

By: Swinford

H.B. No. 2671

Substitute the following for H.B. No. 2671:

By: Garcia

C.S.H.B. No. 2671

A BILL TO BE ENTITLED

AN ACT

relating to limited agricultural cooperatives; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Agriculture Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. LIMITED AGRICULTURAL COOPERATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. SHORT TITLE. This Act may be cited as the Limited Agricultural Cooperatives Act.

Sec. 53.002. DEFINITIONS. In this chapter:

(1) "Address" means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which may not be a post office box.

(2) "Articles of organization" means the articles of organization of a cooperative as originally filed and subsequently amended.

(3) "Association" means an organization conducting business on a cooperative plan under the laws of this state or another state that is chartered to conduct business under other laws of this state or another state.

(4) "Board" means the board of directors of a cooperative.

1           (5) "Business entity" means:

2                   (A) a corporation, limited liability company,  
3 limited partnership, limited liability partnership, or other legal  
4 entity, whether domestic or foreign;

5                   (B) an association; or

6                   (C) a body vested with the power or function of a  
7 legal entity.

8           (6) "Cooperative" means an association organized  
9 under this chapter conducting business on a cooperative plan as  
10 provided under this chapter.

11           (7) "Domestic business entity" means a business entity  
12 organized under the laws of this state.

13           (8) "Foreign business entity" means a business entity  
14 that is not a domestic business entity.

15           (9) "Governing documents" has the meaning assigned by  
16 Section 1.002, Business Organizations Code.

17           (10) "Jurisdiction of formation" has the meaning  
18 assigned by Section 1.002, Business Organizations Code.

19           (11) "Member" means a person or entity shown on the  
20 books of a cooperative as the owner of governance rights of a  
21 membership interest of the cooperative and includes patron and  
22 nonpatron members.

23           (12) "Membership interest" means a member's interest  
24 in a cooperative consisting of a member's financial rights, a  
25 member's right to assign financial rights, a member's governance  
26 rights, and a member's right to assign governance rights.  
27 Membership interest includes a patron membership interest and a

1 nonpatron membership interest.

2 (13) "Members' meeting" means a regular or special  
3 members' meeting.

4 (14) "Merger" means:

5 (A) the division of a cooperative into two or  
6 more new cooperatives or other business entities or into a  
7 surviving cooperative and one or more new domestic or foreign  
8 business entities; or

9 (B) the combination of one or more cooperatives  
10 with one or more domestic or foreign business entities, resulting  
11 in:

12 (i) one or more surviving cooperatives or  
13 domestic or foreign business entities;

14 (ii) the creation of one or more new  
15 cooperatives or domestic or foreign business entities; or

16 (iii) one or more surviving cooperatives or  
17 business entities and the creation of one or more new cooperatives  
18 or business entities.

19 (15) "Nonpatron membership interest" means a  
20 membership interest that does not require the holder to conduct  
21 patronage business for or with the cooperative to receive financial  
22 rights or distributions.

23 (16) "Patron" means a person or entity that conducts  
24 patronage business with a cooperative.

25 (17) "Patronage" means business, transactions, or  
26 services done for or with the cooperative as defined by the  
27 cooperative.

1           (18) "Patron member" means a member who holds a patron  
2 membership interest.

3           (19) "Patron membership interest" means a membership  
4 interest that requires the holder to conduct patronage business for  
5 or with the cooperative, as specified by the cooperative, to  
6 receive financial rights or distributions.

7           Sec. 53.003. APPLICATION OF OTHER LAW. To the extent the  
8 provision is not inconsistent with this chapter, the provisions of  
9 Title 1, Business Organizations Code, apply to a cooperative in the  
10 same manner as if the cooperative were a domestic limited liability  
11 company.

12           Sec. 53.004. FEES. The secretary of state shall impose a  
13 fee of:

14           (1) \$300 for filing articles of organization under  
15 this chapter;

16           (2) \$150 for filing articles of amendment under this  
17 chapter;

18           (3) \$300 for filing restated articles of organization  
19 under this chapter;

20           (4) \$15 for filing a statement of change of registered  
21 agent or change of registered office, or both, under this chapter;

22           (5) \$300 for filing a merger or conversion under this  
23 chapter, which is in addition to any fee imposed for filing  
24 formation documents for a domestic business entity or cooperative  
25 created by the merger or conversion;

26           (6) \$40 for filing articles of dissolution under this  
27 chapter;

1           (7) \$75 for filing an application for reinstatement  
2 under this chapter;

3           (8) \$15 for filing a certificate of correction under  
4 this chapter; and

5           (9) \$15 for filing any other instrument permitted or  
6 authorized by this chapter.

