporations; and any~~ entity. Any claim existing or 1044
any action or proceeding pending by or against any ~~of the~~ 1045
~~constituent corporations~~ entity may be prosecuted to judgment, 1046
with right of appeal ~~as in other cases~~, as if ~~such~~ the merger or 1047
consolidation had not taken place, or the surviving or new 1048
~~corporation~~ entity may be substituted in its place~~+~~. 1049

~~(G)(5)~~ All of the rights of creditors of each constituent 1050
~~corporation shall be~~ entity are preserved unimpaired, and all 1051
liens upon the property of any ~~of the~~ constituent ~~corporations~~ 1052
~~shall be~~ entity are preserved unimpaired, ~~limited in lien to on~~ 1053
only the property affected by ~~such~~ those liens immediately prior 1054
to the effective date of the merger or consolidation~~+~~ 1055

~~(H)~~ ~~The agreement shall operate as amended articles in the~~ 1056
~~ease of a merger and as original articles in the case of~~ 1057
~~consolidation. If a general partner of a constituent partnership~~ 1058
~~is not a general partner of the surviving entity or the new entity~~ 1059
~~resulting from the merger or consolidation, the former general~~ 1060
~~partner has no liability for any obligation incurred after the~~ 1061
~~merger or consolidation except to the extent that a former~~ 1062
~~creditor of the constituent partnership in which the former~~ 1063
~~general partner was a partner extends credit to the surviving or~~ 1064
~~new entity reasonably believing that the former general partner~~ 1065
~~continued as a general partner of the surviving or new entity.~~ 1066

(B) If a general partner of a constituent partnership is not 1067
a general partner of the surviving entity or the new entity 1068
resulting from the merger or consolidation, division (B) of 1069
section 1782.434 of the Revised Code applies. 1070

(C) In the case of a merger of a domestic constituent 1071
corporation into a foreign surviving corporation, limited 1072
liability company, limited partnership, or unincorporated 1073

association that is not licensed or registered to transact 1074
business in this state or in the case of a consolidation of a 1075
domestic constituent corporation into a new foreign corporation, 1076
limited liability company, limited partnership, or unincorporated 1077
association, if the surviving or new entity intends to transact 1078
business in this state and the certificate of merger or 1079
consolidation is accompanied by the information described in 1080
division (A)(4) of section 1702.43 of the Revised Code, the 1081
surviving or new entity shall be considered on the effective date 1082
of the merger or consolidation to have complied with the 1083
requirements for procuring a license or for registering to 1084
transact business in this state as a foreign corporation, limited 1085
liability company, limited partnership, or unincorporated 1086
association, as the case may be. In that case, a copy of the 1087
certificate of merger or consolidation certified by the secretary 1088
of state constitutes the license certificate prescribed by the 1089
laws of this state for a foreign corporation transacting business 1090
in this state or the application for registration prescribed for a 1091
foreign limited partnership, limited liability company, or 1092
unincorporated association. 1093

(D) Any action to set aside any merger or consolidation on 1094
the ground that any section of the Revised Code applicable to the 1095
merger or consolidation has not been complied with shall be 1096
brought within ninety days after the effective date of that merger 1097
or consolidation or be forever barred. 1098

(E) As used in this section, "corporation" or "entity" 1099
applies to both domestic and foreign corporations or entities if 1100
the context so permits. In the case of a foreign constituent 1101
entity or a foreign new entity, this section is subject to the 1102
laws of the state under the laws of which the entity exists or in 1103
which it has property. 1104

Sec. 1702.46. ~~(A)~~ Upon the filing of the certificate of 1105
merger or consolidation in compliance with the laws of each state 1106
under the laws of which any constituent ~~corporation~~ entity exists, 1107
or at ~~such any~~ later date ~~as~~ that the certificate specifies, the 1108
merger or consolidation shall become effective. 1109

~~(B) The effect of such merger or consolidation, if the 1110
surviving or new corporation is to be a domestic corporation, 1111
shall be the same as in the case of the merger or consolidation of 1112
domestic corporations. If the surviving or new corporation is to 1113
be a foreign corporation:~~ 1114

~~(1) The surviving or new corporation shall thenceforth be 1115
liable for all the obligations of each of the constituent 1116
corporations:~~ 1117

~~(2) All the rights of creditors of each constituent 1118
corporation shall be preserved unimpaired, and all liens upon the 1119
property of any of the constituent corporations shall be preserved 1120
unimpaired, limited in lien to the property affected by such liens 1121
immediately prior to the effective date of the merger or 1122
consolidation:~~ 1123

~~(3) The effect of such merger or consolidation shall, in all 1124
other respects, be the same as in the case of the merger or 1125
consolidation of domestic corporations except insofar as the laws 1126
of such other state otherwise provide.~~ 1127

~~(C) If the surviving or new corporation is to be a foreign 1128
corporation and if the certificate states that the surviving or 1129
new corporation desires to exercise its corporate privileges in 1130
this state as a foreign corporation in a continual course of 1131
transactions, the surviving or new corporation shall, when the 1132
merger or consolidation becomes effective, be deemed to have 1133
complied with the requirements for procuring a certificate 1134
authorizing it to do so, and a copy of the certificate of merger 1135~~

~~or consolidation, certified by the secretary of state of this~~ 1136
~~state, shall be considered and accepted as the license certificate~~ 1137
~~prescribed by the laws of this state for a foreign corporation~~ 1138
~~exercising its corporate privileges in this state in a continual~~ 1139
~~course of transactions.~~ 1140

Sec. 1745.05. As used in this chapter, unless the context 1141
otherwise requires: 1142

(A) "Authorized communications equipment" means any 1143
communications equipment that provides a transmission, including, 1144
but not limited to, by telephone, telecopy, or any electronic 1145
means, from which it can be determined that the transmission was 1146
authorized by, and accurately reflects the intention of, the 1147
member or manager involved and, with respect to meetings, allows 1148
all persons participating in the meeting to contemporaneously 1149
communicate with each other. 1150

(B)(1) "Entity" means any of the following: 1151

(a) An unincorporated nonprofit association existing under 1152
the laws of this state or any other state; 1153

(b) A nonprofit corporation existing under the laws of this 1154
state or any other state; 1155

(c) A for profit corporation existing under the laws of this 1156
state or any other state; 1157

(d) Any of the following organizations existing under the 1158
laws of this state, the United States, or any other state: 1159

(i) An unincorporated business or for profit organization, 1160
including a general or limited partnership; 1161

(ii) A limited liability company; 1162

(iii) Any other legal or commercial entity the formation and 1163
operation of which is governed by statute. 1164

| | |
|---|--|
| <u>(2) "Entity" includes a domestic or foreign entity.</u> | 1165 |
| <u>(C) "Established practices" means the practices used by an unincorporated nonprofit association without material change during the most recent five years of its existence or, if it has existed for less than five years, during its entire existence.</u> | 1166 1167 1168 1169 |
| <u>(D) "Governing principles" means all agreements, whether oral, in a record, or implied from its established practices, or any combination of them, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. "Governing principles" includes any amendment or restatement of the agreements constituting the governing principles.</u> | 1170 1171 1172 1173 1174 1175 1176 |
| <u>(E) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.</u> | 1177 1178 |
| <u>(F) "Manager" means a person, irrespective of the person's designation as director or other designation, that is responsible, alone or in concert with others, for the management of an unincorporated nonprofit association as stated in division (E) of section 1745.32 of the Revised Code.</u> | 1179 1180 1181 1182 1183 |
| <u>(G) "Member" means a person that, under the governing principles of an unincorporated nonprofit association, is entitled to participate in the selection of persons authorized to manage the affairs of the association or in the adoption of the policies and activities of the association.</u> | 1184 1185 1186 1187 1188 |
| <u>(H) "Mutual benefit association" means any unincorporated nonprofit association organized under this chapter other than a public benefit association.</u> | 1189 1190 1191 |
| <u>(I) "Person" means an individual, corporation, business trust, statutory entity trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, public corporation, government or governmental subdivision, agency, or</u> | 1192 1193 1194 1195 |

instrumentality, two or more persons having a joint or common 1196
interest, or any other legal or commercial entity. 1197

(J) "Public benefit association" means an unincorporated 1198
nonprofit association that is exempt from federal income taxation 1199
under section 501(c)(3) of the Internal Revenue Code or is 1200
organized for a public or charitable purpose and that upon 1201
dissolution must distribute its assets to a public benefit 1202
association, the United States, a state or any political 1203
subdivision of a state, or a person that is recognized as exempt 1204
from federal income taxation under section 501(c)(3) of the 1205
Internal Revenue Code. 1206

(K) "Public benefit entity" means an entity that is 1207
recognized as exempt from federal income taxation under section 1208
501(c)(3) of the Internal Revenue Code or is organized for a 1209
public or charitable purpose and that upon dissolution must 1210
distribute its assets to a public benefit entity, the United 1211
States, a state or any political subdivision of a state, or a 1212
person that is recognized as exempt from federal income taxation 1213
under section 501(c)(3) of the Internal Revenue Code. "Public 1214
benefit entity" does not include an entity that is organized by 1215
one or more municipal corporations to further a public purpose 1216
that is not a charitable purpose. 1217

(L) "Record" means information that is inscribed on a 1218
tangible medium or that is stored in an electronic or other medium 1219
and is retrievable in perceivable form. 1220

(M) "Unincorporated nonprofit association" means an 1221
unincorporated organization, consisting of two or more members 1222
joined by mutual consent pursuant to an agreement, written, oral, 1223
or inferred from conduct, for one or more common, nonprofit 1224
purposes. "Unincorporated nonprofit association" does not include 1225
any of the following: 1226

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|---|------|
| <u>(1) A trust;</u> | 1227 |
| <u>(2) A marriage, domestic partnership, common law relationship, or other domestic living arrangement;</u> | 1228 |
| <u>(3) An organization that is formed under any other statute that governs the organization and operation of unincorporated associations;</u> | 1230 |
| <u>(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;</u> | 1233 |
| <u>(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.</u> | 1236 |
| <u>(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:</u> | 1240 |
| <u>(a) Performs services for or on behalf of, and under the authority or auspices of, that unincorporated nonprofit association;</u> | 1244 |
| <u>(b) Does not receive compensation, either directly or indirectly, for performing those services.</u> | 1247 |
| <u>(2) For purposes of division (N)(1) of this section, "compensation" does not include any of the following:</u> | 1249 |
| <u>(a) Actual and necessary expenses that are incurred by a volunteer in connection with the services performed for an unincorporated nonprofit association and that are reimbursed to the volunteer or otherwise paid;</u> | 1251 |
| <u>(b) Insurance premiums paid on behalf of a volunteer, and amounts paid or reimbursed, pursuant to divisions (A) and (G) of</u> | 1255 |

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|---|------|
| <u>section 1745.43 of the Revised Code;</u> | 1257 |
| <u>(c) Modest perquisites.</u> | 1258 |
| <u>Sec. 1745.06. (A) Principles of law and equity supplement</u> | 1259 |
| <u>this chapter unless displaced by a particular provision of this</u> | 1260 |
| <u>chapter.</u> | 1261 |
| <u>(B) A statute in this state governing a particular type of</u> | 1262 |
| <u>unincorporated nonprofit association prevails over an inconsistent</u> | 1263 |
| <u>provision in this chapter to the extent of the inconsistency.</u> | 1264 |
| <u>(C) This chapter supplements all regulatory laws that are</u> | 1265 |
| <u>applicable to nonprofit organizations operating in this state. In</u> | 1266 |
| <u>the event of a conflict, those regulatory laws prevail.</u> | 1267 |
| <u>Sec. 1745.07. (A) Except as otherwise provided in division</u> | 1268 |
| <u>(B) of this section, the law of this state governs all</u> | 1269 |
| <u>unincorporated nonprofit associations formed or operating in this</u> | 1270 |
| <u>state.</u> | 1271 |
| <u>(B) Unless the governing principles of an unincorporated</u> | 1272 |
| <u>nonprofit association specify a different jurisdiction, the law of</u> | 1273 |
| <u>the jurisdiction in which the association has its main place of</u> | 1274 |
| <u>activities governs the internal affairs of the association.</u> | 1275 |
| <u>Sec. 1745.08. All of the following apply to an unincorporated</u> | 1276 |
| <u>nonprofit association:</u> | 1277 |
| <u>(A) It is a legal entity distinct from its members and</u> | 1278 |
| <u>managers.</u> | 1279 |
| <u>(B) It has perpetual duration unless its governing principles</u> | 1280 |
| <u>specify otherwise.</u> | 1281 |
| <u>(C) It has the same powers as an individual to do all things</u> | 1282 |
| <u>necessary or convenient to carry on its activities.</u> | 1283 |
| <u>(D) It may engage in profit-making activities, but any</u> | 1284 |

profits from those activities shall be used or set aside for the 1285
association's nonprofit purposes. 1286

Sec. 1745.09. An unincorporated nonprofit association may 1287
acquire, hold, encumber, or transfer in its name an estate or 1288
interest in real or personal property. An unincorporated nonprofit 1289
association may be a legatee, a devisee, or a beneficiary of a 1290
trust or contract. All property acquired by an unincorporated 1291
nonprofit association by purchase, gift, devise, bequest, or 1292
otherwise shall be the absolute property of the association, 1293
unless it is otherwise specified in writing at the time of 1294
acquiring that property. 1295

Sec. 1745.10. A debt, obligation, or other liability of an 1296
unincorporated nonprofit association, whether arising in contract, 1297
tort, or otherwise, is solely the debt, obligation, or other 1298
liability of the association and does not become the debt, 1299
obligation, or other liability of a member or manager solely 1300
because the member acts as a member or the manager acts as a 1301
manager. A person's status as a member or a manager of an 1302
unincorporated nonprofit association does not prevent or restrict 1303
any law other than this chapter from imposing liability on the 1304
person or association because of the person's conduct. 1305

Sec. 1745.11. An unincorporated nonprofit association has the 1306
capacity to sue and be sued in its own name. A member or a manager 1307
of an unincorporated nonprofit association may assert a claim that 1308
the member or manager has against the association. An 1309
unincorporated nonprofit association may assert a claim that it 1310
has against a member or a manager of the association. 1311

Sec. 1745.12. All assets, property, funds, and rights or 1312
interests, at law or in equity, of any unincorporated nonprofit 1313

association shall be subject to judgment, execution, and other 1314
process. A money judgment against an unincorporated nonprofit 1315
association shall be enforced only against the association as an 1316
entity and shall not be enforceable against the property of any 1317
manager or member of the association. 1318

Sec. 1745.13. (A) An unincorporated nonprofit association may 1319
file in the office of the secretary of state a statement 1320
appointing an agent authorized to receive service of process. The 1321
statement appointing an agent shall set forth the name of the 1322
unincorporated nonprofit association and the name and address in 1323
this state of the agent, including the street and number or other 1324
particular description, and shall otherwise be in the form that 1325
the secretary of state prescribes. The secretary of state shall 1326
keep a record of the names of all unincorporated nonprofit 1327
associations that have filed a statement appointing an agent 1328
authorized to receive service of process and the names and 1329
addresses of their respective agents. 1330

(B) A statement appointing an agent authorized to receive 1331
service of process under division (A) of this section shall be 1332
signed by a person authorized to manage the affairs of the 1333
unincorporated nonprofit association. The statement also shall be 1334
signed by the person appointed as agent who accepts the 1335
appointment. The appointed agent may resign by filing with the 1336
secretary of state, on a form prescribed by the secretary of 1337
state, a written notice to that effect that is signed by the agent 1338
and by sending a copy of the notice to the association at the 1339
current or last known address of its principal office on or prior 1340
to the date that the notice is filed with the secretary of state. 1341

(C) An unincorporated nonprofit association may revoke the 1342
appointment of an agent by filing with the secretary of state on a 1343
form prescribed by the secretary of state a written appointment of 1344

another agent and a statement that the appointment of the former 1345
agent is revoked. 1346

Sec. 1745.14. In an action or proceeding against an 1347
unincorporated nonprofit association, a summons and complaint or 1348
other process may be served on an agent authorized by appointment 1349
to receive service of process or a manager of the association or 1350
in any other manner authorized by the law of this state. 1351

Sec. 1745.15. An action or proceeding against an 1352
unincorporated nonprofit association does not abate merely because 1353
of a change in its members or managers. 1354

Sec. 1745.16. Unless otherwise provided by law, the venue of 1355
an action against an unincorporated nonprofit association brought 1356
in this state shall be determined under the statutes applicable to 1357
an action brought in this state against a nonprofit corporation. 1358

Sec. 1745.17. A member of an unincorporated nonprofit 1359
association is not an agent of the association solely by reason of 1360
being a member. 1361

Sec. 1745.18. Except as otherwise provided in its governing 1362
principles, an unincorporated nonprofit association shall have the 1363
approval of its members to do any of the following: 1364

(A) Admit, suspend, dismiss, or expel a member; 1365

(B) Select or dismiss a manager; 1366

(C) Adopt, amend, or repeal its governing principles; 1367

(D) Sell, lease, exchange, or otherwise dispose of all or 1368
substantially all of the association's property, with or without 1369
the association's goodwill, outside the ordinary course of its 1370
activities; 1371