7           [Sections 53.005-53.050 reserved for expansion]

8                   SUBCHAPTER B. PURPOSE AND POWERS

9           Sec. 53.051. ORGANIZATIONAL PURPOSE. A cooperative may be  
10 formed and organized on a cooperative plan under this chapter to  
11 market, process, or otherwise change the form or marketability of  
12 crops, livestock, and other agricultural products, including  
13 manufacturing and further processing of products, and other  
14 purposes that are necessary or convenient to facilitate the  
15 production or marketing of agricultural products by patron members  
16 or that are related to the business of the cooperative.

17           Sec. 53.052. POWERS. (a) In addition to other powers, a  
18 cooperative:

19                   (1) may perform each act or thing necessary or proper  
20 to the conduct of the cooperative's business or the accomplishment  
21 of the purposes of the cooperative;

22                   (2) has the rights, powers, and privileges granted to  
23 a domestic entity under Chapter 2, Business Organizations Code,  
24 except those that are inconsistent with this chapter; and

25                   (3) has the powers provided by this section.

26           (b) A cooperative may buy, sell, or deal in its own  
27 products, the products of the cooperative's individual members,

1 patrons, or nonmembers, the products of another cooperative  
2 association or of its members or patrons, or the products of another  
3 person or entity. A cooperative may negotiate the price for which  
4 the products the cooperative sells may be sold.

5 (c) A cooperative may enter into or become a party to a  
6 contract or agreement for the cooperative or for the cooperative's  
7 individual members or patrons or between the cooperative and its  
8 members.

9 (d) A cooperative may purchase and hold, lease, mortgage,  
10 encumber, sell, exchange, or convey real property, buildings, and  
11 personal property as the business of the cooperative may require,  
12 including the sale or other disposition of assets required by the  
13 business of the cooperative as determined by the board.

14 (e) A cooperative may erect buildings or other structures or  
15 facilities on land owned or leased by the cooperative or on a  
16 right-of-way acquired by the cooperative.

17 (f) A cooperative may issue bonds or other evidence of  
18 indebtedness and may borrow money to finance the business of the  
19 cooperative.

20 (g) A cooperative may make advances to the cooperative's  
21 members or patrons on products delivered by the members or patrons  
22 to the cooperative.

23 (h) A cooperative may accept deposits of money from other  
24 cooperatives, associations, or its members.

25 (i) A cooperative may extend trade credit to or borrow money  
26 from individual members, cooperatives, or associations from which  
27 it is constituted using security that it considers sufficient in

1 dealing with the members, cooperatives, or associations.

2 (j) If reasonably necessary or incidental to accomplish the  
3 purposes stated in its articles of organization, a cooperative may  
4 purchase, acquire, hold, or dispose of an ownership interest in  
5 another business entity, whether organized under the laws of this  
6 state or another state, and assume all rights, interests,  
7 privileges, responsibilities, and obligations arising out of the  
8 ownership interest.

9 (k) A cooperative may acquire and hold an ownership interest  
10 in another business entity organized under the laws of this or  
11 another state, including a business entity organized:

12 (1) as a federation of associations;

13 (2) for the purpose of forming a district, state, or  
14 national marketing, sales, or service agency; or

15 (3) for the purpose of acquiring marketing facilities  
16 at terminal or other markets in this state or other states.

17 (l) A cooperative may purchase, own, and hold ownership  
18 interests, memberships, interests in nonstock capital, or  
19 evidences of indebtedness of any domestic business entity or  
20 foreign business entity if reasonably necessary or incidental to  
21 accomplish the purposes stated in the articles of organization.

22 (m) A cooperative may exercise any fiduciary power in  
23 relations with the members, cooperatives, associations, or  
24 business entities from which it is constituted.

25 (n) A cooperative may take, receive, and hold real and  
26 personal property, including the principal of and interest on money  
27 or other funds and rights in a contract, in trust for any purpose

1 not inconsistent with the purposes of the cooperative stated in its  
2 articles of organization and may exercise fiduciary powers in  
3 relation to the taking, receiving, or holding of the property.

4 (o) A cooperative may not act as a credit union, bank, trust  
5 company, savings bank, or savings association regulated under the  
6 Finance Code.

7 Sec. 53.053. AGRICULTURAL PRODUCT MARKETING CONTRACTS. (a)  
8 A cooperative and its patron member or patron may make and execute a  
9 marketing contract that requires the patron member or patron to  
10 sell a specified portion of the patron member's or patron's  
11 agricultural product or specified commodity produced from a certain  
12 area exclusively to or through the cooperative or a facility  
13 established by the cooperative.

14 (b) If a sale is contracted to the cooperative, the sale  
15 transfers title to the product absolutely, subject only to a  
16 recorded lien or security interest, to the cooperative on delivery  
17 of the product or at another specified time if expressly provided in  
18 the contract. The contract may allow the cooperative to sell or  
19 resell the product with or without taking title to the product and  
20 pay the resale price to the patron member or patron after deducting  
21 all necessary selling, overhead, and other costs and expenses,  
22 including other proper reserves and interest.

23 (c) The term of a marketing contract may not exceed 10  
24 years, but a marketing contract may be made self-renewing for  
25 subsequent periods of five years each, subject to the right of  
26 either party to terminate by giving written notice of the  
27 termination as specified in the contract.

1       (d) The bylaws or the marketing contract, or both, may set a  
2 specific sum as liquidated damages to be paid by the patron member  
3 or patron to the cooperative for a breach of any provision of a  
4 marketing contract regarding the sale, delivery, or withholding of  
5 a product and may provide that the patron member or patron shall pay  
6 the costs, premiums for bonds, expenses, and fees if an action is  
7 brought on the contract by the cooperative. The remedies for breach  
8 of contract are valid and enforceable in the courts of this state.  
9 The provisions shall be enforced as liquidated damages and may not  
10 be considered or regarded as a penalty.

11       (e) On a breach or threatened breach of a marketing contract  
12 by a patron member or patron, the cooperative is entitled to seek an  
13 injunction to prevent the breach and to specific performance of the  
14 contract. Pending the adjudication of the action, the cooperative  
15 may be granted a temporary restraining order and preliminary  
16 injunction against the patron member or patron.

17       (f) A person commits an offense if the person knowingly  
18 induces or attempts to induce a member or patron of a cooperative to  
19 breach a marketing contract with the cooperative or knowingly  
20 spreads false reports about the finances or management of a  
21 cooperative organized under this chapter. An offense under this  
22 subsection is a misdemeanor punishable by a fine of not less than  
23 \$100 or more than \$1,000. It is a defense to prosecution under this  
24 subsection that the person is a bona fide creditor of the  
25 cooperative or the agent or attorney of a bona fide creditor  
26 attempting to collect a debt of the cooperative.

27       (g) A person is liable to the cooperative for civil damages

1 if the person:

2 (1) knowingly induces a member or patron of a  
3 cooperative to breach a marketing contract with the cooperative; or

4 (2) knowingly spreads false reports about the finances  
5 or management of a cooperative.

6 Sec. 53.054. DISTRIBUTION OF UNCLAIMED PROPERTY. (a) A  
7 cooperative may, instead of paying or delivering unclaimed property  
8 to this state, distribute the unclaimed property to a corporation  
9 or organization that is exempt from federal income taxation. To be  
10 valid, a cooperative that elects to distribute unclaimed property  
11 must file with the comptroller:

12 (1) a verified, written explanation of the proof of  
13 claim of an owner establishing a right to receive the abandoned  
14 property;

15 (2) any error in the presumption of abandonment;

16 (3) the name, address, and exemption number of the  
17 corporation or organization to which the property was or is to be  
18 distributed; and

19 (4) the approximate date of distribution.

20 (b) This section does not alter any procedure provided by  
21 law for a cooperative to report unclaimed property to this state or  
22 a requirement that the claims of an owner be made to the cooperative  
23 for a period following the publication of a list of abandoned  
24 property.

25 (c) The entitlement of an owner to unclaimed property held  
26 by a cooperative is extinguished when the property is distributed  
27 under this section.

1           [Sections 53.055-53.100 reserved for expansion]

2                           SUBCHAPTER C. FILINGS

3           Sec. 53.101. WHEN FILINGS TAKE EFFECT. (a) Except as  
4 permitted by Subsection (b) or as otherwise provided by this  
5 chapter, a filing instrument submitted to the secretary of state  
6 takes effect when filed.

7           (b) The date and time at which a filing instrument takes  
8 effect may be delayed as provided by Subchapter B, Chapter 4,  
9 Business Organizations Code.

10           Sec. 53.102. ABANDONMENT BEFORE EFFECTIVENESS. The parties  
11 to a filing instrument may abandon the filed instrument if the  
12 instrument has not taken effect by filing a certificate of  
13 abandonment in accordance with Section 4.057, Business  
14 Organizations Code.

15           Sec. 53.103. CORRECTING AN ERRONEOUS OR DEFECTIVE  
16 INSTRUMENT. (a) A cooperative may, by filing a certificate of  
17 correction in accordance with Subchapter C, Chapter 4, Business  
18 Organizations Code, correct any instrument filed with the secretary  
19 of state if the instrument is an inaccurate record of the event or  
20 transaction evidenced in the instrument, contains an inaccurate or  
21 erroneous statement, or was defectively or erroneously signed,  
22 sealed, acknowledged, or verified.

23           (b) The certificate of correction must be signed by a  
24 director or authorized officer of the cooperative.

25           (c) Except as provided by Subsection (d), after the  
26 certificate of correction is filed by the secretary of state, the  
27 filing instrument is considered to have been corrected on the date

1 the filing instrument was originally filed.

2 (d) With respect to a person who is adversely affected by  
3 the correction, the filing instrument is considered to have been  
4 corrected on the date the certificate of correction is filed.

5 (e) A certificate issued by the secretary of state before a  
6 filing instrument is corrected, with respect to the effect of  
7 filing the original filing instrument, applies to the corrected  
8 filing instrument as of the date the corrected filing instrument is  
9 considered to have been filed under this section.