(E) Dissolve under section 1745.50 of the Revised Code or
merge or consolidate under section 1745.46 or 1745.461 of the
Revised Code; 1372
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(F) Undertake any other act outside the ordinary course of
the association's activities if the association has annual gross
receipts of less than twenty-five thousand dollars; 1375
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(G) Determine the purposes of the association and, if the
association has annual gross receipts of less than twenty-five
thousand dollars, determine the policies of the association; 1378
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(H) Do any other act or exercise any right that requires
action by the members under the governing principles. 1381
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Sec. 1745.19. (A) Unless another form of notice is required
by the governing principles of an unincorporated nonprofit
association or by applicable law, any notice required by this
chapter shall be in writing and shall be delivered personally or
sent by telegram, by the use of authorized communications
equipment, or by United States mail, express mail, or courier
service, with postage or fees prepaid. 1383
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(B) In computing the period of time for the giving of a
notice required or permitted under this chapter or under the
governing principles of an unincorporated nonprofit association or
a resolution of its members or managers, the day on which the
notice is given shall be excluded, and the day when the act for
which the notice is given is to be done shall be included, unless
the instrument calling for the notice provides otherwise. If
notice is given by personal delivery or transmitted by telegram or
by the use of authorized communications equipment, the notice
shall be considered to have been given when it is delivered or
transmitted. If notice is sent by United States mail, express
mail, or courier service, the notice shall be considered to have
been given when it is deposited in the mail or with the courier 1390
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service. 1403

(C) A written notice or report delivered as part of a 1404
newsletter, magazine, or other publication regularly sent to 1405
members shall constitute a written notice or report if addressed 1406
or delivered to the member's address shown in the unincorporated 1407
nonprofit association's current list of members, or, in the case 1408
of members who are residents of the same household and who have 1409
the same address in the association's current list of members, if 1410
addressed or delivered to one of those members at the address 1411
appearing on the association's current list of members. 1412

Sec. 1745.20. (A) An unincorporated nonprofit association 1413
shall maintain a record of its members containing the name and 1414
address of each member and, if members are classified, the class 1415
to which the member belongs. 1416

(B) A member of an unincorporated nonprofit association may 1417
be suspended, dismissed, or expelled as provided in division (A) 1418
of section 1745.29 of the Revised Code or may resign as provided 1419
in division (A) of section 1745.30 of the Revised Code. Upon the 1420
suspension or termination of membership, that fact and the date of 1421
the suspension or termination shall be recorded in the 1422
association's membership records. 1423

(C) Unless the governing principles provide otherwise, all 1424
rights and privileges of a member in an unincorporated nonprofit 1425
association and its property shall cease on termination of 1426
membership. 1427

(D) Whenever the number of members of an unincorporated 1428
nonprofit association that, under the law or its governing 1429
principles, must have a specified number of members is reduced 1430
below the specified number, the unincorporated nonprofit 1431
association shall not be required because of that reduction to 1432
cease carrying on its activities, but the continuing members may 1433

fill all vacancies. 1434

(E) Unless otherwise provided in the governing principles of an unincorporated nonprofit association, all members have the same membership rights and privileges. 1435
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(F) All members of an unincorporated nonprofit association shall exercise their membership rights and privileges consistent with the obligation of good faith and fair dealing. 1438
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Sec. 1745.21. (A) Unless the governing principles provide otherwise, meetings of voting members of an unincorporated nonprofit association may be called by any of the following: 1441
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(1) The president or, in case of the president's absence, death, or disability, the vice-president authorized to exercise the authority of the president; 1444
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(2) The manager or managers by action at a meeting, or a majority of the managers acting without a meeting; 1447
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(3) The lesser of ten per cent of the voting members or twenty-five of the voting members, unless the governing principles specify for that purpose a smaller or larger proportion or number, but not in excess of fifty per cent of the voting members; 1449
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(4) Any other officers or persons that the governing principles authorize to call those meetings. 1453
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(B) If so provided in the governing principles, meetings of voting members may be held either within or outside this state or solely by means of authorized communications equipment. 1455
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(C) Unless the governing principles provide otherwise, the voting members and proxyholders who are not physically present at a meeting of voting members may attend the meeting by the use of authorized communications equipment that enables the voting members and proxyholders an opportunity to participate in the meeting and to vote on matters submitted to the voting members, 1458
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including an opportunity to read or hear the proceedings of the 1464
meeting, participate in the proceedings, and contemporaneously 1465
communicate with the persons who are physically present at the 1466
meeting. Any voting member who uses authorized communications 1467
equipment under this division is considered to be present in 1468
person at the meeting whether the meeting is held at a designated 1469
place or solely by means of authorized communications equipment. 1470
The members or managers may adopt procedures and guidelines for 1471
the use of authorized communications equipment in connection with 1472
a meeting of voting members to permit the unincorporated nonprofit 1473
association to verify that a person is a voting member or 1474
proxyholder and to maintain a record of any vote or other action 1475
taken at the meeting. 1476

Sec. 1745.22. Unless the governing principles provide for 1477
notice of meetings otherwise than as provided in this section, 1478
written notice stating the place, if any, and the time of a 1479
meeting, the means, if any, by which the voting members can be 1480
present and vote at the meeting through the use of authorized 1481
communications equipment, and in case of a special meeting the 1482
purpose or purposes for which the meeting is called, shall be 1483
given in the manner described in section 1745.19 of the Revised 1484
Code, to each member entitled to notice of the meeting not less 1485
than ten and not more than sixty days before the date of the 1486
meeting. The notice of the meeting shall be given by or at the 1487
direction of the president, the secretary, or any other person 1488
required or permitted by the governing principles to give notice 1489
or by the officers or persons calling the meeting. If mailed or 1490
sent by overnight delivery service, that notice shall be addressed 1491
to the member at the member's address as it appears on the records 1492
of the unincorporated nonprofit association. If sent by means of 1493
authorized communications equipment, that notice shall be sent to 1494
the address furnished by the voting member for transmissions by 1495

authorized communications equipment. Notice of adjournment of a 1496
meeting need not be given if the place, if any, and the time to 1497
which it is adjourned and the procedure by which the voting 1498
members can be present and vote at the adjourned meeting through 1499
the use of authorized communications equipment are fixed and 1500
announced at the meeting. 1501

Sec. 1745.23. (A) Notice of the place, if any, the time, and 1502
the purpose or purposes of any meeting of voting members or 1503
managers, as the case may be, whether required by law or the 1504
governing principles may be waived in writing, either before or 1505
after the holding of that meeting, by any member or any manager. 1506
That writing shall be filed with or entered upon the records of 1507
the meeting. A transmission by authorized communications equipment 1508
that contains a waiver is a writing for purposes of this division. 1509

(B) If a member or manager attends a meeting described in 1510
division (A) of this section without protesting prior to or at the 1511
commencement of the meeting, then the lack of proper notice shall 1512
be considered to be a waiver by the member or manager of notice of 1513
the meeting. 1514

(C) Unless the governing principles provide otherwise, a 1515
member shall be considered in attendance at a meeting described in 1516
division (A) of this section if the member is present in person, 1517
by the use of authorized communications equipment, by mail, or, if 1518
permitted, by proxy. Unless the governing principles provide 1519
otherwise, a manager shall be considered in attendance at a 1520
meeting described in division (A) of this section if the manager 1521
is present in person or by the use of authorized communications 1522
equipment. 1523

Sec. 1745.24. Unless the governing principles provide 1524
otherwise, the following apply: 1525

(A) The voting members present in person, by the use of 1526
authorized communications equipment, by mail, or, if permitted, by 1527
proxy at any meeting of voting members shall constitute a quorum 1528
for the meeting. 1529

(B) The affirmative vote of a majority of the voting members 1530
present at a meeting at which a quorum is present as provided in 1531
division (A) of this section shall be necessary for the 1532
authorization or taking of any action voted upon by the members, 1533
except that no action required by law or by the governing 1534
principles to be authorized or taken by a specified proportion or 1535
number of the voting members or of any class of voting members may 1536
be authorized or taken by a lesser proportion or number. 1537

Sec. 1745.25. (A) Except as otherwise provided in the 1538
governing principles, each member, regardless of class, shall be 1539
entitled to one vote on each matter properly submitted to the 1540
members for their vote, consent, waiver, release, or other action. 1541

(B) Unless the governing principles provide otherwise, voting 1542
at elections and votes on other matters may be conducted by mail 1543
or by the use of authorized communications equipment. 1544

(C) Participation by a member in a meeting through the use of 1545
any of the means of communication described in division (B) of 1546
this section constitutes presence in person of that member at the 1547
meeting. The members or managers may adopt procedures and 1548
guidelines for the use of authorized communications equipment to 1549
permit the unincorporated nonprofit association to verify that a 1550
person is a voting member and to maintain a record of any vote. 1551

(D) Unless the governing principles provide otherwise, no 1552
member who is a natural person shall vote or act by proxy. 1553

Sec. 1745.26. Whenever with respect to the authorization or 1554
taking of any action by the members or the managers the governing 1555

principles require the vote, consent, waiver, or release of a 1556
greater proportion or number of the members or the managers than 1557
that otherwise required by law with respect to that authorization 1558
or taking of the action, the provisions of the governing 1559
principles shall control. 1560

Sec. 1745.27. The authorization or taking of any action by 1561
vote, consent, waiver, or release of the members may be rescinded 1562
or revoked by the same vote, consent, waiver, or release as at the 1563
time of rescission or revocation would be required to authorize or 1564
take that action in the first instance, subject to the contract 1565
rights of other persons. 1566

Sec. 1745.28. (A) Unless the governing principles prohibit 1567
the authorization or taking of any action of the members or the 1568
managers without a meeting, any action that may be authorized or 1569
taken at a meeting of the members or the managers, as the case may 1570
be, may be authorized or taken without a meeting with the 1571
affirmative vote or approval of, and in a writing or writings 1572
signed by, all of the members or all of the managers, as the case 1573
may be, who would be entitled to notice of a meeting for that 1574
purpose, or, in the case of members, any other proportion or 1575
number of voting members, not less than a majority, that the 1576
governing principles permit. The writing or writings described in 1577
this division shall be filed with or entered upon the records of 1578
the unincorporated nonprofit association. Any certificate with 1579
respect to the authorization or taking of any action described in 1580
this division that is required to be filed in the office of the 1581
secretary of state shall recite that the authorization or taking 1582
of that action was in a writing or writings approved and signed as 1583
specified in this section. 1584

(B) Any transmission by authorized communications equipment 1585

that contains an affirmative vote or approval of the person 1586
described in division (A) of this section is a signed writing for 1587
purposes of this section. The date on which that transmission by 1588
authorized communications equipment is sent is the date on which 1589
the writing is signed. 1590

Sec. 1745.29. (A) A person becomes a member of an 1591
unincorporated nonprofit association and may be suspended, 1592
dismissed, or expelled in accordance with the association's 1593
governing principles. If there are no applicable governing 1594
principles, a person may become a member or be suspended, 1595
dismissed, or expelled from an unincorporated nonprofit 1596
association by a vote of its members. A person may not be admitted 1597
as a member of an unincorporated nonprofit association without the 1598
person's consent. 1599

(B) Unless the governing principles provide otherwise, the 1600
suspension, dismissal, or expulsion of a member of an 1601
unincorporated nonprofit association does not relieve the member 1602
from any unpaid capital contribution, dues, assessments, fees, or 1603
other obligation incurred or commitment made by the member before 1604
the suspension, dismissal, or expulsion. 1605

Sec. 1745.30. (A) A member may resign from membership in an 1606
unincorporated nonprofit association in accordance with the 1607
governing principles. In the absence of applicable governing 1608
principles, a member may resign at any time. 1609

(B) Unless the governing principles provide otherwise, 1610
resignation of a member of an unincorporated nonprofit association 1611
does not relieve the member from any unpaid capital contribution, 1612
dues, assessments, fees, or other obligation incurred or 1613
commitment made by the member before the resignation. 1614

Sec. 1745.31. Except as otherwise provided in the governing 1615

principles, any interest or right of the member under the 1616
governing principles is not transferable. 1617

Sec. 1745.32. Except as otherwise provided in this chapter or 1618
the governing principles, all of the following apply: 1619

(A) The members of an unincorporated nonprofit association 1620
may select the manager or managers. 1621

(B) A manager may be a member of the association. 1622

(C) If no manager is selected, all members are managers. 1623

(D) Each manager has equal rights in the management and 1624
conduct of the association's activities. 1625

(E) All matters relating to the association's activities are 1626
decided by its managers, except for those matters reserved for 1627
approval by members as specified in section 1745.18 of the Revised 1628
Code. 1629

(F) A difference among managers is decided by a majority of 1630
the managers. 1631

Sec. 1745.33. (A) Except when the law or the governing 1632
principles require that action be otherwise authorized or taken, 1633
all of the authority of an unincorporated nonprofit association 1634
shall be exercised by or under the direction of its manager or 1635
managers. 1636

(B) The only fiduciary duties a manager owes to the 1637
association are the duties set forth in this division. The duties 1638
of a manager are to act in good faith, in a manner the manager 1639
reasonably believes to be in or not opposed to the best interests 1640
of the unincorporated nonprofit association, and with the care 1641
that an ordinarily prudent person in a similar position would use 1642
under similar circumstances. A manager serving on a committee of 1643

managers is acting as a manager. 1644

(C) In performing the duties of a manager, a manager is 1645
entitled to rely on information, opinions, reports, or statements, 1646
including financial statements and other financial data, that are 1647
prepared or presented by any of the following: 1648

(1) One or more managers, officers, or employees of the 1649
association who the manager reasonably believes are reliable and 1650
competent in the matters prepared or presented; 1651

(2) Counsel, public accountants, or other persons as to 1652
matters that the manager reasonably believes are within the 1653
person's professional or expert competence; 1654

(3) A committee of the managers in which the manager does not 1655
serve, duly established in accordance with a provision of the 1656
governing principles as to matters within its designated 1657
authority, which committee the manager reasonably believes to 1658
merit confidence. 1659

(D) For purposes of division (B) of this section, the 1660
following apply: 1661

(1) A manager shall not be found to have failed to perform 1662
the manager's duties in accordance with that division, unless it 1663
is proved by clear and convincing evidence in an action brought 1664
against the manager that the manager has not acted in good faith, 1665
in a manner the manager reasonably believes to be in or not 1666
opposed to the best interests of the unincorporated nonprofit 1667
association, or with the care that an ordinarily prudent person in 1668
a similar position would use under similar circumstances. An 1669
action under division (D)(1) of this section includes, but is not 1670
limited to, an action that involves or affects any of the 1671
following: 1672

(a) A change or potential change in control of the 1673
association; 1674

(b) A termination or potential termination of the manager's service to the association as manager; 1675
1676

(c) The manager's service in any other position or relationship with the association. 1677
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(2) A manager shall not be considered to be acting in good faith if the manager has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by any of the persons described in divisions (C)(1) to (3) of this section, to be unwarranted. 1679
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(3) The provisions of division (D) of this section do not limit relief available under section 1745.42 of the Revised Code. 1685
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(E)(1) Subject to divisions (E)(2) and (3) of this section, a manager is liable in damages for any act that the manager takes or fails to take as manager only if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the manager was one undertaken with a deliberate intent to cause injury to the association or was one undertaken with a reckless disregard for the best interests of the association. 1687
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(2) Division (E)(1) of this section does not affect the liability of a manager under section 1745.56 of the Revised Code. 1695
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(3) Subject to division (E)(2) of this section, division (E)(1) of this section does not apply if, and only to the extent that, at the time of an act or omission of a manager that is the subject of the complaint, the governing principles of the association state by specific reference to division (E)(1) of this section that its provisions do not apply to the association. 1697
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(F) For purposes of this section, in determining what a manager reasonably believes to be in or not opposed to the best interests of the association, a manager shall consider the 1703
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| <u>purposes of the association and may consider any of the following:</u> | 1706 |
| <u>(1) The interests of the employees, suppliers, creditors, and customers of the association;</u> | 1707 1708 |
| <u>(2) The economy of this state and of the nation;</u> | 1709 |
| <u>(3) Community and societal considerations;</u> | 1710 |
| <u>(4) The long-term and short-term best interests of the association, including, but not limited to, the possibility that those interests may be best served by the continued independence of the association.</u> | 1711 1712 1713 1714 |
| <u>(G) Divisions (E) and (F) of this section do not affect the duties of a manager who acts in any capacity other than in the capacity as a manager.</u> | 1715 1716 1717 |
| | |
| <u>Sec. 1745.34. Unless otherwise provided in the governing principles, the following apply:</u> | 1718 1719 |
| <u>(A) Meetings of the managers may be called by any two managers or by any chairperson, president, or vice-president of the unincorporated nonprofit association.</u> | 1720 1721 1722 |
| <u>(B) Meetings of the managers may be held at any place within or outside this state, including by means of authorized communications equipment, unless the governing principles prohibit participation by managers at a meeting by means of authorized communications equipment. Participation at a meeting pursuant to this division constitutes presence at that meeting.</u> | 1723 1724 1725 1726 1727 1728 |
| <u>(C) Notice of the place, if any, and time of each meeting of the managers shall be given to each manager either by personal delivery or by mail, by overnight delivery service, or by means of authorized communications equipment at least two days before the meeting. The notice need not specify the purposes of the meeting.</u> | 1729 1730 1731 1732 1733 |
| <u>(D) Notice of adjournment of a meeting of the managers need</u> | 1734 |

not be given if the time and place to which it is adjourned are 1735
fixed and announced at that meeting. 1736

Sec. 1745.35. Unless the governing principles provide 1737
otherwise, a majority of the whole authorized number of managers 1738
is necessary to constitute a quorum for a meeting of the managers, 1739
except that a majority of the managers in office constitutes a 1740
quorum for filling a vacancy in the position of manager. The act 1741
of a majority of the managers present at a meeting at which a 1742
quorum is present is the act of all of the managers, unless the 1743
act of a greater number is required by the governing principles. 1744