10 Sec. 53.104. SIGNATURE AND GENERAL FILING REQUIREMENTS.

11 (a) Unless otherwise provided by this chapter, a filing instrument  
12 submitted by or on behalf of a cooperative must be signed by an  
13 authorized officer of the cooperative.

14 (b) If the cooperative is under the control of a receiver,  
15 trustee, or other court-appointed fiduciary, a filing instrument  
16 may be signed by that fiduciary.

17 (c) A person authorized to sign a filing instrument for a  
18 cooperative is not required to show evidence of the person's  
19 authority as a requirement for filing.

20 (d) A photographic, photostatic, facsimile, electronic, or  
21 similar reproduction of a filing instrument, signature,  
22 acknowledgment of filing, certificate, or communication may be  
23 filed or issued in place of:

24 (1) an original filing instrument;

25 (2) an original signature on a filing instrument; or

26 (3) an original certificate or acknowledgment of  
27 filing or other written communication from the secretary of state

1 relating to a filing instrument.

2 (e) To be accepted and filed by the secretary of state, an  
3 instrument that is submitted for filing must satisfy the filing  
4 requirements of this chapter, the requirements of any other law  
5 that is made applicable to the instrument or cooperative by this  
6 chapter, and any administrative rule adopted by the secretary of  
7 state relating to the instrument.

8 (f) If the secretary of state finds that a filing instrument  
9 conforms to the requirements of Subsection (e) and all required  
10 fees have been paid, the secretary of state shall:

11 (1) file the instrument by accepting it into the  
12 filing system adopted by the secretary of state and assigning the  
13 instrument a date of filing; and

14 (2) deliver a written acknowledgment or certificate  
15 evidencing filing to the cooperative or its representative.

16 (g) If a duplicate copy of a filing instrument is delivered  
17 to the secretary of state, on accepting the filing instrument the  
18 secretary of state shall endorse the duplicate copy with the word  
19 "Filed" and the month, day, and year of filing and return the  
20 duplicate copy to the cooperative or its representative with the  
21 written acknowledgment or certificate evidencing filing.

22 Sec. 53.105. APPEALS FROM SECRETARY OF STATE'S REFUSAL TO  
23 FILE INSTRUMENT. A person may appeal the secretary of state's  
24 disapproval of the filing of an instrument only as provided by  
25 Section 12.004, Business Organizations Code.

26 Sec. 53.106. PENALTY FOR SUBMISSION OF A FALSE OR  
27 FRAUDULENT INSTRUMENT. Section 4.008, Business Organizations Code,

1 applies to a filing instrument under this chapter.

2 Sec. 53.107. SECRETARY OF STATE; DUTIES AND AUTHORITY. (a)  
3 The duty of the secretary of state to file instruments under this  
4 chapter is ministerial.

5 (b) The secretary of state may adopt procedural rules for  
6 the filing of instruments authorized to be filed with the secretary  
7 of state under this chapter.

8 (c) The secretary of state may adopt forms for a filing  
9 instrument authorized or required by this chapter.

10 (d) The secretary of state has the power and authority  
11 reasonably necessary to perform the duties imposed under this  
12 chapter.

13 [Sections 53.108-53.150 reserved for expansion]

14 SUBCHAPTER D. ORGANIZATION

15 Sec. 53.151. ORGANIZERS. A cooperative may be organized by  
16 one or more organizers who must be adult individuals and who may act  
17 for themselves or as agents for other entities. An organizer of the  
18 cooperative is not required to become a member of the cooperative.

19 Sec. 53.152. COOPERATIVE NAME. (a) The name of a  
20 cooperative must comply with Subchapters A and B, Chapter 5,  
21 Business Organizations Code, in the manner required of a domestic  
22 filing entity.

23 (b) A cooperative may conduct business under a name other  
24 than the name stated in the articles of organization if the  
25 cooperative files an assumed name certificate in accordance with  
26 Chapter 36, Business & Commerce Code.

27 (c) A cooperative's name may not infringe on the rights of

1 another person under:

2 (1) the Trademark Act of 1946, as amended (15 U.S.C.  
3 Section 1051 et seq.);

4 (2) Chapter 16 or 36, Business & Commerce Code; or

5 (3) common law.