Sec. 1745.36. (A) The governing principles may provide for 1745
the creation by the managers of an executive committee or any 1746
other committee of the managers, to consist of one or more 1747
managers, and may authorize the delegation to that committee of 1748
any of the authority of the managers, however conferred. 1749

(B) The managers may appoint one or more managers as 1750
alternate members of any committee described in division (A) of 1751
this section, who may take the place of any absent member or 1752
members at any meeting of the particular committee. 1753

(C) Each committee described in division (A) of this section 1754
shall serve at the pleasure of the managers, shall act only in the 1755
intervals between meetings of the managers, and shall be subject 1756
to the control and direction of the managers. 1757

(D) Unless otherwise provided in the governing principles or 1758
ordered by the managers, any committee described in division (A) 1759
of this section may act by a majority of its members at a meeting 1760
or by a writing or writings signed by all of its members. 1761

(E) Meetings of committees described in division (A) of this 1762
section may be held by any means of authorized communication 1763
equipment, unless participation by members of the committee at a 1764

meeting by means of authorized communications equipment is 1765
prohibited by the governing principles or any order of the 1766
managers. Participation at a meeting pursuant to this division 1767
constitutes presence at the meeting. 1768

(F) An act or authorization of an act by any committee 1769
described in division (A) of this section within the authority 1770
delegated to it shall be as effective for all purposes as the act 1771
or authorization of the managers. 1772

Sec. 1745.37. (A) The officers of an unincorporated nonprofit 1773
association, if any, may consist of a president, a secretary, a 1774
treasurer, and, if desired, a chairperson, one or more 1775
vice-presidents, and any other officers and assistant officers 1776
that may be considered necessary, each of whom may be designated 1777
by any other titles that may be provided in the governing 1778
principles or the resolutions of the managers. Unless the 1779
governing principles provide otherwise, none of the officers need 1780
be a manager. Any two or more offices may be held by the same 1781
person. The officers shall be elected or appointed at the time, in 1782
the manner, and for the terms that may be prescribed in the 1783
governing principles. In the absence of any such provision, all 1784
officers shall be elected annually by the managers. 1785

(B) Unless the governing principles provide otherwise, the 1786
following apply: 1787

(1) All officers, as between themselves and the association, 1788
shall respectively have the authority and perform the duties that 1789
are determined by the persons authorized to elect or appoint them. 1790

(2) Any officer may be removed, with or without cause, by the 1791
persons authorized to elect or appoint the officer without 1792
prejudice to the contract rights of that officer. The election or 1793
appointment of an officer for a given term, or a general provision 1794
in the governing principles with respect to term of office, shall 1795

not be considered to create contract rights. 1796

(3) The persons authorized to elect or appoint officers may 1797

fill any vacancy in any office occurring for whatever reason. 1798

Sec. 1745.38. The managers of an unincorporated nonprofit 1799

association may authorize any mortgage, pledge, or deed of trust 1800

of all or any of the property of the association of any 1801

description or any interest in the property, for the purpose of 1802

securing the payment or performance of any obligation or contract. 1803

Unless the governing principles or the terms of any trust on which 1804

the association holds any particular property provide otherwise, 1805

no vote or consent of the members of the association or 1806

authorization from the court under section 1715.39 of the Revised 1807

Code is necessary for that action. 1808

Sec. 1745.39. (A) On reasonable notice, a member or manager 1809

of an unincorporated nonprofit association may inspect and copy 1810

during the association's regular operating hours and at a 1811

reasonable location specified by the association any record 1812

maintained by the association regarding its activities, financial 1813

condition, and other circumstances, to the extent the information 1814

is material to the member's or manager's rights and duties under 1815

the association's governing principles or this chapter. 1816

(B) An unincorporated nonprofit association may impose 1817

reasonable restrictions on access to and use of information to be 1818

furnished under this section, including designating the 1819

information confidential and imposing nondisclosure and 1820

safeguarding obligations on the recipient. 1821

(C) An unincorporated nonprofit association may charge a 1822

person that makes a demand under this section reasonable copying 1823

costs, limited to the costs of labor and materials. 1824

(D) A former member or manager of an unincorporated nonprofit 1825

association may have access to information to which the member or 1826
manager was entitled while a member or manager of the association 1827
if the information pertains to the period during which the person 1828
was a member or manager, the former member or manager seeks the 1829
information in good faith, and the former member or manager 1830
satisfies divisions (A) to (C) of this section. 1831

Sec. 1745.40. (A) Except as otherwise provided in division 1832
(B) of this section, an unincorporated nonprofit association may 1833
not pay dividends or distribute any part of its income or profits 1834
to a member, manager, officer, or other private person. 1835

(B) An unincorporated nonprofit association may do any of the 1836
following: 1837

(1) Pay reasonable compensation or reimburse reasonable 1838
expenses to a member or manager for services rendered; 1839

(2) Confer benefits on a member or manager in conformity with 1840
its nonprofit purposes; 1841

(3) Repurchase a membership and repay a capital contribution 1842
made by a member to the extent authorized by its governing 1843
principles; 1844

(4) Make distributions of property to members upon winding up 1845
and termination to the extent permitted by section 1745.52 of the 1846
Revised Code. 1847

Sec. 1745.41. (A) The office of a manager becomes vacant if 1848
the manager dies or resigns. A resignation under this division 1849
takes effect immediately or at any other time that the manager may 1850
specify. 1851

(B) A manager may be removed from office pursuant to any 1852
procedure for removal from office provided in the governing 1853
principles. That removal from office creates a vacancy. 1854

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

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

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

(a) The material facts as to the member's, manager's, or officer's relationship or interest and as to the contract, action, or transaction are disclosed or are known to the managers or the committee, and the managers or committee, in good faith reasonably justified by the material facts, authorizes the contract, action, or transaction by the affirmative vote of a majority of the

disinterested managers, even though the disinterested managers 1886
constitute less than a quorum of the managers or the committee. 1887

(b) The material facts as to the member's, manager's, or 1888
officer's relationship or interest and as to the contract, action, 1889
or transaction are disclosed or are known to the members entitled 1890
to vote on the contract, action, or transaction, and the contract, 1891
action, or transaction is specifically approved at a meeting of 1892
the members held for the purpose of voting on the contract, 1893
action, or transaction, by the affirmative vote of a majority of 1894
the voting members of the unincorporated nonprofit association who 1895
are not interested in the contract, action, or transaction. 1896

(c) The contract, action, or transaction is fair as to the 1897
unincorporated nonprofit association as of the time it is 1898
authorized or approved by the managers, a committee of the 1899
managers, or the members. 1900

(2) Common or interested managers may be counted in 1901
determining the presence of a quorum at a meeting of the managers 1902
or a committee of the managers that authorizes the contract, 1903
action, or transaction. 1904

(3) The managers, by the affirmative vote of a majority of 1905
those in office and irrespective of any financial or personal 1906
interest of any of the managers, have the authority to establish 1907
reasonable compensation, which may include pension, disability, 1908
and death benefits, for services to the unincorporated nonprofit 1909
association by the managers and officers, or to delegate that 1910
authority to establish reasonable compensation to one or more 1911
officers or managers. 1912

(B) Divisions (A)(1) and (2) of this section do not limit or 1913
otherwise affect the liability of managers under section 1745.56 1914
of the Revised Code. 1915

(C) For purposes of division (A) of this section, a manager 1916

is not an interested manager solely because the subject of a 1917
contract, action, or transaction may involve or effect a change in 1918
control of the unincorporated nonprofit association or the 1919
manager's continuation in office as a manager of the association. 1920

(D) For purposes of this section, "action" means a resolution 1921
that is adopted by the managers or a committee of the managers. 1922

Sec. 1745.43. (A) An unincorporated nonprofit association may 1923
indemnify or agree to indemnify any person who was or is a party 1924
or is threatened to be made a party to any threatened, pending, or 1925
completed civil, criminal, administrative, or investigative 1926
action, suit, or proceeding, other than an action by or in the 1927
right of the association, by reason of the fact that the person is 1928
or was a manager, officer, employee, member, agent, or volunteer 1929
of the association or a person acting in any other representative 1930
capacity, however denominated, or is or was serving at the request 1931
of the association as a director, officer, employee, member, 1932
manager, agent, or volunteer of any other entity, against 1933
expenses, including attorney's fees, judgments, fines, and amounts 1934
paid in settlement actually and reasonably incurred by the person 1935
in connection with that action, suit, or proceeding, if the person 1936
acted in good faith and in a manner the person reasonably believed 1937
to be in or not opposed to the best interests of the association, 1938
and, with respect to any criminal action or proceeding if the 1939
person had no reasonable cause to believe the person's conduct was 1940
unlawful. The termination of any action, suit, or proceeding by 1941
judgment, order, settlement, or conviction, or upon a plea of nolo 1942
contendere or its equivalent, shall not create, of itself, a 1943
presumption that the person did not act in good faith and in a 1944
manner the person reasonably believed to be in or not opposed to 1945
the best interests of the association, and, with respect to any 1946
criminal action or proceeding, a presumption that the person had 1947
reasonable cause to believe that the person's conduct was 1948

unlawful. 1949

(B) An unincorporated nonprofit association may indemnify or 1950
agree to indemnify any person who was or is a party, or is 1951
threatened to be made a party, to any threatened, pending, or 1952
completed action or suit by or in the right of the association to 1953
procure a judgment in its favor by reason of the fact that the 1954
person is or was a manager, officer, employee, member, agent, or 1955
volunteer of the association or a person acting in any other 1956
representative capacity, however denominated, or is or was serving 1957
at the request of the association as a director, officer, 1958
employee, member, manager, agent, or volunteer of any other 1959
entity, against expenses, including attorney's fees, actually and 1960
reasonably incurred by the person in connection with the defense 1961
or settlement of that action or suit if the person acted in good 1962
faith and in a manner the person reasonably believed to be in or 1963
not opposed to the best interests of the association, except that 1964
no indemnification shall be made with respect to any of the 1965
following: 1966

(1) Any claim, issue, or matter as to which the person is 1967
adjudged to be liable for negligence or misconduct in the 1968
performance of the person's duty to the unincorporated nonprofit 1969
association unless and only to the extent that the court of common 1970
pleas or the court in which the action or suit was brought 1971
determines, upon application, that despite the adjudication of 1972
liability but in view of all the circumstances of the case, the 1973
person is fairly and reasonably entitled to indemnity for the 1974
expenses that the court of common pleas or that other court 1975
considers proper; 1976

(2) Any action or suit in which liability is asserted against 1977
a manager and that liability is asserted only pursuant to section 1978
1745.56 of the Revised Code. 1979

(C) To the extent that a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in division (A) or (B) of this section, or in defense of any claim, issue, or matter in the action, suit, or proceeding, that person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with that action, suit, or proceeding.

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

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

(b) Whether or not a quorum as described in division (D)(1)(a) of this section is obtainable, and if a majority of a quorum of disinterested managers so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with an attorney, who has been retained by or has performed services for the association or any person to be indemnified within the past five years;

(c) By the members; 2012

(d) By the court of common pleas or the court in which the 2013
action, suit, or proceeding referred to in division (A) or (B) of 2014
this section was brought. 2015

(2) If an action or suit by or in the right of the 2016
unincorporated nonprofit association is involved, any 2017
determination made by the disinterested managers under division 2018
(D)(1)(a) of this section or by independent legal counsel under 2019
division (D)(1)(b) of this section shall be communicated promptly 2020
to the person who threatened or brought the action or suit under 2021
division (B) of this section, and, within ten days after receipt 2022
of that notification, the person shall have the right to petition 2023
the court of common pleas or the court in which the action or suit 2024
was brought to review the reasonableness of that determination. 2025

(E)(1)(a) Unless at the time of a manager's or volunteer's 2026
act or omission that is the subject of an action, suit, or 2027
proceeding referred to in division (A) or (B) of this section the 2028
governing principles of the unincorporated nonprofit association 2029
stated, by specific reference to division (E)(1)(a) of this 2030
section, that its provisions do not apply to the association, 2031
unless the only liability asserted against a manager in an action, 2032
suit, or proceeding referred to in division (A) or (B) of this 2033
section is pursuant to section 1745.56 of the Revised Code, or 2034
unless division (E)(1)(b) of this section applies, the expenses, 2035
including attorney's fees, incurred by the manager or volunteer in 2036
defending the action, suit, or proceeding shall be paid by the 2037
unincorporated nonprofit association. Upon the request of the 2038
manager or volunteer and in accordance with division (E)(2) of 2039
this section, those expenses shall be paid as they are incurred, 2040
in advance of the final disposition of the action, suit, or 2041
proceeding. 2042

(b) Notwithstanding division (E)(1)(a) of this section, the 2043

expenses incurred by a manager or volunteer in defending an 2044
action, suit, or proceeding referred to in division (A) or (B) of 2045
this section, including attorney's fees, shall not be paid by the 2046
unincorporated nonprofit association upon the final disposition of 2047
the action, suit, or proceeding, or, if paid in advance of the 2048
final disposition of the action, suit, or proceeding, shall be 2049
repaid to the association by the manager or volunteer, if it is 2050
proved, by clear and convincing evidence, in a court with 2051
jurisdiction that the act or omission of the manager or volunteer 2052
was one undertaken with a deliberate intent to cause injury to the 2053
association or was one undertaken with a reckless disregard for 2054
the best interests of the association. 2055

(2) Expenses, including attorney's fees, incurred by a 2056
manager, officer, employee, member, agent, or volunteer of the 2057
association or a person acting in any other representative 2058
capacity, however denominated, in defending any action, suit, or 2059
proceeding referred to in division (A) or (B) of this section may 2060
be paid by the unincorporated nonprofit association as they are 2061
incurred, in advance of the final disposition of the action, suit, 2062
or proceeding, as authorized by the managers in the specific case, 2063
upon receipt of an undertaking by or on behalf of the manager, 2064
officer, employee, member, agent, volunteer, or person acting in 2065
any other representative capacity to repay the amount if it 2066
ultimately is determined that the person is not entitled to be 2067
indemnified by the association. 2068

(F) The indemnification authorized by this section is not 2069
exclusive of, and shall be in addition to, any other rights 2070
granted to those seeking indemnification pursuant to the governing 2071
principles, any agreement, a vote of the members or disinterested 2072
managers, or otherwise, both as to action in their official 2073
capacities and as to action in another capacity while holding 2074
their offices or positions, shall continue as to a person who has 2075

ceased to be a manager, officer, employee, member, agent, or 2076
volunteer of the association or a person acting in any other 2077
representative capacity, however denominated, and shall inure to 2078
the benefit of the heirs, executors, and administrators of that 2079
person. 2080

(G) An unincorporated nonprofit association may purchase and 2081
maintain insurance, or furnish similar protection, including, but 2082
not limited to, trust funds, letters of credit, or self-insurance, 2083
for or on behalf of any person who is or was a manager, officer, 2084
employee, member, agent, or volunteer of the association or a 2085
person acting in any other representative capacity, however 2086
denominated, or is or was serving at the request of the 2087
association as a director, manager, officer, employee, member, 2088
agent, or volunteer of any other entity, against any liability 2089
asserted against the person and incurred by the person in that 2090
capacity, or arising out of the person's status as such, whether 2091
or not the association would have the power to indemnify the 2092
person against that liability under this section. Insurance may be 2093
so purchased from or so maintained with a person in which the 2094
association has a financial interest. 2095

(H) The authority of an unincorporated nonprofit association 2096
to indemnify persons pursuant to division (A) or (B) of this 2097
section does not limit the payment of expenses as they are 2098
incurred, in advance of the final disposition of an action, suit, 2099
or proceeding, pursuant to division (E) of this section or the 2100
payment of indemnification, insurance, or other protection that 2101
may be provided pursuant to division (F) or (G) of this section. 2102
Divisions (A) and (B) of this section do not create any obligation 2103
to repay or return payments made by the association pursuant to 2104
division (E), (F), or (G) of this section. 2105

(I) As used in this section, "unincorporated nonprofit 2106
association" includes all constituent entities in a consolidation 2107

or merger, and the new or surviving entity, so that any person who 2108
is or was a manager, officer, employee, member, agent, or 2109
volunteer of a constituent entity or a person acting in any other 2110
representative capacity, however denominated, or is or was serving 2111
at the request of a constituent entity as a director, officer, 2112
employee, member, manager, agent, or volunteer of any other 2113
entity, shall stand in the same position under this section with 2114
respect to the new or surviving entity as the person would if the 2115
person had served the new or surviving entity in the same 2116
capacity. 2117

Sec. 1745.44. (A) Unless the governing principles of the 2118
unincorporated nonprofit association provide otherwise, the lease, 2119
sale, exchange, transfer, or other disposition of any assets of 2120
the association may be made without the necessity of procuring 2121
authorization from the court under section 1715.39 of the Revised 2122
Code, upon terms and for the consideration that may be authorized 2123
by the managers, except that a lease, sale, exchange, transfer, or 2124
other disposition of all, or substantially all, of the assets may 2125
be made only when that transaction is also authorized, either 2126
before or after authorization by the managers, by the voting 2127
members of the association at a meeting held for that purpose. 2128

(B)(1) A public benefit association may not dispose of its 2129
assets with value equal to more than fifty per cent of the fair 2130
market value of the net tangible and intangible assets, including 2131
goodwill, of the association over a period of thirty-six 2132
consecutive months in a transaction or series of transactions, 2133
including the lease, sale, exchange, transfer, or other 2134
disposition of those assets, that are outside the ordinary course 2135
of its business or that are not in accordance with the purpose or 2136
purposes for which the association was organized, as set forth in 2137
its governing principles, unless one or more of the following 2138
apply: 2139

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

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

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

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

(C) The attorney general may institute a civil action to enforce the requirements of division (B)(1) of this section in the court of common pleas of the county in this state in which the principal office of the public benefit association is located or in the Franklin county court of common pleas. In addition to any

civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies. 2172
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(D) The unincorporated nonprofit association or the public benefit association by its managers may abandon the proposed lease, sale, exchange, transfer, or other disposition of the assets of the association pursuant to division (A) or (B) of this section, as applicable, subject to the contract rights of other persons, if that power of abandonment is conferred upon the managers either by the terms of the transaction or by the same vote of members and at the same meeting of members as that referred to in division (A) or (B) of this section, as applicable, or at any subsequent meeting. 2175
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(E) An action to set aside a conveyance by an unincorporated nonprofit association or a public benefit association on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of the assets of that association has not been complied with shall be brought within one year after that transaction, or the action shall be forever barred. 2185
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Sec. 1745.45. Property of any description and any interest in the property of an unincorporated nonprofit association, domestic or foreign, may be sold under the judgment or decree of a court, as provided in the Revised Code with respect to similar property of natural persons, at a public or private sale in the manner, at the time and place, on the notice by publication or otherwise, and on the terms that the court adjudging or decreeing that sale considers equitable and proper. It is not necessary to appraise that property or to advertise the sale of the property otherwise than as the court adjudges or decrees. 2192
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Sec. 1745.46. (A)(1) Pursuant to an agreement of merger, an 2202
unincorporated nonprofit association and one or more additional 2203
domestic or foreign entities may be merged into a surviving 2204
unincorporated nonprofit association. Pursuant to an agreement of 2205
consolidation, one or more domestic or foreign entities may be 2206
consolidated into a new unincorporated nonprofit association. If 2207
any constituent entity is formed or organized under the laws of 2208
any state other than this state or under any chapter of the 2209
Revised Code other than this chapter, the merger or consolidation 2210
also must be permitted by the chapter of the Revised Code under 2211
which each domestic constituent entity exists and by the laws 2212
under which each foreign constituent entity exists. 2213

(2) To effect a merger or consolidation under this section, 2214
the manager or managers of each constituent unincorporated 2215
nonprofit association shall approve an agreement of merger or 2216
consolidation to be signed by the manager, the chairperson, the 2217
president, or a vice-president and by the secretary or an 2218
assistant secretary or, if there are no officers, by one or more 2219
authorized managers. The agreement of merger or consolidation 2220
shall be approved or otherwise authorized by or on behalf of each 2221
other constituent entity in accordance with the laws under which 2222
it exists. 2223

(3) The agreement of merger or consolidation shall set forth 2224
all of the following: 2225

(a) The name and the form of entity of each constituent 2226
entity and the state under the laws of which each constituent 2227
entity exists; 2228

(b) That the named constituent entities have agreed to merge 2229
into a specified constituent unincorporated nonprofit association, 2230
designated in this section as the surviving unincorporated 2231
nonprofit association, or that the named constituent entities have 2232

agreed to consolidate into a new unincorporated nonprofit 2233
association to be formed by the consolidation, designated in this 2234
section as the new unincorporated nonprofit association; 2235

(c) All statements and matters required to be set forth in an 2236
agreement of merger or consolidation by the laws under which each 2237
constituent entity exists; 2238

(d) The name of the surviving or new unincorporated nonprofit 2239
association, which may be the same as or similar to that of any 2240
constituent unincorporated nonprofit association; 2241

(e) The place in this state where the principal office of the 2242
surviving or new unincorporated nonprofit association is to be 2243
located; 2244

(f) The names and addresses of the first managers and 2245
officers, if any, of the surviving or new unincorporated nonprofit 2246
association and, if desired, their term or terms of office; 2247

(g) The name and address of the statutory agent, if any, upon 2248
whom any process, notice, or demand against any constituent entity 2249
or the surviving or new unincorporated nonprofit association may 2250
be served; 2251

(h) The terms of the merger or consolidation and the mode of 2252
carrying those terms into effect; 2253

(i) The governing principles of the surviving or new 2254
unincorporated nonprofit association or a provision to the effect 2255
that the governing principles of a specified constituent 2256
unincorporated nonprofit association shall be the governing 2257
principles of the surviving or new unincorporated nonprofit 2258
association or to the effect that the voting members or the 2259
managers of the surviving or new unincorporated nonprofit 2260
association may adopt governing principles, or any combination of 2261
them. 2262

(4) The agreement of merger or consolidation also may set forth any of the following: 2263
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(a) The specification of a date, which may be the date of the filing of the agreement or a date subsequent to that date of filing, upon which the merger or consolidation shall become effective; 2265
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(b) A provision conferring upon the managers of one or more of the constituent unincorporated nonprofit associations or the comparable representatives of any other constituent entity the power to abandon the merger or consolidation prior to the filing of the agreement; 2269
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(c) Any additional provision permitted to be included in the governing principles of a newly formed unincorporated nonprofit association; 2274
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(d) Any additional provision considered necessary or desirable with respect to the proposed merger or consolidation. 2277
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(B)(1) A merger or consolidation in which a public benefit association is one of the constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the public benefit association is located in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding and in which the attorney general may intervene as of right. No approval by the court under division (B)(1) of this section is required if either of the following applies: 2279
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(a) A public benefit association is the surviving entity in the case of a merger and continues to be a public benefit association or is the new unincorporated nonprofit association in the case of a consolidation and continues to be a public benefit association. 2289
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(b) A public benefit association is not the surviving entity 2294
in the case of a merger or is not the new unincorporated nonprofit 2295
association in the case of a consolidation, and all of the 2296
following apply: 2297

(i) On or prior to the effective date of the merger or 2298
consolidation, assets with a value equal to the greater of the 2299
fair market value of the net tangible and intangible assets, 2300
including goodwill, of the public benefit association or the fair 2301
market value of the public benefit association if it is to be 2302
operated as a business concern, are transferred or conveyed to one 2303
or more persons that would have received its assets under division 2304
(D)(2) of section 1745.52 of the Revised Code had it voluntarily 2305
dissolved. 2306

(ii) The public benefit association returns, transfers, or 2307
conveys any assets held by it upon a condition requiring return, 2308
transfer, or conveyance, which condition occurs by reason of the 2309
merger or consolidation, in accordance with that condition. 2310

(iii) The merger or consolidation is approved by a majority 2311
of managers of the public benefit association who will not receive 2312
any financial or other benefit, directly or indirectly, as a 2313
result of the merger or consolidation or by agreement, and who are 2314
not and will not as a result of the merger or consolidation become 2315
members, partners, or other owners, however denominated, of, 2316
shareholders in, managers, officers, employees, agents, or other 2317
representatives of, or consultants to, the surviving or new 2318
entity. 2319

(2) At least twenty days before consummation of any merger or 2320
consolidation of a public benefit association pursuant to division 2321
(B)(1)(b) of this section, written notice shall be delivered to 2322
the attorney general's charitable law section. The notice shall 2323
include a copy of the proposed plan of merger or consolidation. 2324
The attorney general's charitable law section may review a 2325

proposed merger or consolidation of a public benefit association 2326
under division (B)(1)(b) of this section. The attorney general may 2327
require pursuant to section 109.24 of the Revised Code the 2328
production of the documents necessary for review of a proposed 2329
merger or consolidation under division (B)(1)(b) of this section. 2330
The attorney general may retain, at the expense of the public 2331
benefit association, one or more experts, including an investment 2332
banker, actuary, appraiser, certified public accountant, or other 2333
expert, that the attorney general considers reasonably necessary 2334
to provide assistance in reviewing a proposed merger or 2335
consolidation under division (B)(1)(b) of this section. The 2336
attorney general may extend the date of any merger or 2337
consolidation of a public benefit association under division 2338
(B)(1)(b) of this section for a period not to exceed sixty days 2339
and shall provide notice of that extension to the public benefit 2340
association. The notice shall set forth the reasons necessitating 2341
the extension. 2342

(3) No member, other than a member that is a public benefit 2343
entity, or manager of a public benefit association in that 2344
person's capacity as a member or manager may receive or keep 2345
anything as a result of a merger or consolidation other than as a 2346
member or manager in the surviving or new public benefit 2347
association without the prior written consent of the attorney 2348
general or of the court of common pleas of the county in this 2349
state in which the principal office of the public benefit 2350
association is located in a proceeding in which the attorney 2351
general's charitable law section has been given written notice by 2352
certified mail within three days of the initiation of the 2353
proceeding and in which the attorney general may intervene as of 2354
right. The court shall approve the transaction if it is in the 2355
public interest. 2356

(4) The attorney general may institute a civil action to 2357

enforce the requirements of divisions (B)(1), (2), and (3) of this 2358
section in the court of common pleas of the county in this state 2359
in which the principal office of the public benefit association is 2360
located or in the Franklin county court of common pleas. In 2361
addition to any civil remedies that may exist under common law or 2362
the Revised Code, a court may rescind the transaction or grant 2363
injunctive relief or impose any combination of these remedies. 2364

Sec. 1745.461. (A)(1) Pursuant to an agreement of merger 2365
between the constituent entities as provided in this section, a 2366
domestic unincorporated nonprofit association and, if so provided, 2367
one or more additional domestic or foreign entities may be merged 2368
into a surviving entity other than a domestic unincorporated 2369
nonprofit association. Pursuant to an agreement of consolidation, 2370
a domestic unincorporated nonprofit association together with one 2371
or more additional domestic or foreign entities may be 2372
consolidated into a new entity other than a domestic 2373
unincorporated nonprofit association to be formed by that 2374
consolidation. The merger or consolidation must be permitted by 2375
the chapter of the Revised Code under which each domestic 2376
constituent entity exists and by the laws under which each foreign 2377
constituent entity exists. 2378

(2) To effect a merger or consolidation under this section, 2379
the manager or managers of each constituent unincorporated 2380
nonprofit association shall approve an agreement of merger or 2381
consolidation to be signed by the manager, the chairperson, the 2382
president, or a vice-president and by the secretary or an 2383
assistant secretary or, if there are no officers, by an authorized 2384
manager. The agreement of merger or consolidation shall be 2385
approved or otherwise authorized by or on behalf of each other 2386
constituent entity in accordance with the laws under which it 2387
exists. 2388

| | |
|---|------|
| <u>(3) The agreement of merger or consolidation shall set forth</u> | 2389 |
| <u>all of the following:</u> | 2390 |
| <u>(a) The name and the form of entity of each constituent</u> | 2391 |
| <u>entity and the state under the laws of which each constituent</u> | 2392 |
| <u>entity exists;</u> | 2393 |
| <u>(b) In the case of a merger, that one or more specified</u> | 2394 |
| <u>constituent entities will be merged into a specified surviving</u> | 2395 |
| <u>foreign entity or surviving domestic entity other than a domestic</u> | 2396 |
| <u>unincorporated nonprofit association or, in the case of a</u> | 2397 |
| <u>consolidation, that the constituent entities will be consolidated</u> | 2398 |
| <u>into a new foreign entity or domestic entity other than a domestic</u> | 2399 |
| <u>unincorporated nonprofit association. The name of the surviving or</u> | 2400 |
| <u>new entity may be the same as or similar to that of any</u> | 2401 |
| <u>constituent entity.</u> | 2402 |
| <u>(c) The terms of the merger or consolidation and the mode of</u> | 2403 |
| <u>carrying those terms into effect;</u> | 2404 |
| <u>(d) If the surviving or new entity is a foreign</u> | 2405 |
| <u>unincorporated nonprofit association, all additional statements</u> | 2406 |
| <u>and matters, other than the name and address of the statutory</u> | 2407 |
| <u>agent, that would be required by section 1745.46 of the Revised</u> | 2408 |
| <u>Code if the surviving or new unincorporated nonprofit association</u> | 2409 |
| <u>were a domestic unincorporated nonprofit association;</u> | 2410 |
| <u>(e) The name and the form of entity of the surviving or new</u> | 2411 |
| <u>entity, the state under the laws of which the surviving entity</u> | 2412 |
| <u>exists or the new entity is to exist, and the location of the</u> | 2413 |
| <u>principal office of the surviving or new entity in that state;</u> | 2414 |
| <u>(f) All statements and matters required to be set forth in an</u> | 2415 |
| <u>agreement of merger or consolidation by the laws under which each</u> | 2416 |
| <u>constituent entity exists and, in the case of a consolidation, the</u> | 2417 |
| <u>new entity is to exist;</u> | 2418 |
| <u>(g) The consent of the surviving or the new entity to be sued</u> | 2419 |

and served with process in this state and the irrevocable 2420
appointment of the secretary of state as its agent to accept 2421
service of process in any proceeding in this state to enforce 2422
against the surviving or new entity any obligation of any domestic 2423
constituent unincorporated nonprofit association; 2424

(h) If the surviving or new entity is a foreign 2425
unincorporated nonprofit association that desires to transact 2426
business in this state as a foreign unincorporated nonprofit 2427
association, a statement to that effect, together with a statement 2428
regarding the appointment of a statutory agent and service of any 2429
process, notice, or demand upon that statutory agent or the 2430
secretary of state, as required when a foreign unincorporated 2431
nonprofit association applies for a license to transact business 2432
in this state; 2433

(i) If the surviving or new entity is a foreign limited 2434
partnership that desires to transact business in this state as a 2435
foreign limited partnership, a statement to that effect, together 2436
with all of the information required under section 1782.49 of the 2437
Revised Code when a foreign limited partnership registers to 2438
transact business in this state; 2439

(j) If the surviving or new entity is a foreign limited 2440
liability company that desires to transact business in this state 2441
as a foreign limited liability company, a statement to that 2442
effect, together with all of the information required under 2443
section 1705.54 of the Revised Code when a foreign limited 2444
liability company registers to transact business in this state; 2445

(k) If the surviving or new entity is a foreign 2446
unincorporated association that desires to transact business in 2447
this state as a foreign unincorporated association, a statement to 2448
that effect, together with all of the information, if any, 2449
required by the secretary of state when a foreign unincorporated 2450
association registers to transact business in this state. 2451

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

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

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

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

principles. If the agreement would effect or authorize any action 2483
by the unincorporated nonprofit association that, under any 2484
applicable provision of law or under the governing principles of 2485
the constituent domestic unincorporated nonprofit association, 2486
could be effected or authorized only by or pursuant to a specified 2487
vote of the members, the agreement, including any amendments or 2488
additions to the agreement proposed at each meeting described in 2489
division (A) of this section, shall be adopted by the same vote as 2490
would be required for that action. 2491

(2) For purposes of division (B)(1) of this section, 2492
participation by a voting member at a meeting through the use of 2493
any of the means of communication described in that division 2494
constitutes presence in person of that voting member at the 2495
meeting for purposes of determining a quorum. 2496

(C) At any time prior to the filing of the agreement, the 2497
merger or consolidation may be abandoned by the managers of one or 2498
more of the constituent unincorporated nonprofit associations or 2499
the comparable representatives of any other constituent entity, if 2500
the power of abandonment is conferred either by the agreement or 2501
by the same vote or action as is required to adopt that agreement. 2502

Sec. 1745.48. (A) When a merger or consolidation becomes 2503
effective, all of the following apply: 2504

(1) The separate existence of each constituent entity other 2505
than the surviving entity in a merger shall cease, except that 2506
whenever a conveyance, assignment, transfer, deed, or other 2507
instrument or act is necessary to vest property or rights in the 2508
surviving or new entity, the officers, managers, general partners, 2509
or other authorized representatives of the respective constituent 2510
entities shall execute, acknowledge, and deliver those instruments 2511
and do those acts. For these purposes, the existence of the 2512
constituent entities and the authority of their respective 2513

officers, managers, general partners, or other authorized 2514
representatives is continued notwithstanding the merger or 2515
consolidation. 2516

(2) In the case of a merger in which the surviving entity is 2517
a domestic unincorporated nonprofit association, the governing 2518
principles of the domestic surviving unincorporated nonprofit 2519
association in effect immediately prior to the time the merger 2520
becomes effective shall continue as its governing principles after 2521
the merger except as otherwise provided in the agreement of 2522
merger. In the case of a consolidation, the new entity exists when 2523
the consolidation becomes effective and, if it is a domestic 2524
unincorporated nonprofit association, the governing principles 2525
contained in or provided for in the agreement of consolidation 2526
shall be its governing principles. 2527

(3) The surviving or new entity possesses all assets and 2528
property of every description and every interest in the assets and 2529
property, wherever located, the rights, privileges, immunities, 2530
powers, franchises, and authority, of a public as well as of a 2531
private nature, of each constituent entity, and all obligations 2532
belonging to or due to each constituent entity, all of which are 2533
vested in the surviving or new entity without further act or deed. 2534
Any right or interest in respect to any past or future devise, 2535
bequest, conditional gift, or trust, property, or fund restricted 2536
to particular uses, when vested in or claimed by the surviving or 2537
new entity as a result of the merger or consolidation, shall 2538
belong to it as a continuation without interruption of the 2539
existence and identity of the constituent entity originally named 2540
as taker or beneficiary. The surviving or new entity possesses 2541
title to any real estate or any interest in the real estate vested 2542
in any of the constituent entities. Title to any real estate or 2543
any interest in the real estate vested in any constituent entity 2544
shall not revert or in any way be impaired by reason of the merger 2545

or consolidation. 2546

(4) The surviving or new entity is liable for all of the 2547
obligations of each constituent entity. Any claim existing or any 2548
action or proceeding pending by or against any constituent entity 2549
may be prosecuted to judgment, with right of appeal, as if the 2550
merger or consolidation had not taken place, or the surviving or 2551
new entity may be substituted in its place. 2552