6 Sec. 53.153. ARTICLES OF ORGANIZATION. (a) The organizers  
7 shall prepare the articles of organization, which must include:

8 (1) the name of the cooperative;

9 (2) the purpose of the cooperative;

10 (3) the principal place of business for the  
11 cooperative;

12 (4) the period of duration for the cooperative, if the  
13 duration is not perpetual;

14 (5) the capital structure of the cooperative,  
15 including a statement of the classes and relative rights,  
16 preferences, and restrictions granted to or imposed on each type of  
17 member interest, the rights to share in profits or distributions of  
18 the cooperative, and the authority to issue member interests, which  
19 may be designated to be determined by the board;

20 (6) a provision designating the voting and governance  
21 rights, including which membership interests have voting power and  
22 any limitation or restriction on the voting power, which must be in  
23 accordance with the provisions of this chapter;

24 (7) a statement that a patron membership interest with  
25 voting power is restricted to one vote for each member regardless of  
26 the amount of the patron membership interest held in the affairs of  
27 the cooperative, or a statement describing a different allocation

1 of voting power as provided for in this chapter;

2 (8) a statement that a membership interest held by a  
3 member is transferable only with the approval of the board or as  
4 provided in the bylaws;

5 (9) the names, mailing addresses, and terms of office  
6 of the directors of the initial board;

7 (10) a statement as to how profits and losses are to be  
8 allocated and cash distributed between patron membership interests  
9 collectively and nonpatron membership interests collectively;

10 (11) a statement that net income allocated to a patron  
11 membership interest as determined by the board in excess of  
12 dividends and additions to reserves is to be distributed on the  
13 basis of patronage and that the records of the cooperative are to  
14 include the interests of patron membership interests and nonpatron  
15 membership interests, which may be additionally described in the  
16 bylaws of any class and in the reserves; and

17 (12) the street address of the cooperative's initial  
18 registered office and the name of the cooperative's registered  
19 agent at the office.

20 (b) The articles of organization must indicate if a  
21 cooperative is being formed under a plan of conversion or a plan of  
22 merger. If the cooperative is being formed under a plan of  
23 conversion, the articles of organization must state the name,  
24 address, date of formation, organizational form, and jurisdiction  
25 of formation of the entity being converted to a cooperative under  
26 the plan.

27 (c) The articles of organization shall contain the

1 provisions described by Subsections (a) and (b), except that the  
2 names and mailing addresses of the directors of the initial board  
3 may be omitted after their successors have been elected by the  
4 members or the articles of organization are amended or restated in  
5 their entirety.

6 (d) The articles of organization may contain any other  
7 lawful provision. The articles of organization are not required to  
8 state any of the powers provided to the cooperative under this  
9 chapter.

10 (e) The articles of organization must be signed by the  
11 organizers.

12 (f) Except as otherwise provided by this subsection, the  
13 original articles of organization must be filed with the secretary  
14 of state. The articles of organization for a cooperative that is  
15 formed under a plan of merger or conversion must be filed with the  
16 articles of merger or certificate of conversion and are not  
17 required to be separately filed. If the secretary of state  
18 determines that articles of organization submitted with articles of  
19 merger or a certificate of conversion meet the requirements of this  
20 chapter, the secretary of state shall file the articles of  
21 organization and issue a certificate of organization. In the case  
22 of a merger or conversion, the certificate of organization of the  
23 cooperative that is the converted entity or that is created under  
24 the plan of merger becomes effective when the merger or conversion  
25 becomes effective.

26 (g) When the articles of organization are filed with the  
27 secretary of state and the required fee is paid, it is presumed

1 that:

2 (1) all conditions precedent required to be performed  
3 by the organizers have been complied with;

4 (2) the cooperative has been chartered by this state  
5 as a separate legal entity; and

6 (3) the secretary of state will issue a certificate of  
7 organization to the cooperative.

8 Sec. 53.154. AMENDMENT OF ARTICLES OF ORGANIZATION. (a)

9 The articles of organization of a cooperative may be amended as  
10 follows:

11 (1) the board by majority vote must pass a resolution  
12 stating the text of the proposed amendment;

13 (2) the text of the proposed amendment and an attached  
14 mail ballot if the board has provided for a mail ballot in the  
15 resolution, or a description of an alternative voting method  
16 approved by the board and stated in the resolution, must be mailed  
17 or distributed with a regular or special meeting notice to each  
18 member;

19 (3) the notice must designate the time and place of the  
20 meeting for the proposed amendment to be considered and voted on;  
21 and

22 (4) if a quorum of the members is registered as being  
23 present or represented by alternative vote at the meeting, the  
24 proposed amendment is adopted:

25 (A) when approved by a majority of the votes  
26 cast; or

27 (B) if the cooperative has articles of

1 organization or bylaws that require more than majority approval or  
2 other conditions for approval, when approved by a proportion of the  
3 votes cast or a number of total members as required by the articles  
4 of organization or bylaws and when the conditions for approval in  
5 the articles of organization or bylaws have been complied with.

6 (b) After an amendment has been adopted, the cooperative  
7 shall file with the secretary of state articles of amendment signed  
8 by the chair, vice chair, records officer, or assistant records  
9 officer that:

10 (1) state the name of the cooperative;

11 (2) identify by reference or description each  
12 provision being added, altered, or deleted;

13 (3) provide the amended text of each section that is  
14 added or altered; and

15 (4) include a statement that the amendment was  
16 approved in the manner required by this section and by the  
17 cooperative's governing documents.