(5) All of the rights of creditors of each constituent entity 2553
are preserved unimpaired, and all liens upon the property of any 2554
constituent entity are preserved unimpaired on only the property 2555
affected by those liens immediately prior to the effective date of 2556
the merger or consolidation. If a general partner of a constituent 2557
partnership is not a general partner of the surviving entity or 2558
the new entity resulting from the merger or consolidation, the 2559
former general partner has no liability for any obligation 2560
incurred after the merger or consolidation except to the extent 2561
that a former creditor of the constituent partnership in which the 2562
former general partner was a partner extends credit to the 2563
surviving or new entity reasonably believing that the former 2564
general partner continued as a general partner of the surviving or 2565
new entity. 2566

(B) If a general partner of a constituent partnership is not 2567
a general partner of the surviving entity or the new entity 2568
resulting from the merger or consolidation, division (B) of 2569
section 1782.434 of the Revised Code applies. 2570

(C) In the case of a merger of a domestic constituent 2571
unincorporated nonprofit association into a foreign surviving 2572
unincorporated nonprofit association, limited liability company, 2573
limited partnership, or unincorporated association that is not 2574
licensed or registered to transact business in this state or in 2575
the case of a consolidation of a domestic constituent 2576
unincorporated nonprofit association into a new foreign 2577

unincorporated nonprofit association, limited liability company, 2578
limited partnership, or unincorporated association, if the 2579
surviving or new entity intends to transact business in this 2580
state, the surviving or new entity shall comply with all of the 2581
requirements that are necessary for that entity to transact 2582
business in this state as a foreign unincorporated nonprofit 2583
association, limited liability company, limited partnership, or 2584
unincorporated association, whichever is applicable. 2585

(D) Any action to set aside any merger or consolidation on 2586
the ground that any section of the Revised Code applicable to the 2587
merger or consolidation has not been complied with shall be 2588
brought within ninety days after the effective date of that merger 2589
or consolidation or be forever barred. 2590

(E) As used in this section, "unincorporated nonprofit 2591
association" or "entity" applies to both domestic and foreign 2592
unincorporated nonprofit associations or entities if the context 2593
so permits. In the case of a foreign constituent entity or a 2594
foreign new entity, this section is subject to the laws of the 2595
state under the laws of which the entity exists or in which it has 2596
property. 2597

Sec. 1745.49. The merger or consolidation shall become 2598
effective at the time that the constituent entities have complied 2599
with the laws of each state under the laws of which the 2600
constituent entities exist or at any later date that the agreement 2601
of merger or consolidation specifies. 2602

Sec. 1745.50. (A) An unincorporated nonprofit association may 2603
be dissolved voluntarily in the manner provided in this section. 2604

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(B) A resolution of dissolution for an unincorporated 2606
nonprofit association shall set forth all of the following: 2607

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| <u>(1) That the association elects to be dissolved;</u> | 2608 |
| <u>(2) Any additional provision considered necessary with respect to the proposed dissolution and winding up of affairs.</u> | 2609 2610 |
| <u>(C) The managers of an unincorporated nonprofit association may adopt a resolution of dissolution in any of the following cases:</u> | 2611 2612 2613 |
| <u>(1) If the association has been adjudged bankrupt or has made a general assignment for the benefit of creditors;</u> | 2614 2615 |
| <u>(2) By leave of the court, if a receiver has been appointed in a general creditors' suit or in any suit in which the affairs of the association are to be wound up;</u> | 2616 2617 2618 |
| <u>(3) If substantially all of the assets of the association have been sold at judicial sale;</u> | 2619 2620 |
| <u>(4) When the period of existence of the association specified in its governing principles has expired or upon the occurrence of another event or condition specified in its governing principles;</u> | 2621 2622 2623 |
| <u>(5) If no members of the association can be identified and the association's operations have been discontinued for at least three years by the managers or, if the association has no incumbent managers, by its last preceding incumbent manager.</u> | 2624 2625 2626 2627 |
| <u>(D) The members of an unincorporated nonprofit association may adopt a resolution of dissolution by the affirmative vote of the members.</u> | 2628 2629 2630 |
| Sec. 1745.51. <u>Following the adoption of a resolution of dissolution, the managers in an expeditious manner shall do both of the following:</u> | 2631 2632 2633 |
| <u>(A) Cause a notice of voluntary dissolution to be published once a week on the same day of each week for two successive weeks, in a newspaper published and of general circulation in the county</u> | 2634 2635 2636 |

in which the principal office of the unincorporated nonprofit 2637
association was to be or is located; 2638

(B) Cause written notice of dissolution to be given either 2639
personally or by mail to all known creditors of, and to all known 2640
claimants against, the dissolved association. 2641

Sec. 1745.52. (A) When an unincorporated nonprofit 2642
association is dissolved voluntarily upon the expiration of the 2643
period of existence of the association specified in its governing 2644
principles, the association shall cease to carry on its activities 2645
and shall do only those acts that are required to wind up its 2646
affairs, and for those purposes it shall continue as an 2647
unincorporated nonprofit association. 2648

(B) Any claim existing or action or proceeding pending by or 2649
against the unincorporated nonprofit association or that would 2650
have accrued against it may be prosecuted to judgment with right 2651
of appeal as in other cases, but any proceeding, execution, or 2652
process, or the satisfaction or performance of any order, 2653
judgment, or decree, may be stayed as provided in section 1745.53 2654
of the Revised Code. 2655

(C) Any process, notice, or demand against the unincorporated 2656
nonprofit association may be served by delivering a copy to a 2657
manager, liquidator, or person having charge of its assets or, if 2658
none of those persons can be found, to the statutory agent. 2659

(D) The managers of the unincorporated nonprofit association 2660
and their survivors or successors shall act in accordance with the 2661
governing principles until the affairs of the association are 2662
completely wound up. Subject to the orders of courts of this state 2663
having jurisdiction over the association, the managers shall 2664
proceed as speedily as is practicable to a complete winding up of 2665
the affairs of the association and, to the extent necessary or 2666
expedient to that end, shall exercise all the authority of the 2667

association. Without limiting the generality of that authority, 2668
they may fill vacancies, elect managers, carry out contracts of 2669
the association, make new contracts, borrow money, mortgage or 2670
pledge the property of the association as security, sell its 2671
assets at public or private sale, make conveyances in the 2672
association's name, lease real property for any term, including 2673
ninety-nine years renewable forever, settle or compromise claims 2674
in favor of or against the association, employ one or more persons 2675
as liquidators to wind up the affairs of the association with the 2676
authority that the managers see fit to grant, cause the title to 2677
any of the assets of the association to be conveyed to those 2678
liquidators for that purpose, apply assets to the payment of 2679
obligations, perform all other acts necessary or expedient to the 2680
winding up of the affairs of the association, and, after paying or 2681
adequately providing for the payment of all known obligations of 2682
the association, distribute the remainder of the assets as 2683
follows: 2684

(1) Assets held upon a condition requiring return, transfer, 2685
or conveyance, which condition will have occurred by reason of the 2686
dissolution or otherwise, shall be returned, transferred, or 2687
conveyed in accordance with those requirements; 2688

(2) In the case of a public benefit association, the 2689
following apply: 2690

(a) Assets held by it in trust for specified purposes shall 2691
be applied so far as is feasible in accordance with the terms of 2692
the trust. 2693

(b) The remaining assets not held in trust shall be applied 2694
so far as is feasible towards carrying out the purposes stated in 2695
its governing principles. 2696

(c) In the event and to the extent that in the judgment of 2697
the managers it is not feasible to apply the assets as provided in 2698

divisions (D)(2)(a) and (b) of this section, the assets shall be 2699
applied as may be directed by the court of common pleas of the 2700
county in this state in which the principal office of the 2701
association is located, in an action brought for that purpose by 2702
the managers or any one of them or by the association, to which 2703
action the attorney general shall be a party, in an action brought 2704
by the attorney general in a court of competent jurisdiction, or 2705
in an action brought as provided in section 1745.53 of the Revised 2706
Code for the purpose of winding up the affairs of the association 2707
under the supervision of the court. 2708

(3) In the case of a mutual benefit association, any 2709
remaining assets shall be distributed in accordance with the 2710
applicable provisions of the governing principles of the 2711
association or, to the extent that no such provision is made, the 2712
assets shall be distributed pursuant to a plan of distribution 2713
adopted by the members of the association at a meeting held for 2714
the purpose of voting on dissolution or any adjournment of the 2715
meeting. If no plan of distribution is so adopted by the members, 2716
those remaining assets shall be distributed pursuant to a plan of 2717
distribution adopted by the managers. If no plan of distribution 2718
is so adopted by the members or managers, the remaining assets 2719
shall be applied in the manner directed by the court of common 2720
pleas of the county in this state in which the principal office of 2721
the association is located, in an action brought for that purpose 2722
by the mutual benefit association, by the managers or any one of 2723
them, or by the attorney general in a court of competent 2724
jurisdiction or in an action brought as provided in section 2725
1745.53 of the Revised Code for the purpose of winding up the 2726
affairs of the association under the supervision of the court. 2727

(E) Without limiting the authority of the managers, any 2728
action within the purview of this section that is authorized or 2729
approved by the members at a meeting held for that purpose shall 2730

be conclusive for all purposes upon all of the members of the 2731
association, except that nothing in this section shall impair the 2732
jurisdiction of courts of competent jurisdiction to enforce the 2733
duties of a public benefit association with respect to the 2734
application of its assets towards its public or charitable 2735
purposes, or impair the power of the state, acting through the 2736
attorney general, to require those assets to be applied, as nearly 2737
as may be, towards its public or charitable purposes. 2738

(F) All deeds and other instruments of the unincorporated 2739
nonprofit association shall be in the name of the association and 2740
shall be executed, acknowledged, and delivered by a manager of the 2741
association. 2742

(G) At any time during the winding up of its affairs, the 2743
unincorporated nonprofit association by its managers may make 2744
application to the court of common pleas of the county in this 2745
state in which the principal office of the association is located 2746
to have the winding up continued under supervision of the court as 2747
provided in section 1745.53 of the Revised Code. 2748

Sec. 1745.53. (A) Without limiting the generality of its 2749
authority, the court of common pleas of the county in this state 2750
in which is located the principal office of a voluntarily 2751
dissolved unincorporated nonprofit association or of an 2752
unincorporated nonprofit association whose period of existence has 2753
expired, upon the complaint of the association, a majority of the 2754
managers, or a creditor or member of the association and upon 2755
notice to all of the managers and any other interested persons 2756
that the court considers proper, at any time may order and adjudge 2757
in regard to the following matters: 2758

(1) The presentation and proof of all claims and demands 2759
against the association and of all rights, interests, or liens in 2760
or on any of its property, the fixing of the time within which and 2761

the manner in which that proof shall be made and the person to 2762
whom that presentation shall be made, and the barring from 2763
participation in any distribution of assets of all persons failing 2764
to make and present proofs as required by the order of the court; 2765

(2) The stay of the prosecution of any proceeding against the 2766
association or involving any of its property, and the requirement 2767
that the parties to it present and prove their claims, demands, 2768
rights, interests, or liens at the time and in the manner required 2769
of creditors or others, or the grant of leave to bring or maintain 2770
an independent proceeding to enforce liens; 2771

(3) The settlement or determination of all claims of every 2772
nature against the association or any of its property, the 2773
determination of the assets required to be retained to pay or 2774
provide for the payment of those claims or any claim, the 2775
determination of the assets available for distribution among 2776
members and others, and the making of new parties to the 2777
proceeding so far as the court considers proper for the 2778
determination of all matters; 2779

(4) The determination of the rights of members or others in 2780
and to the assets of the association; 2781

(5) The presentation and the filing of intermediate and final 2782
accounts of the managers or of the liquidators and hearings on 2783
them, the allowance, disallowance, or settlement of those 2784
accounts, and the discharge of the managers, the liquidators, or 2785
any of them from their duties and liabilities; 2786

(6) The appointment of a special master commissioner to hear 2787
and determine any matters with the authority that the court 2788
considers proper; 2789

(7) The filling of any vacancies in the number of managers or 2790
liquidators if the managers are unable to act on the vacancies for 2791
want of a quorum or for any other reason; 2792

(8) The appointment of a receiver, in accordance with the usages of a court in equitable matters, to wind up the affairs of the association, to take custody of any of its property, or for any other purpose; 2793
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(9) The issuance or entry of any injunction or any other order that the court considers proper in the administration of the trust involved in the winding up of the affairs of the association and the giving of notice of it; 2797
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(10) The allowance and payment of compensation to the managers or any of them, to liquidators, to a receiver, to the attorney for the complainant, or to any person properly rendering services beneficial to the association or to those interested in it; 2801
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(11) The entry of a judgment or decree that, if it so provides, may operate as the deed or other instrument ordered to be executed, or the appointment of a master to execute that deed or instrument in the name of the association with the same effect as if executed by an authorized manager pursuant to authority conferred by the managers or by the members of the association if there is no manager competent to execute the deed or instrument, if the association or its managers do not perform or comply with a judgment or decree of court, or if the court considers it proper. 2806
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(B) A judicial proceeding under this section concerning the winding up of the affairs of an unincorporated nonprofit association is a special proceeding, and final orders in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code. 2815
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Sec. 1745.54. (A) If after an unincorporated nonprofit association is dissolved voluntarily or the period of existence of 2822
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the association has expired a receiver is appointed to wind up the 2824
affairs of the association, all of the claims, demands, rights, 2825
interests, or liens of creditors, claimants, and members shall be 2826
determined as of the day on which the receiver was appointed. 2827
Unless it is otherwise ordered, that appointment vests in the 2828
receiver and the receiver's successors the right to the immediate 2829
possession of all of the property of the association that shall, 2830
if so ordered, execute and deliver conveyances of the property to 2831
the receiver or the receiver's nominee. 2832

(B) Any manager, member, or other person, whether a resident 2833
or nonresident of this state and however interested, may be 2834
appointed as receiver. 2835

(C) The receiver has all the authority vested in the managers 2836
and members of the association, shall exercise that authority 2837
subject to the orders that are made by the court, and may be 2838
required to qualify by giving bond to the state in the amount that 2839
the court fixes, with surety to the satisfaction of the clerk of 2840
the court, conditioned for the faithful discharge of the 2841
receiver's duties and for a due accounting for all money or 2842
property received by the receiver. 2843

Sec. 1745.55. (A) An unincorporated nonprofit association may 2844
be dissolved judicially and its affairs wound up in any of the 2845
following manners: 2846

(1) By an order of the supreme court or of a court of appeals 2847
in an action in quo warranto brought as provided by sections 2848
2733.02 to 2733.39 of the Revised Code, in which event the court 2849
may order the affairs of the association to be wound up by its 2850
managers as in the case of voluntary dissolution or by proceedings 2851
in, and under the order of, the court of common pleas of the 2852
county in this state in which the association has its principal 2853

office; 2854

(2) By an order of the court of common pleas of the county in 2855
this state in which that association has its principal office, in 2856
an action brought by members entitled to dissolve the association 2857
voluntarily, if any of the following is established: 2858

(a) The association's period of existence as set forth in its 2859
governing principles has expired, and it is necessary in order to 2860
protect the members that the association be judicially dissolved. 2861

(b) The association is insolvent or is unable to afford 2862
reasonable security to those who may deal with it, and it is 2863
necessary in order to protect the creditors of the association 2864
that the association be judicially dissolved. 2865

(c) The objects of the association have wholly failed or are 2866
entirely abandoned, or their accomplishment is impracticable. 2867

(3) By an order of the court of common pleas of the county in 2868
this state in which the association has its principal office, in 2869
an action brought by a majority of the voting members or by any 2870
lesser proportion or number of members that are entitled by the 2871
governing principles to dissolve the association voluntarily, if 2872
it is established that it is beneficial to the members that the 2873
association be judicially dissolved; 2874

(4) By an order of the court of common pleas of the county in 2875
this state in which the association has its principal office, in 2876
an action brought by one-half of the managers if there is an even 2877
number of managers or by one-half of the members if it is 2878
established that the association has an even number of managers 2879
who are deadlocked in the management of the association's affairs, 2880
and the members are unable to break the deadlock, or if it is 2881
established that the association has an uneven number of managers, 2882
and the members are deadlocked in voting power and unable to agree 2883
upon or vote for the election of managers as successors to 2884

managers whose terms normally would expire upon the election of 2885
their successors. 2886

(B) A complaint for judicial dissolution shall be verified by 2887
any of the complainants and shall set forth facts showing that the 2888
case is one of those specified in this section. Unless the 2889
complainants set forth in the complaint that they are unable to 2890
annex a list of members, a schedule shall be annexed to the 2891
complaint setting forth the name of each member and the member's 2892
address if it is known. 2893

(C) Upon the filing of a complaint for judicial dissolution, 2894
the court with which it is filed shall have the power to issue 2895
injunctions, to appoint a receiver with the authority and duties 2896
that the court from time to time may direct, to take any other 2897
proceedings that may be necessary to protect the property or the 2898
rights of the complainants or of the persons interested, and to 2899
carry on the activities of the unincorporated nonprofit 2900
association until a full hearing can be had. Upon or after the 2901
filing of a complaint for judicial dissolution, the court by 2902
injunction or order may stay the prosecution of any proceeding 2903
against the unincorporated nonprofit association or involving any 2904
of its property and require the parties to it to present and prove 2905
their claims, demands, rights, interests, or liens at the time and 2906
in the manner required of creditors or others. The court may refer 2907
the complaint to a special master commissioner. 2908

(D) After a hearing had upon the notice that the court may 2909
direct to be given to all parties to the proceeding and to any 2910
other parties in interest designated by the court, a final order 2911
based either upon the evidence or upon the report of the special 2912
master commissioner if one has been appointed, shall be made 2913
dissolving the association or dismissing the complaint. An order 2914
or judgment for the judicial dissolution of an unincorporated 2915
nonprofit association shall contain a concise statement of the 2916

proceedings leading up to the order or judgment, the name of the 2917
association, the place in this state where its principal office is 2918
located, the names and addresses of its managers, the name and 2919
address of a statutory agent, and if desired, any other provisions 2920
with respect to the judicial dissolution and winding up of affairs 2921
that are considered necessary or desirable. Upon the issuance of 2922
that order or judgment, the association shall be dissolved. To the 2923
extent consistent with orders entered in that proceeding, the 2924
effect of the judicial dissolution shall be the same as in the 2925
case of voluntary dissolution, and the provisions of sections 2926
1745.52, 1745.53, and 1745.54 of the Revised Code with respect to 2927
the authority and duties of managers during the winding up of the 2928
affairs of an association dissolved voluntarily, the jurisdiction 2929
of courts over the winding up of the affairs of an association, 2930
and receivers for winding up the affairs of an association are 2931
applicable to associations that are judicially dissolved. 2932

(E) A judicial proceeding under this section concerning the 2933
judicial dissolution of an unincorporated nonprofit association is 2934
a special proceeding, and final orders in the proceeding may be 2935
vacated, modified, or reversed on appeal pursuant to the Rules of 2936
Appellate Procedure or the Rules of Practice of the Supreme Court, 2937
whichever are applicable, and, to the extent not in conflict with 2938
those rules, Chapter 2505. of the Revised Code. 2939

Sec. 1745.56. (A) The members, the managers, and the officers 2940
of an unincorporated nonprofit association shall not be personally 2941
liable for any obligation of the association. 2942

(B)(1) Managers who vote for or assent to any of the 2943
following shall be jointly and severally liable to the association 2944
as provided in division (B)(2) of this section: 2945

(a) A distribution of assets to members contrary to law or 2946
the governing principles; 2947

(b) A distribution of assets to persons other than creditors 2948
during the winding up of the affairs of the association on 2949
dissolution or otherwise without the payment of all known 2950
obligations of the association or without making adequate 2951
provision for that payment; 2952

(c) The making of loans, other than in the usual conduct of 2953
its affairs or in accordance with provisions for the making of 2954
loans in the governing principles, to an officer, manager, or 2955
member of the association. 2956

(2) The managers described in division (B)(1) of this section 2957
shall be jointly and severally liable to the association as 2958
follows: 2959

(a) In cases under division (B)(1)(a) of this section, except 2960
as provided in division (B)(3) of this section, up to the amount 2961
of the distribution in excess of the amount that could have been 2962
distributed without violation of law or the governing principles 2963
but not in excess of the amount that would inure to the benefit of 2964
the creditors of the association if it was insolvent at the time 2965
of the distribution or there was reasonable ground to believe that 2966
by that action it would be rendered insolvent, or to the benefit 2967
of the members other than members of the class in respect of which 2968
the distribution was made; 2969

(b) In cases under division (B)(1)(b) of this section, except 2970
as provided in division (B)(3) of this section, to the extent that 2971
those obligations that are not otherwise barred by statute are not 2972
paid or for the payment of which adequate provision has not been 2973
made; 2974

(c) In cases under division (B)(1)(c) of this section, for 2975
the amount of the loan with interest at the rate of six per cent 2976
per annum until that amount has been paid. 2977

(3) A manager shall not be liable under division (B)(1)(a) or 2978

(b) of this section if in determining the amount available for any 2979
distribution under that division, the manager in good faith relied 2980
on a financial statement of the association prepared by an officer 2981
or employee of the association in charge of its accounts or 2982
certified by a public accountant or firm of public accountants, in 2983
good faith considered the assets to be of their book value, or 2984
followed what the manager believed to be sound accounting and 2985
business practice. 2986

(C) A manager who is present at a meeting of the managers or 2987
of a committee of the managers at which action on any matter is 2988
authorized or taken and who has not voted for or against that 2989
action shall be presumed to have voted for the action unless the 2990
manager's written dissent from the action is filed either during 2991
the meeting or within a reasonable time after the adjournment of 2992
the meeting, with the person acting as secretary of the meeting or 2993
with the secretary of the association. 2994

(D) A member who knowingly receives any distribution made 2995
contrary to law or the governing principles shall be liable to the 2996
association for the amount received by the member that is in 2997
excess of the amount that could have been distributed without 2998
violation of law or the governing principles. 2999

(E) A manager against whom a claim is asserted under or 3000
pursuant to this section and who is held liable on the claim shall 3001
be entitled to contribution, on equitable principles, from other 3002
managers who are also liable. Additionally, any manager against 3003
whom a claim is asserted under or pursuant to this section or who 3004
is held liable on the claim shall have a right of contribution 3005
from the members who knowingly received any distribution made 3006
contrary to law or the governing principles, and those members as 3007
among themselves shall also be entitled to contribution in 3008
proportion to the amounts received by them respectively. 3009

(F) No action shall be brought by or on behalf of an 3010

association upon any cause of action arising under division 3011
(B)(1)(a) or (b) of this section at any time after two years from 3012
the day on which the violation occurs. 3013

(G) Nothing in this section shall preclude any creditor whose 3014
claim is unpaid from exercising any rights that the creditor 3015
otherwise would have by law to enforce the creditor's claim 3016
against the assets of the association distributed to the members 3017
or other persons. 3018

Sec. 1745.57. Sections 1745.05 to 1745.56 of the Revised Code 3019
do not affect any action or proceeding that is commenced, or any 3020
right that accrues, before those sections take effect. 3021

Sec. 2901.23. (A) An organization may be convicted of an 3022
offense under any of the following circumstances: 3023

(1) The offense is a minor misdemeanor committed by an 3024
officer, agent, or employee of the organization acting in its 3025
behalf and within the scope of ~~his~~ the officer's, agent's, or 3026
employee's office or employment, except that if the section 3027
defining the offense designates the officers, agents, or employees 3028
for whose conduct the organization is accountable or the 3029
circumstances under which it is accountable, ~~such~~ those provisions 3030
shall apply. 3031

(2) A purpose to impose organizational liability plainly 3032
appears in the section defining the offense, and the offense is 3033
committed by an officer, agent, or employee of the organization 3034
acting in its behalf and within the scope of ~~his~~ the officer's, 3035
agent's, or employee's office or employment, except that if the 3036
section defining the offense designates the officers, agents, or 3037
employees for whose conduct the organization is accountable or the 3038
circumstances under which it is accountable, ~~such~~ those provisions 3039
shall apply. 3040

(3) The offense consists of an omission to discharge a 3041
specific duty imposed by law on the organization. 3042

(4) If, acting with the kind of culpability otherwise 3043
required for the commission of the offense, its commission was 3044
authorized, requested, commanded, tolerated, or performed by the 3045
board of directors, trustees, partners, or by a high managerial 3046
officer, agent, or employee acting in behalf of the organization 3047
and within the scope of ~~his~~ such a board's or person's office or 3048
employment. 3049

(B) ~~When~~ If strict liability is imposed for the commission of 3050
an offense, a purpose to impose organizational liability shall be 3051
presumed, unless the contrary plainly appears. 3052

(C) In a prosecution of an organization for an offense other 3053
than one for which strict liability is imposed, it is a defense 3054
that the high managerial officer, agent, or employee having 3055
supervisory responsibility over the subject matter of the offense 3056
exercised due diligence to prevent its commission. This defense is 3057
not available if it plainly appears inconsistent with the purpose 3058
of the section defining the offense. 3059

(D) As used in this section, "organization" means a 3060
corporation for profit or not for profit, partnership, limited 3061
partnership, joint venture, unincorporated nonprofit association, 3062
estate, trust, or other commercial or legal entity. "Organization" 3063
does not include an entity organized as or by a governmental 3064
agency for the execution of a governmental program. 3065

Sec. 3955.06. (A) There is hereby created a ~~nonprofit an~~ 3066
unincorporated nonprofit association to be known as the Ohio 3067
insurance guaranty association. All member insurers, as defined in 3068
division (D) of section 3955.01 of the Revised Code, shall be and 3069
remain members of the association as a condition of their 3070
authority to transact insurance in this state. The association 3071

shall perform its functions under a plan of operation established 3072
and approved under section 3955.09 of the Revised Code and shall 3073
exercise its powers through a board of directors established under 3074
section 3955.07 of the Revised Code. 3075

(B) For purposes of administration and assessment, the 3076
association shall be divided into two accounts: 3077

(1) The automobile insurance account; 3078

(2) The account for all other insurance to which sections 3079
3955.01 to 3955.19 of the Revised Code apply. 3080

Sec. 3956.06. (A) There is hereby created a ~~nonprofit~~ an 3081
unincorporated nonprofit association to be known as the Ohio life 3082
and health insurance guaranty association. All member insurers 3083
shall be and remain members of the association as a condition of 3084
their authority to transact the business of insurance in this 3085
state. The association shall perform its functions under the plan 3086
of operation established and approved under section 3956.10 of the 3087
Revised Code and shall exercise its powers through a board of 3088
directors established under section 3956.07 of the Revised Code. 3089
For purposes of administration and assessment, the association 3090
shall maintain the following two accounts: 3091

(1) The life insurance and annuity account ~~which~~ that 3092
includes the following subaccounts: 3093

(a) Life insurance subaccount; 3094

(b) Annuity subaccount; 3095

(c) Unallocated annuity subaccount ~~which~~ that also includes 3096
all annuity contracts meeting the requirements of section 403(b) 3097
of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 3098
U.S.C.A. 1, as amended. 3099

(2) The health insurance account. 3100

(B) The association is subject to the supervision of the 3101
superintendent of insurance and to the applicable insurance laws 3102
of this state. 3103

Sec. 4121.70. (A) There is hereby created the 3104
labor-management government advisory council consisting of fifteen 3105
members appointed as follows: 3106

(1) The governor, with the advice and consent of the senate, 3107
shall appoint three members who, by training and vocation, are 3108
representative of labor and three members who, by training and 3109
vocation, are representative of employers. 3110

(2) Ex officio, the chairpersons of the standing committees 3111
of the house of representatives and the senate to which 3112
legislation concerned with workers' compensation is customarily 3113
referred. A chairperson may designate the vice-chairperson of the 3114
committee to serve instead. 3115

(3) One person who by training and vocation represents labor 3116
and one person who by training and vocation represents employers 3117
of differing political parties appointed by the speaker of the 3118
house of representatives. 3119

(4) One person who by training and vocation represents labor 3120
and one person who by training and vocation represents employers 3121
of differing political parties appointed by the president of the 3122
senate. 3123

(5) One person who by training and vocation represents 3124
nonprofit vocational rehabilitation services providers that 3125
deliver services to injured workers, appointed by the speaker of 3126
the house of representatives; 3127

(6) One person who by training and vocation represents 3128
nonprofit vocational rehabilitation services providers that 3129
deliver services to injured workers, appointed by the president of 3130

the senate; 3131

(7) The governor, with the advice and consent of the senate, 3132
shall ~~apoint~~ appoint one member who, by training and vocation, 3133
represents a nonprofit ~~association~~ organization of vocational 3134
rehabilitation services providers that deliver services to injured 3135
workers. 3136

(B) Members appointed by the governor shall serve for a term 3137
of six years with each term ending on the same day of the year in 3138
which the member was first appointed, except that each member 3139
shall serve for a period of sixty additional days at the end of 3140
the member's term or until the member's successor is appointed and 3141
qualifies, whichever date occurs first. Of the members first 3142
appointed to the council by the governor, one member each 3143
representing labor and management shall serve an initial term of 3144
two years, one member each representing labor and management shall 3145
serve a term of four years, and the remaining two members shall 3146
serve full six-year terms. The members initially appointed by the 3147
speaker of the house of representatives and the president of the 3148
senate shall serve a term of six years. Thereafter, members shall 3149
be appointed to and serve full six-year terms. Members are 3150
eligible for reappointment to any number of additional terms. 3151

Legislative members shall serve a term that coincides with 3152
the two-year legislative session in which they are first appointed 3153
with each term ending on the thirty-first day of December of the 3154
even-numbered year. Legislative members are eligible for 3155
reappointment. 3156

Vacancies on the council shall be filled in the same manner 3157
as the original appointment. All members of the council shall 3158
serve without additional compensation but shall be reimbursed by 3159
the bureau of workers' compensation for actual and necessary 3160
expenses. 3161

The council shall advise the bureau of workers' compensation 3162
board of directors and the administrator of workers' compensation 3163
on the quality and effectiveness of rehabilitation services and 3164
make recommendations pertaining to the bureau's rehabilitation 3165
program, including the operation of that program. 3166

Sec. 4303.201. (A) As used in this section: 3167

(1) "Convention facility" means any structure owned or leased 3168
by a municipal corporation or county which was expressly designed 3169
and constructed and is currently used for the purpose of 3170
presenting conventions, public meetings, and exhibitions. 3171

(2) "Nonprofit organization" means any unincorporated 3172
nonprofit association or nonprofit corporation that is not formed 3173
for the pecuniary gain or profit of, and whose net earnings or any 3174
part ~~thereof~~ of whose net earnings is not distributable to, its 3175
members, trustees, officers, or other private persons; provided, 3176
that the payment of reasonable compensation for services rendered 3177
and the distribution of assets on dissolution shall not be 3178
considered pecuniary gain or profit or distribution of earnings in 3179
an association or corporation all of whose members are nonprofit 3180
corporations. Distribution of earnings to member organizations 3181
does not deprive it of the status of a nonprofit organization. 3182

(B) An F-1 permit may be issued to any nonprofit organization 3183
to allow the nonprofit organization and its members and their 3184
guests to lawfully bring beer, wine, and intoxicating liquor in 3185
its original package, flasks, or other containers into a 3186
convention facility for consumption therein, if both of the 3187
following requirements are met: 3188

(1) The superintendent of liquor control is satisfied the 3189
organization meets the definition of a nonprofit organization as 3190
set forth in division (A)(2) of this section, the nonprofit 3191
organization's membership includes persons residing in two or more 3192

states, and the organization's total membership is in excess of 3193
five hundred. The superintendent may accept a sworn statement by 3194
the president or other chief executive officer of the nonprofit 3195
organization as proof of the matters required in this division. 3196

(2) The managing official or employee of the convention 3197
facility has given written consent to the use of the convention 3198
facility and to the application for the F-1 permit, as shown in 3199
the nonprofit organization's application to the superintendent. 3200

(C) The superintendent shall specify individually the 3201
effective period of each F-1 permit on the permit, which shall not 3202
exceed three days. The fee for an F-1 permit is two hundred fifty 3203
dollars. The superintendent shall prepare and make available 3204
application forms to request F-1 permits and may require 3205
applicants to furnish such information as the superintendent 3206
determines to be necessary for the administration of this section. 3207

(D) No holder of an F-1 permit shall make a specific charge 3208
for beer, wine, or intoxicating liquor by the drink, or in its 3209
original package, flasks, or other containers in connection with 3210
its use of the convention facility under the permit. 3211

Sec. 4303.204. (A) The division of liquor control may issue 3212
an F-4 permit to an ~~association~~ organization or corporation 3213
organized not-for-profit in this state to conduct an event that 3214
includes the introduction, showcasing, or promotion of Ohio wines, 3215
if the event has all of the following characteristics: 3216

(1) It is coordinated by that ~~association~~ organization or 3217
corporation, and the ~~association~~ organization or corporation is 3218
responsible for the activities at it. 3219

(2) It has as one of its purposes the intent to introduce, 3220
showcase, or promote Ohio wines to persons who attend it. 3221

(3) It includes the sale of food for consumption on the 3222

premises where sold. 3223

(4) It features at least three A-2 permit holders who sell 3224
Ohio wine at it. 3225

(B) The holder of an F-4 permit may furnish, with or without 3226
charge, wine that it has obtained from the A-2 permit holders that 3227
are participating in the event for which the F-4 permit is issued, 3228
in two-ounce samples for consumption on the premises where 3229
furnished and may sell such wine by the glass for consumption on 3230
the premises where sold. The holder of an A-2 permit that is 3231
participating in the event for which the F-4 permit is issued may 3232
sell wine that it has manufactured, in sealed containers for 3233
consumption off the premises where sold. Wine may be furnished or 3234
sold on the premises of the event for which the F-4 permit is 3235
issued only where and when the sale of wine is otherwise permitted 3236
by law. 3237

(C) The premises of the event for which the F-4 permit is 3238
issued shall be clearly defined and sufficiently restricted to 3239
allow proper enforcement of the permit by state and local law 3240
enforcement officers. If an F-4 permit is issued for all or a 3241
portion of the same premises for which another class of permit is 3242
issued, that permit holder's privileges will be suspended in that 3243
portion of the premises in which the F-4 permit is in effect. 3244

(D) No F-4 permit shall be effective for more than 3245
seventy-two consecutive hours. No sales or furnishing of wine 3246
shall take place under an F-4 permit after one a.m. 3247

(E) The division shall not issue more than six F-4 permits to 3248
the same not-for-profit ~~association~~ organization or corporation in 3249
any one calendar year. 3250