18 (c) A certificate shall be prepared stating:

19 (1) the vote and meeting of the board adopting a  
20 resolution of the proposed amendment;

21 (2) the notice given to members of the meeting at which  
22 the amendment was adopted;

23 (3) the quorum registered at the meeting; and

24 (4) the votes cast adopting the amendment.

25 (d) The certificate shall be signed by the chair, vice  
26 chair, records officer, or financial officer and filed with the  
27 records of the cooperative.

1       (e) A majority of directors may amend the articles of  
2 organization if the cooperative does not have any members with  
3 voting rights.

4       Sec. 53.155. RESTATED ARTICLES OF ORGANIZATION. (a) A  
5 cooperative may authorize, execute, and file restated articles of  
6 organization using the procedures for amending the articles of  
7 organization under Section 53.154. The restated articles of  
8 organization must restate the entire text of the cooperative's  
9 articles of organization and incorporate all amendments previously  
10 filed with the secretary of state. The restated articles of  
11 organization may incorporate new amendments not previously filed  
12 with the secretary of state.

13       (b) Unless otherwise provided by the articles of  
14 organization or bylaws, member approval is not required to file  
15 restated articles of organization if the restated text consists  
16 only of the text of articles of organization and amendments  
17 previously filed with the secretary of state.

18       (c) Restated articles of organization must be signed by an  
19 authorized officer of the cooperative and filed in accordance with  
20 Section 3.059, Business Organizations Code.

21       (d) Restated articles of organization may omit the name and  
22 address of each organizer and may insert the names and addresses of  
23 the current directors of the cooperative in place of similar  
24 information concerning the initial directors.

25       Sec. 53.156. CONVERSION OF AN EXISTING ASSOCIATION TO BE  
26 GOVERNED BY THIS CHAPTER. (a) Notwithstanding any other law of  
27 this state, an existing association incorporated under this code or

1 organized under another law of this state is authorized to convert  
2 and become subject to the provisions of this chapter by adopting a  
3 plan of conversion.

4 (b) To effect a conversion, the converting association must  
5 act on and the members of the association must approve a plan of  
6 conversion in the manner provided for the approval of a plan of  
7 merger by an association if the association does not survive the  
8 merger. If a law or the governing documents of the association do  
9 not provide a method to approve a merger if the association does not  
10 survive the merger, the members of the association may approve a  
11 plan of conversion in the manner provided by Chapter 10, Business  
12 Organizations Code, for the adoption and approval of a conversion  
13 by a domestic entity.

14 (c) The plan of conversion must include:

15 (1) the name of the association that is the converting  
16 entity;

17 (2) the name of the cooperative that is the converted  
18 entity;

19 (3) a statement that the converting entity is  
20 continuing its existence as a cooperative governed by this chapter;

21 (4) the proposed effect of the conversion on the  
22 members and patron members of the converting entity;

23 (5) the manner and basis of converting the membership  
24 interests of the converting entity into membership interests of the  
25 cooperative; and

26 (6) the articles of organization of the cooperative,  
27 which must meet the requirements of Section 53.153 and may be

1 included as an attachment or exhibit to the plan of conversion.

2 (d) A plan of conversion may include any other provisions  
3 relating to the conversion allowed by law.

4 (e) On approval of the plan of conversion, a certificate of  
5 conversion must be filed with the secretary of state for the  
6 conversion to be effective. The certificate of conversion must  
7 include:

8 (1) the plan of conversion, or a statement certifying:

9 (A) the name, entity type, and jurisdiction of  
10 organization of the converting entity;

11 (B) the name of the cooperative that is the  
12 converted entity;

13 (C) that the converting entity is continuing its  
14 existence as a cooperative governed by this chapter;

15 (D) that a signed plan of conversion is on file at  
16 the principal place of business of the converting entity and  
17 certifying the address of the principal place of business;

18 (E) that a signed plan of conversion will be on  
19 file at the principal place of business of the converted entity and  
20 certifying the address of the principal place of business; and

21 (F) that a copy of the plan of conversion will be  
22 furnished, without cost, on written request to any member of the  
23 converting entity or the converted entity by:

24 (i) the converting entity before the  
25 conversion; or

26 (ii) the converted entity after the  
27 conversion;

1           (2) a statement that the plan of conversion has been  
2 approved as required by this section, by the law governing the  
3 converting entity, and by the governing documents of the converting  
4 entity; and

5           (3) the articles of organization of the cooperative  
6 that is to be formed under the plan of conversion.

7           (f) When a conversion takes effect, each member of the  
8 converting association has a membership interest in the cooperative  
9 resulting from the conversion. This subsection does not apply to:

10           (1) a member who receives payment for the person's  
11 interest under a law providing for dissent and appraisal; or

12           (2) a person who agrees to an alternative disposition  
13 of the person's interest under the conversion.

14           (g) An association may not convert under this section if, as  
15 a result of the conversion, a member of the association would become  
16 personally liable for a liability or other obligation of the  
17 cooperative without that person's consent.