(F) An applicant for an F-4 permit shall apply for the permit 3251
not later than thirty days prior to the first day of the event for 3252
which the permit is sought. The application for the permit shall 3253

list all of the A-2 permit holders that will participate in the 3254
event for which the F-4 permit is sought. The fee for the F-4 3255
permit is sixty dollars per day. 3256

The division shall prepare and make available an F-4 permit 3257
application form and may require applicants for and holders of the 3258
F-4 permit to provide information that is in addition to that 3259
required by this section and that is necessary for the 3260
administration of this section. 3261

(G)(1) The holder of an F-4 permit is responsible for, and is 3262
subject to penalties for, any violations of this chapter or 3263
Chapter 4301. of the Revised Code or the rules adopted under this 3264
and that chapter. 3265

(2) An F-4 permit holder shall not allow an A-2 permit holder 3266
to participate in the event for which the F-4 permit is issued if 3267
the A-2 or A-1-A permit of that A-2 permit holder is under 3268
suspension. 3269

(3) The division may refuse to issue an F-4 permit to an 3270
applicant who has violated any provision of this chapter or 3271
Chapter 4301. of the Revised Code during the applicant's previous 3272
operation under an F-4 permit, for a period of up to two years 3273
after the date of the violation. 3274

(H)(1) Notwithstanding division (D) of section 4301.22 of the 3275
Revised Code, an A-2 permit holder that participates in an event 3276
for which an F-4 permit is issued may donate wine that it has 3277
manufactured to the holder of that F-4 permit. The holder of an 3278
F-4 permit may return unused and sealed containers of wine to the 3279
A-2 permit holder that donated the wine at the conclusion of the 3280
event for which the F-4 permit was issued. 3281

(2) The participation by an A-2 permit holder or its 3282
employees in an event for which an F-4 permit is issued does not 3283
violate section 4301.24 of the Revised Code. 3284

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| Sec. 4303.207. (A) As used in this section: | 3285 |
| (1) "Nonprofit organization" means any unincorporated | 3286 |
| <u>nonprofit</u> association or nonprofit corporation that is not formed | 3287 |
| for the pecuniary gain or profit of, and whose net earnings or any | 3288 |
| part of whose net earnings is not distributable to, its members, | 3289 |
| trustees, directors, officers, or other private persons. | 3290 |
| (2) "Qualified golf event" means a golf tournament or other | 3291 |
| golf competition event that meets all of the following | 3292 |
| requirements: | 3293 |
| (a) It is hosted by the nonprofit organization to which an | 3294 |
| F-7 permit is issued. | 3295 |
| (b) It is sanctioned by a recognized national golf | 3296 |
| organization. | 3297 |
| (c) It includes the sale of food for consumption on the | 3298 |
| premises for which an F-7 permit is issued. | 3299 |
| (d) Contributions to charity are made from the proceeds of | 3300 |
| the event that equal in the aggregate at least two hundred | 3301 |
| thousand dollars. | 3302 |
| (3) "Recognized national golf organization" means any of the | 3303 |
| following: | 3304 |
| (a) The United States golf association; | 3305 |
| (b) The professional golf association of America (PGA); | 3306 |
| (c) The PGA tour, including the champions tour and the | 3307 |
| nationwide tour; | 3308 |
| (d) The LPGA tour; | 3309 |
| (e) The successors of any organization listed in divisions | 3310 |
| (A)(3)(a) to (d) of this section. | 3311 |
| (B) An F-7 permit may be issued to a nonprofit organization | 3312 |

to sell beer, wine, mixed beverages, and spirituous liquor by the 3313
individual drink at a qualified golf event being held on premises 3314
located in a political subdivision or part of a political 3315
subdivision where the sale of beer, wine, mixed beverages, and 3316
spirituous liquor is otherwise permitted by law on that day, if 3317
both of the following requirements are met: 3318

(1) The superintendent of liquor control is satisfied that 3319
the organization is a nonprofit organization. For this purpose, 3320
the superintendent may accept as proof a sworn statement by the 3321
president or other chief executive officer of the applicant 3322
organization. 3323

(2) The superintendent is satisfied that the event for which 3324
the F-7 permit is sought to be issued is a qualified golf event. 3325
For this purpose, the superintendent may accept as proof a sworn 3326
statement by the president or other chief executive officer of the 3327
applicant organization. 3328

(C) The premises for which the F-7 permit is issued shall 3329
meet all of the following requirements: 3330

(1) Be owned or leased by the nonprofit organization to which 3331
the F-7 permit is issued; 3332

(2) Be limited to areas in which the qualified golf event is 3333
conducted and to other areas that are contiguous to those areas in 3334
which the qualified golf event is conducted, which areas are 3335
specifically designated for food and beverage consumption and 3336
hospitality for the qualified golf event; 3337

(3) Be clearly defined; 3338

(4) Be sufficiently restricted to allow proper supervision of 3339
use of the permit by state and local law enforcement personnel. 3340

(D) A nonprofit organization to which an F-7 permit is issued 3341
shall be held responsible for any conduct that violates the laws 3342

pertaining to the sale of beer, wine, mixed beverages, or 3343
spirituous liquor. 3344

(E) The division of liquor control shall prepare and make 3345
available an F-7 permit application form and may require 3346
applicants for the permit to provide information that, in addition 3347
to the information required by this section, is necessary for the 3348
administration of this section. 3349

(F) An F-7 permit shall be effective for a period not to 3350
exceed eight consecutive days. The division of liquor control 3351
shall not issue more than two F-7 permits per calendar year to the 3352
same nonprofit organization. The fee for an F-7 permit is four 3353
hundred fifty dollars. 3354

Sec. 5111.151. (A) This section applies to eligibility 3355
determinations for all cases involving medicaid provided pursuant 3356
to this chapter, qualified medicare beneficiaries, specified 3357
low-income medicare beneficiaries, qualifying individuals-1, 3358
qualifying individuals-2, and medical assistance for covered 3359
families and children. 3360

(B) As used in this section: 3361

(1) "Trust" means any arrangement in which a grantor 3362
transfers real or personal property to a trust with the intention 3363
that it be held, managed, or administered by at least one trustee 3364
for the benefit of the grantor or beneficiaries. "Trust" includes 3365
any legal instrument or device similar to a trust. 3366

(2) "Legal instrument or device similar to a trust" includes, 3367
but is not limited to, escrow accounts, investment accounts, 3368
partnerships, contracts, and other similar arrangements that are 3369
not called trusts under state law but are similar to a trust and 3370
to which all of the following apply: 3371

(a) The property in the trust is held, managed, retained, or 3372

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| administered by a trustee. | 3373 |
| (b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary. | 3374 3375 3376 |
| (c) The trustee holds identifiable property for the beneficiary. | 3377 3378 |
| (3) "Grantor" is a person who creates a trust, including all of the following: | 3379 3380 |
| (a) An individual; | 3381 |
| (b) An individual's spouse; | 3382 |
| (c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse; | 3383 3384 3385 |
| (d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse. | 3386 3387 3388 |
| (4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust. | 3389 3390 |
| (5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries. | 3391 3392 |
| (6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association. | 3393 3394 3395 |
| (7) "Applicant" is an individual who applies for medicaid or the individual's spouse. | 3396 3397 |
| (8) "Recipient" is an individual who receives medicaid or the individual's spouse. | 3398 3399 |
| (9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even | 3400 3401 |

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|---|--|
| if the terms of the trust state that it is irrevocable: | 3402 |
| (a) A trust that provides that the trust can be terminated only by a court; | 3403 3404 |
| (b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee. | 3405 3406 3407 |
| (10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor. | 3408 3409 3410 3411 |
| (11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property. | 3412 3413 3414 |
| (12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient. | 3415 3416 3417 |
| (13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust. | 3418 3419 3420 |
| (C) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust is one of the following: | 3421 3422 3423 3424 3425 3426 3427 |
| (1) A countable resource; | 3428 |
| (2) Countable income; | 3429 |
| (3) A countable resource and countable income; | 3430 |
| (4) Not a countable resource or countable income. | 3431 |

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

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

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

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

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

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

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

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

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

(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid, medical assistance for covered families and

children, or as a qualified medicare beneficiary, specified 3462
low-income medicare beneficiary, qualifying individual-1, or 3463
qualifying individual-2; 3464

(b) Whether or not the trustee actually exercises discretion. 3465

(5) If any real or personal property is transferred to a 3466
medicaid qualifying trust that is not distributable to the 3467
applicant or recipient, the transfer shall be considered an 3468
improper disposition of assets and shall be subject to section 3469
5111.0116 of the Revised Code and rules to implement that section 3470
adopted under section 5111.011 of the Revised Code. 3471

(6) The baseline date for the look-back period for 3472
disposition of assets involving a medicaid qualifying trust shall 3473
be the date on which the applicant or recipient is both 3474
institutionalized and first applies for medicaid. 3475

(E)(1) A trust or legal instrument or device similar to a 3476
trust shall be considered a self-settled trust if all of the 3477
following apply: 3478

(a) The trust was established on or after August 11, 1993. 3479

(b) The trust was not established by a will. 3480

(c) The trust was established by an applicant or recipient, 3481
spouse of an applicant or recipient, or a person, including a 3482
court or administrative body, with legal authority to act in place 3483
of or on behalf of an applicant, recipient, or spouse, or acting 3484
at the direction or on request of an applicant, recipient, or 3485
spouse. 3486

(2) A trust that meets the requirements of division (E)(1) of 3487
this section and is a revocable trust shall be treated by the 3488
county department of job and family services as follows: 3489

(a) The corpus of the trust shall be considered a resource 3490
available to the applicant or recipient. 3491

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

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

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

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

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

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

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

(e) When determining the value of the disposed asset under this provision, the value of the trust shall be its value on the

date payment to the applicant or recipient was foreclosed. 3523

(f) Any income earned or other resources added subsequent to 3524
the foreclosure date shall be added to the total value of the 3525
trust. 3526

(g) Any payments to or for the benefit of the applicant or 3527
recipient after the foreclosure date but prior to the application 3528
date shall be subtracted from the total value. Any other payments 3529
shall not be subtracted from the value. 3530

(h) Any addition of assets after the foreclosure date shall 3531
be considered a separate disposition. 3532

(4) If a trust is funded with assets of another person or 3533
persons in addition to assets of the applicant or recipient, the 3534
applicable provisions of this section and rules adopted by the 3535
department of job and family services governing trusts shall apply 3536
only to the portion of the trust attributable to the applicant or 3537
recipient. 3538

(5) The availability of a self-settled trust shall be 3539
considered without regard to any of the following: 3540

(a) The purpose for which the trust is established; 3541

(b) Whether the trustees have exercised or may exercise 3542
discretion under the trust; 3543

(c) Any restrictions on when or whether distributions may be 3544
made from the trust; 3545

(d) Any restrictions on the use of distributions from the 3546
trust. 3547

(6) The baseline date for the look-back period for 3548
dispositions of assets involving a self-settled trust shall be the 3549
date on which the applicant or recipient is both institutionalized 3550
and first applies for medicaid. 3551

(F) The principal or income from any of the following shall 3552

be exempt from being counted as a resource by a county department 3553
of job and family services: 3554

(1)(a) A special needs trust that meets all of the following 3555
requirements: 3556

(i) The trust contains assets of an applicant or recipient 3557
under sixty-five years of age and may contain the assets of other 3558
individuals. 3559

(ii) The applicant or recipient is disabled as defined in 3560
rules adopted by the department of job and family services. 3561

(iii) The trust is established for the benefit of the 3562
applicant or recipient by a parent, grandparent, legal guardian, 3563
or a court. 3564

(iv) The trust requires that on the death of the applicant or 3565
recipient the state will receive all amounts remaining in the 3566
trust up to an amount equal to the total amount of medicaid paid 3567
on behalf of the applicant or recipient. 3568

(b) If a special needs trust meets the requirements of 3569
division (F)(1)(a) of this section and has been established for a 3570
disabled applicant or recipient under sixty-five years of age, the 3571
exemption for the trust granted pursuant to division (F) of this 3572
section shall continue after the disabled applicant or recipient 3573
becomes sixty-five years of age if the applicant or recipient 3574
continues to be disabled as defined in rules adopted by the 3575
department of job and family services. Except for income earned by 3576
the trust, the grantor shall not add to or otherwise augment the 3577
trust after the applicant or recipient attains sixty-five years of 3578
age. An addition or augmentation of the trust by the applicant or 3579
recipient with the applicant's own assets after the applicant or 3580
recipient attains sixty-five years of age shall be treated as an 3581
improper disposition of assets. 3582

(c) Cash distributions to the applicant or recipient shall be 3583

counted as unearned income. All other distributions from the trust 3584
shall be treated as provided in rules adopted by the department of 3585
job and family services governing in-kind income. 3586

(d) Transfers of assets to a special needs trust shall not be 3587
treated as an improper transfer of resources. Assets held prior to 3588
the transfer to the trust shall be considered as countable assets 3589
or countable income or countable assets and income. 3590

(2)(a) A qualifying income trust that meets all of the 3591
following requirements: 3592

(i) The trust is composed only of pension, social security, 3593
and other income to the applicant or recipient, including 3594
accumulated interest in the trust. 3595

(ii) The income is received by the individual and the right 3596
to receive the income is not assigned or transferred to the trust. 3597

(iii) The trust requires that on the death of the applicant 3598
or recipient the state will receive all amounts remaining in the 3599
trust up to an amount equal to the total amount of medicaid paid 3600
on behalf of the applicant or recipient. 3601

(b) No resources shall be used to establish or augment the 3602
trust. 3603

(c) If an applicant or recipient has irrevocably transferred 3604
or assigned the applicant's or recipient's right to receive income 3605
to the trust, the trust shall not be considered a qualifying 3606
income trust by the county department of job and family services. 3607

(d) Income placed in a qualifying income trust shall not be 3608
counted in determining an applicant's or recipient's eligibility 3609
for medicaid. The recipient of the funds may place any income 3610
directly into a qualifying income trust without those funds 3611
adversely affecting the applicant's or recipient's eligibility for 3612
medicaid. Income generated by the trust that remains in the trust 3613

shall not be considered as income to the applicant or recipient. 3614

(e) All income placed in a qualifying income trust shall be 3615
combined with any countable income not placed in the trust to 3616
arrive at a base income figure to be used for spend down 3617
calculations. 3618

(f) The base income figure shall be used for post-eligibility 3619
deductions, including personal needs allowance, monthly income 3620
allowance, family allowance, and medical expenses not subject to 3621
third party payment. Any income remaining shall be used toward 3622
payment of patient liability. Payments made from a qualifying 3623
income trust shall not be combined with the base income figure for 3624
post-eligibility calculations. 3625

(g) The base income figure shall be used when determining the 3626
spend down budget for the applicant or recipient. Any income 3627
remaining after allowable deductions are permitted as provided 3628
under rules adopted by the department of job and family services 3629
shall be considered the applicant's or recipient's spend down 3630
liability. 3631

(3)(a) A pooled trust that meets all of the following 3632
requirements: 3633

(i) The trust contains the assets of the applicant or 3634
recipient of any age who is disabled as defined in rules adopted 3635
by the department of job and family services. 3636

(ii) The trust is established and managed by a nonprofit 3637
~~association~~ organization. 3638

(iii) A separate account is maintained for each beneficiary 3639
of the trust but, for purposes of investment and management of 3640
funds, the trust pools the funds in these accounts. 3641

(iv) Accounts in the trust are established by the applicant 3642
or recipient, the applicant's or recipient's parent, grandparent, 3643

or legal guardian, or a court solely for the benefit of 3644
individuals who are disabled. 3645

(v) The trust requires that, to the extent that any amounts 3646
remaining in the beneficiary's account on the death of the 3647
beneficiary are not retained by the trust, the trust pay to the 3648
state the amounts remaining in the trust up to an amount equal to 3649
the total amount of medicaid paid on behalf of the beneficiary. 3650

(b) Cash distributions to the applicant or recipient shall be 3651
counted as unearned income. All other distributions from the trust 3652
shall be treated as provided in rules adopted by the department of 3653
job and family services governing in-kind income. 3654

(c) Transfers of assets to a pooled trust shall not be 3655
treated as an improper disposition of assets. Assets held prior to 3656
the transfer to the trust shall be considered as countable assets, 3657
countable income, or countable assets and income. 3658

(4) A supplemental services trust that meets the requirements 3659
of section 5815.28 of the Revised Code and to which all of the 3660
following apply: 3661

(a) A person may establish a supplemental services trust 3662
pursuant to section 5815.28 of the Revised Code only for another 3663
person who is eligible to receive services through one of the 3664
following agencies: 3665

(i) The department of developmental disabilities; 3666

(ii) A county board of developmental disabilities; 3667

(iii) The department of mental health; 3668

(iv) A board of alcohol, drug addiction, and mental health 3669
services. 3670

(b) A county department of job and family services shall not 3671
determine eligibility for another agency's program. An applicant 3672
or recipient shall do one of the following: 3673

(i) Provide documentation from one of the agencies listed in 3674
division (F)(4)(a) of this section that establishes that the 3675
applicant or recipient was determined to be eligible for services 3676
from the agency at the time of the creation of the trust; 3677

(ii) Provide an order from a court of competent jurisdiction 3678
that states that the applicant or recipient was eligible for 3679
services from one of the agencies listed in division (F)(4)(a) of 3680
this section at the time of the creation of the trust. 3681

(c) At the time the trust is created, the trust principal 3682
does not exceed the maximum amount permitted. The maximum amount 3683
permitted in calendar year 2006 is two hundred twenty-two thousand 3684
dollars. Each year thereafter, the maximum amount permitted is the 3685
prior year's amount plus two thousand dollars. 3686

(d) A county department of job and family services shall 3687
review the trust to determine whether it complies with the 3688
provisions of section 5815.28 of the Revised Code. 3689

(e) Payments from supplemental services trusts shall be 3690
exempt as long as the payments are for supplemental services as 3691
defined in rules adopted by the department of job and family 3692
services. All supplemental services shall be purchased by the 3693
trustee and shall not be purchased through direct cash payments to 3694
the beneficiary. 3695

(f) If a trust is represented as a supplemental services 3696
trust and a county department of job and family services 3697
determines that the trust does not meet the requirements provided 3698
in division (F)(4) of this section and section 5815.28 of the 3699
Revised Code, the county department of job and family services 3700
shall not consider it an exempt trust. 3701

(G)(1) A trust or legal instrument or device similar to a 3702
trust shall be considered a trust established by an individual for 3703
the benefit of the applicant or recipient if all of the following 3704

apply: 3705

(a) The trust is created by a person other than the applicant 3706
or recipient. 3707

(b) The trust names the applicant or recipient as a 3708
beneficiary. 3709

(c) The trust is funded with assets or property in which the 3710
applicant or recipient has never held an ownership interest prior 3711
to the establishment of the trust. 3712

(2) Any portion of a trust that meets the requirements of 3713
division (G)(1) of this section shall be an available resource 3714
only if the trust permits the trustee to expend principal, corpus, 3715
or assets of the trust for the applicant's or recipient's medical 3716
care, care, comfort, maintenance, health, welfare, general well 3717
being, or any combination of these purposes. 3718

(3) A trust that meets the requirements of division (G)(1) of 3719
this section shall be considered an available resource even if the 3720
trust contains any of the following types of provisions: 3721

(a) A provision that prohibits the trustee from making 3722
payments that would supplant or replace medicaid or other public 3723
assistance; 3724

(b) A provision that prohibits the trustee from making 3725
payments that would impact or have an effect on the applicant's or 3726
recipient's right, ability, or opportunity to receive medicaid or 3727
other public assistance; 3728

(c) A provision that attempts to prevent the trust or its 3729
corpus or principal from being counted as an available resource. 3730

(4) A trust that meets the requirements of division (G)(1) of 3731
this section shall not be counted as an available resource if at 3732
least one of the following circumstances applies: 3733

(a) If a trust contains a clear statement requiring the 3734

trustee to preserve a portion of the trust for another beneficiary 3735
or remainderman, that portion of the trust shall not be counted as 3736
an available resource. Terms of a trust that grant discretion to 3737
preserve a portion of the trust shall not qualify as a clear 3738
statement requiring the trustee to preserve a portion of the 3739
trust. 3740

(b) If a trust contains a clear statement requiring the 3741
trustee to use a portion of the trust for a purpose other than 3742
medical care, care, comfort, maintenance, welfare, or general well 3743
being of the applicant or recipient, that portion of the trust 3744
shall not be counted as an available resource. Terms of a trust 3745
that grant discretion to limit the use of a portion of the trust 3746
shall not qualify as a clear statement requiring the trustee to 3747
use a portion of the trust for a particular purpose. 3748

(c) If a trust contains a clear statement limiting the 3749
trustee to making fixed periodic payments, the trust shall not be 3750
counted as an available resource and payments shall be treated in 3751
accordance with rules adopted by the department of job and family 3752
services governing income. Terms of a trust that grant discretion 3753
to limit payments shall not qualify as a clear statement requiring 3754
the trustee to make fixed periodic payments. 3755

(d) If a trust contains a clear statement that requires the 3756
trustee to terminate the trust if it is counted as an available 3757
resource, the trust shall not be counted as an available resource. 3758
Terms of a trust that grant discretion to terminate the trust do 3759
not qualify as a clear statement requiring the trustee to 3760
terminate the trust. 3761

(e) If a person obtains a judgment from a court of competent 3762
jurisdiction that expressly prevents the trustee from using part 3763
or all of the trust for the medical care, care, comfort, 3764
maintenance, welfare, or general well being of the applicant or 3765
recipient, the trust or that portion of the trust subject to the 3766

court order shall not be counted as a resource. 3767

(f) If a trust is specifically exempt from being counted as 3768
an available resource by a provision of the Revised Code, rules, 3769
or federal law, the trust shall not be counted as a resource. 3770

(g) If an applicant or recipient presents a final judgment 3771
from a court demonstrating that the applicant or recipient was 3772
unsuccessful in a civil action against the trustee to compel 3773
payments from the trust, the trust shall not be counted as an 3774
available resource. 3775

(h) If an applicant or recipient presents a final judgment 3776
from a court demonstrating that in a civil action against the 3777
trustee the applicant or recipient was only able to compel limited 3778
or periodic payments, the trust shall not be counted as an 3779
available resource and payments shall be treated in accordance 3780
with rules adopted by the department of job and family services 3781
governing income. 3782

(i) If an applicant or recipient provides written 3783
documentation showing that the cost of a civil action brought to 3784
compel payments from the trust would be cost prohibitive, the 3785
trust shall not be counted as an available resource. 3786

(5) Any actual payments to the applicant or recipient from a 3787
trust that meet the requirements of division (G)(1) of this 3788
section, including trusts that are not counted as an available 3789
resource, shall be treated as provided in rules adopted by the 3790
department of job and family services governing income. Payments 3791
to any person other than the applicant or recipient shall not be 3792
considered income to the applicant or recipient. Payments from the 3793
trust to a person other than the applicant or recipient shall not 3794
be considered an improper disposition of assets. 3795

Sec. 5701.13. (A) As used in this section: 3796

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

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

(3) "Adult care facility" means an adult care facility as defined in section 3722.01 of the Revised Code that is issued a license pursuant to section 3722.04 of the Revised Code.

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

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

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

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

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

(d) It does not pay, directly or indirectly, compensation for

services rendered, interest on debts incurred, or purchase price 3827
for land, building, equipment, supplies, or other goods or 3828
chattels, which compensation, interest, or purchase price is 3829
unreasonably high. 3830

(e) It provides services for the life of each resident 3831
without regard to the resident's ability to continue payment for 3832
the full cost of the services. 3833

(2) A place of residence that satisfies divisions (B)(1)(b), 3834
(d), and (e) of this section; that satisfies the definition of 3835
"nursing home," "residential care facility," or "adult care 3836
facility" under section 3721.01 or 3722.01 of the Revised Code 3837
regardless of whether it is licensed as such a home or facility; 3838
and that is provided at no charge to individuals on account of 3839
their service without compensation to a charitable, religious, 3840
fraternal, or educational institution, which individuals are aged 3841
or infirm and are members of the corporation, association, or 3842
trust that owns the place of residence. For the purposes of 3843
division (B)(2) of this section, "compensation" does not include 3844
furnishing room and board, clothing, health care, or other 3845
necessities, or stipends or other de minimis payments to defray 3846
the cost thereof. 3847

Exemption from taxation shall be accorded, on proper 3848
application, only to those homes or parts of homes ~~which~~ that meet 3849
the standards and provide the services specified in this section. 3850

Nothing in this section shall be construed as preventing a 3851
home from requiring a resident with financial need to apply for 3852
any applicable financial assistance or requiring a home to retain 3853
a resident who willfully refuses to pay for services for which the 3854
resident has contracted even though the resident has sufficient 3855
resources to do so. 3856

(C)(1) If a corporation, unincorporated nonprofit 3857

association, or trust described in division (B)(1)(b) of this 3858
section is granted a certificate of need pursuant to section 3859
3702.52 of the Revised Code to construct, add to, or otherwise 3860
modify a nursing home, or is given approval pursuant to section 3861
3791.04 of the Revised Code to construct, add to, or otherwise 3862
modify a residential care facility or adult care facility and if 3863
the corporation, association, or trust submits an affidavit to the 3864
tax commissioner stating that, commencing on the date of licensure 3865
and continuing thereafter, the home or facility will be operated 3866
in accordance with the requirements of divisions (B)(1)(a) to (e) 3867
of this section, the corporation, association, or trust shall be 3868
considered to be operating a "home for the aged" within the 3869
meaning of division (B)(1) of this section, beginning on the first 3870
day of January of the year in which such certificate is granted or 3871
approval is given. 3872

(2) If a corporation, association, or trust is considered to 3873
be operating a "home for the aged" pursuant to division (C)(1) of 3874
this section, the corporation, association, or trust shall notify 3875
the tax commissioner in writing upon the occurrence of any of the 3876
following events: 3877

(a) The corporation, association, or trust no longer intends 3878
to complete the construction of, addition to, or modification of 3879
the home or facility, to obtain the appropriate license for the 3880
home or facility, or to commence operation of the home or facility 3881
in accordance with the requirements of divisions (B)(1)(a) to (e) 3882
of this section; 3883

(b) The certificate of approval referred to in division 3884
(C)(1) of this section expires, is revoked, or is otherwise 3885
terminated prior to the completion of the construction of, 3886
addition to, or modification of the home or facility; 3887

(c) The license to operate the home or facility is not 3888
granted by the director of health within one year following 3889

completion of the construction of, addition to, or modification of 3890
the home or facility; 3891

(d) The license to operate the home or facility is not 3892
granted by the director of health within four years following the 3893
date upon which the certificate or approval referred to in 3894
division (C)(1) of this section was granted or given; 3895

(e) The home or facility is granted a license to operate as a 3896
nursing home, residential care facility, or adult care facility. 3897

(3) Upon the occurrence of any of the events referred to in 3898
divisions (C)(2)(a), (b), (c), (d), and (e) of this section, the 3899
corporation, association, or trust shall no longer be considered 3900
to be operating a "home for the aged" pursuant to division (C)(1) 3901
of this section, except that the tax commissioner, for good cause 3902
shown and to the extent the commissioner considers appropriate, 3903
may extend the time period specified in division (C)(2)(c) or (d) 3904
of this section, or both. Nothing in division (C)(3) of this 3905
section shall be construed to prevent a nursing home, residential 3906
care facility, or adult care facility from qualifying as a "home 3907
for the aged" if, upon proper application made pursuant to 3908
division (B) of this section, it is found to meet the requirements 3909
of divisions (A) and (B) of this section. 3910

Section 2. That existing sections 9.231, 169.01, 1702.01, 3911
1702.05, 1702.41, 1702.42, 1702.43, 1702.44, 1702.46, 2901.23, 3912
3955.06, 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, 3913
and 5701.13 and sections 1702.45, 1745.01, 1745.02, and 1745.04 of 3914
the Revised Code are hereby repealed. 3915

OHIO STATE BAR ASSOCIATION
BOARD OF GOVERNORS
BYLAWS

These Bylaws are adopted effective _____, 2011 pursuant to Section 10.2.1 of the Constitution (the "Constitution") of the Ohio State Bar Association (the "Association").

ARTICLE I – BOARD OF GOVERNORS

Section 1. Meeting Attendance. All members of the Board of Governors of the Association are expected to attend all meetings of the Board. Upon request of a member, attendance may be excused by the President in his or her discretion, provided that such absence will not, in the judgment of the President materially impair the ability of the Board to conduct its business (as, for example, by reducing the number of members in attendance below a quorum) and provided that the request is made reasonably in advance of the meeting from which attendance is sought to be excused. The seat of a member who has two (2) unexcused absences within a twelve (12) month period shall be declared vacant and such vacancy shall be filled in accordance with Section 17.1 of the Constitution.

Section 2. Quorum. A majority of the members of the Board of Governors shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Governors.

Section 3. Action without a Board of Governors Meeting. Any action required or permitted to be taken at a meeting of the Board of Governors may be taken by written action signed, or consented to by authenticated electronic communication, by all of the members of the Board of Governors. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of members unless a different effective date is provided in the written action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. When written action is taken by less than all of the members, all members shall be notified immediately of its text and effective date, except that failure to provide such notice does not invalidate the written action. As used in this Section 3, the term "authenticated electronic communication" means any form of communication, not directly involving the physical transmission of paper, that: (a) creates a record that may be retained, retrieved and reviewed by the recipient of the communication; (b) may be directly reproduced in paper form by the recipient through an automated process; and (c) sets forth information from which the Association can reasonably conclude that the communication was sent by the purported sender.

Section 4. Electronic Meetings of the Board of Governors. Any meeting among members of the Board of Governors may be conducted by one or more means of remote communication through which all of the members may participate in the meeting, if the

same notice is given of the meeting as required by the Constitution, and if the number of members participating in the meeting is sufficient to constitute a quorum at the meeting. Members may participate in a meeting of the Board of Governors by means of conference telephone or, if authorized by the Board of Governors, by such other means of remote communication, in each case through which that member, other members so participating, and all members physically present at the meeting may participate with each other during the meeting. Participation in a meeting by any of the above-mentioned means constitutes presence at the meeting. As used in this Section 4, "remote communication" means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Section 5. Order of Business. Unless other rules are adopted at any meeting, Robert's Rules of Order, most current edition, shall be the rules of procedure for the transaction of any business of the Board of Governors when not inconsistent with the Constitution or these Bylaws, or unless superseded by a vote of a majority of the Board (not a majority of the quorum) with respect to any individual item of business.

ARTICLE II – RULES, POLICIES AND PROCEDURES

The Board of Governors shall have the power and authority to create and adopt rules, policies and procedures consistent with the purpose of the Association to enforce the provisions of the Association's Constitution and these Bylaws. In the event of a conflict between these Bylaws and any rule, policy or procedure, the provisions of these Bylaws shall control.

ARTICLE III - COMMITTEES

Section 1. Standing Committees. There shall be five (5) standing committees of the Board of Governors, as set forth in this Section 1. Unless otherwise designated in these Bylaws or other rules, policies and/or procedures adopted by the Board of Governors in accordance with Article II above, each member of the Board of Governors shall serve on at least one (1) standing committee. New members of the Board of Governors shall be appointed to such standing committees by the President-Elect of the Association at the commencement of his or her term as President. The President-Elect shall appoint the chairs of each standing committee at the commencement of such President-Elect's term as President. Except as otherwise provided in these Bylaws, each standing committee shall meet at such times and places as may be designated by its chairperson.

(a) Budget and Headquarters Committee. The Budget and Headquarters Committee shall consist of a chairperson and as many members as designated by the President. This committee shall have the following designated duties, in addition to any duties imposed upon it by the President, with the advice and consent of the Board of Governors: This committee shall be charged with the duties of preparing and recommending the

Association's annual budget, expenditures during the year outside the budget, considering matters pertaining to physical facilities and equipment, reviewing and recommending insurance coverage for the Association's assets, and reviewing and recommending all staff benefits.

(b) Membership, Public and Media Relations and Publications Committee. The Membership, Public and Media Relations and Publications Committee shall consist of a chairperson and as many members as designated by the President. This committee shall have the following designated duties, in addition to any duties imposed upon it by the President, with the advice and consent of the Board of Governors: This committee shall be charged with the duties of reviewing and recommending items pertaining to all membership services, activities and benefits (group insurance, pamphlets, etc.), planning membership recruitment and retention programs, considering and recommending items pertaining to the publication of Ohio State Bar Association Report, and reviewing and approving programs for the Association's public and media relations program. Members of the Membership, Public and Media Relations and Publications Committee shall also serve on the board of editors of Ohio Lawyer.

(c) Government Affairs Committee. The Government Affairs Committee shall consist of a chairperson and as many members as designated by the President. This committee shall have the following designated duties, in addition to any duties imposed upon it by the President, with the advice and consent of the Board of Governors: This committee shall be charged with the duties of reviewing legislation pending before the Ohio General Assembly and recommending positions on such legislation, providing a liaison with state offices (governor, attorney general, secretary of state, etc.) providing a liaison with state agencies, and providing contact with Ohio congressional delegation and federal government agencies. This committee shall review court rules and maintain regular contact with the Ohio Supreme Court and other state courts, and the Ohio Judicial Conference and other state judicial associations.

(d) Coordinating Committee. The Coordinating Committee shall consist of the President, President-Elect, Immediate Past President, the chairs of the standing committees and the Executive Director and Assistant Executive Directors of the Association. This committee shall serve in an advisory capacity to the officers of the organization, and shall meet upon the call of the President who shall be the Chair of the Coordinating Committee.

(e) Audit Committee. The composition, appointment and duties of the Audit Committee shall be as set forth in the Ohio State Bar Association Policy for the Creation and Function of the OSBA Audit Committee, adopted on June 20, 2008 (as subsequently amended) (the "Audit Committee Policy"). The Audit committee shall meet at such times and places as may be designated by its chairperson, but in no event less than three (3) times annually.

Section 2. Special Committees. The President, with the advice and consent of the Board of Governors, may appoint special committees and define their duties. The terms of membership on such committees shall be established by the President at the time the

committees are appointed. Each special committee shall include at least two (2) members.

Section 3. Operation of Committees. All standing committees shall report to the Board of Governors at each meeting thereof. Committees (standing, special or otherwise) shall render to the Board of Governors those reports that are requested from time to time by the President or the Board of Governors. Committees shall have vested in them the authority to carry out their committee assignments. No action, report, or recommendation of any committee is binding upon the Association unless first approved by the Board of Governors.

ARTICLE IV – AMENDMENTS TO BYLAWS

Section 1. Procedure for Amendment. These Bylaws may be amended when necessary by a two-thirds (2/3) majority vote of the Board of Governors (not of the quorum). Proposed amendments must be submitted to the Secretary fourteen (14) days prior to the Board meeting.