18           (h) When the conversion takes effect:

19           (1) the converting entity continues to exist, without  
20 interruption, as a cooperative governed by this chapter rather than  
21 in the organizational form of the entity before the conversion;

22           (2) each right or title to or interest in property  
23 owned by the converting entity continues to be owned, subject to any  
24 existing lien or other encumbrance on the property, by the  
25 cooperative without:

26                   (A) reversion or impairment;

27                   (B) further act or deed; or

1           (C) any transfer or assignment having occurred;

2           (3) each liability or obligation of the converting  
3 entity continues to be a liability or obligation of the cooperative  
4 without impairment or diminution because of the conversion;

5           (4) the rights of creditors or other parties with  
6 respect to or against the previous members of the converting entity  
7 in their capacities as members continue to exist and may be enforced  
8 by the creditors and obligees as if a conversion had not occurred;

9           (5) a proceeding pending by or against the converting  
10 entity or by or against any of the converting entity's members in  
11 their capacities as members may be continued by or against the  
12 cooperative and by or against the previous members without  
13 substituting a party;

14           (6) the membership interests of the converting entity  
15 are converted into membership interests of the converted entity as  
16 provided in the plan of conversion and the former members of the  
17 converting entity are entitled only to the rights provided in the  
18 plan of conversion or under a right of dissent and appraisal as  
19 provided by law; and

20           (7) if a member of the converted entity is liable after  
21 the conversion takes effect for the liabilities or obligations of  
22 the converted entity in the person's capacity as a member, the  
23 person is liable for the liabilities and obligations of the  
24 converting entity that existed before the conversion took effect  
25 only to the extent that the person:

26           (A) agrees in writing to be liable for the  
27 liabilities or obligations;

1           (B) was liable, before the conversion took  
2 effect, for the liabilities or obligations; or

3           (C) becomes liable under other applicable law for  
4 the existing liabilities and obligations of the converted entity as  
5 a result of becoming a member of the converted entity.

6           Sec. 53.157. CONVERSION OF AN EXISTING BUSINESS ENTITY TO  
7 BE GOVERNED BY THIS CHAPTER. (a) A business entity other than an  
8 association described by Section 53.156 may convert to a  
9 cooperative governed by this chapter by adopting a plan of  
10 conversion and by filing a certificate of conversion as provided by  
11 Section 53.156.

12           (b) To effect the conversion, the business entity must take  
13 any action that may be required for a conversion under the laws of  
14 the entity's jurisdiction of formation and the entity's governing  
15 documents.

16           (c) The conversion must be permitted by the laws under which  
17 the business entity is incorporated or organized, or by its  
18 governing documents if the governing documents are not inconsistent  
19 with the laws of the entity's jurisdiction of formation.

20           Sec. 53.158. EXISTENCE. (a) The existence of a cooperative  
21 begins when the filing of the articles of organization takes effect  
22 as provided by this chapter.

23           (b) A cooperative has a perpetual duration unless the  
24 articles of organization provide for a limited period of duration.

25           Sec. 53.159. REGISTERED AGENT; CHANGE OF REGISTERED OFFICE  
26 OR REGISTERED AGENT. (a) Each cooperative must continuously  
27 maintain in this state:

1           (1) a registered office, which may be the same as its  
2 place of business; and

3           (2) a registered agent, which may be:

4                 (A) an individual resident of this state whose  
5 business office is the same as the cooperative's registered office;  
6 or

7                 (B) a domestic business entity, or a foreign  
8 business entity authorized to transact business in this state,  
9 whose business office is the same as the cooperative's registered  
10 office.

11           (b) A cooperative may change its registered office or agent  
12 on filing with the secretary of state a statement that includes:

13                 (1) the name of the cooperative;

14                 (2) the address of the cooperative's current  
15 registered office;

16                 (3) the address of the cooperative's new registered  
17 office if the cooperative is changing its registered office;

18                 (4) the name of the cooperative's current registered  
19 agent;

20                 (5) the name of the cooperative's new registered agent  
21 if the cooperative is changing its registered agent;

22                 (6) a certification that the address of the  
23 cooperative's registered office and the address of the business  
24 office of the cooperative's registered agent are identical; and

25                 (7) a certification that the change in the  
26 cooperative's registered agent or registered office was authorized  
27 by an affirmative vote of a majority of the board of directors of

1 the cooperative.

2 (c) The statement under Subsection (b) shall be signed and  
3 delivered to the secretary of state. If the secretary of state finds  
4 that the statement meets the requirements of this section, the  
5 secretary of state shall file the statement. The change of address  
6 of the registered office or the appointment of a new registered  
7 agent is effective when filed by the secretary of state.

8 (d) A registered agent of a cooperative may resign as agent  
9 in the manner provided by Section 5.204, Business Organizations  
10 Code.

11 (e) The registered agent of a cooperative may change its  
12 name, its address as the address of the cooperative's registered  
13 office, or both, by filing a statement of the change in accordance  
14 with Section 5.203, Business Organizations Code.

15 Sec. 53.160. FAILURE TO MAINTAIN REGISTERED AGENT OR  
16 REGISTERED OFFICE; INVOLUNTARY DISSOLUTION AND REINSTATEMENT. (a)  
17 If the secretary of state determines that a cooperative has failed  
18 to maintain a registered agent or registered office in this state as  
19 required by law, the secretary of state may notify the cooperative  
20 of the failure by regular or certified mail addressed to the  
21 cooperative's registered office or principal place of business as  
22 shown on the records of the secretary of state.

23 (b) The secretary of state may involuntarily dissolve a  
24 cooperative at any time after the 90th day after the date that  
25 notice under Subsection (a) was mailed if the cooperative has  
26 continuously failed to maintain a registered agent or registered  
27 office as required by law.

1       (c) If the secretary of state involuntarily dissolves a  
2 cooperative under this section, the secretary of state shall:

3           (1) issue a certificate of involuntary dissolution;  
4 and

5           (2) deliver the certificate of involuntary  
6 dissolution by regular or certified mail to the cooperative at its  
7 registered office or principal place of business.

8       (d) The certificate of involuntary dissolution must state:

9           (1) that the cooperative has been involuntarily  
10 dissolved; and

11           (2) the date of and the reason for the involuntary  
12 dissolution.

13       (e) Except as otherwise provided by this section, the  
14 existence of the cooperative is terminated on the issuance of the  
15 certificate of involuntary dissolution by the secretary of state.

16       (f) The secretary of state shall reinstate a cooperative  
17 that has been involuntarily dissolved under this section if the  
18 cooperative files an application for reinstatement with the  
19 secretary of state as prescribed for a filing entity by Section  
20 11.253, Business Organizations Code, and:

21           (1) the entity files a statement of change of  
22 registered agent or registered office, or both; or

23           (2) the secretary of state finds that the  
24 circumstances that led to the involuntary dissolution did not exist  
25 at the time of termination.

26       (g) The secretary of state may not reinstate a cooperative  
27 if the cooperative name is the same as or deceptively similar or

1 similar to a name of a cooperative or other domestic or foreign  
2 business entity already on file, reserved, or registered with the  
3 secretary of state. This subsection does not prevent a cooperative  
4 from being reinstated if the cooperative files an amendment to its  
5 articles of organization, accompanied by the required fee, to  
6 change its name to a name that does not violate this subsection.

7 (h) Section 11.253(d), Business Organizations Code, applies  
8 to a cooperative that is reinstated under Subsection (f) to the same  
9 extent it applies to a filing entity reinstated under Section  
10 11.253, Business Organizations Code.

11 [Sections 53.161-53.200 reserved for expansion]

12 SUBCHAPTER E. BYLAWS

13 Sec. 53.201. BYLAWS. (a) A cooperative shall adopt bylaws  
14 governing the cooperative's business affairs and structure, the  
15 qualifications, classification, rights, and obligations of its  
16 members, and the classifications, allocations, and distributions  
17 of membership interests.

18 (b) The bylaws of a cooperative may be adopted or amended by  
19 the directors as provided by Subsection (c) or at a regular or  
20 special members' meeting if:

21 (1) the notice of the meeting contains a statement  
22 that the bylaws or restated bylaws will be voted on and copies are  
23 included with the notice, or copies are available on request from  
24 the cooperative and summary statement of each proposed bylaw or  
25 amendment is included with the notice;

26 (2) a quorum is registered as being present or  
27 represented by mail or alternative voting method if the mail or

1 alternative voting method is authorized by the board; and

2 (3) the bylaw or amendment is approved by a majority of  
3 votes cast, or for a cooperative with articles of organization or  
4 bylaws requiring more than majority approval or other conditions  
5 for approval, the bylaw or amendment is approved when the  
6 conditions for approval in the articles of organization or bylaws  
7 are complied with.

8 (c) Until the next annual or special members' meeting, the  
9 majority of directors may adopt and amend bylaws for the  
10 cooperative that are consistent with Subsection (d) and that may be  
11 additionally amended or repealed by the members at an annual or  
12 special members' meeting.

13 (d) Bylaws may contain any provision relating to the  
14 management or regulation of the affairs of the cooperative that is  
15 not inconsistent with the laws of this state or the articles of  
16 organization and must include:

17 (1) the number of directors and the qualifications,  
18 manner of election, powers, duties, and compensation, if any, of  
19 directors;

20 (2) the qualifications of members and any limitation  
21 on their number;

22 (3) the manner of admission, withdrawal, suspension,  
23 and expulsion of members; and

24 (4) the governance rights, financial rights,  
25 assignability of governance or financial rights, and other rights,  
26 privileges, and obligations of members and their membership  
27 interests, which may be additionally described in a member control

1 agreement.

2 [Sections 53.202-53.250 reserved for expansion]

3 SUBCHAPTER F. MEMBERSHIP INTERESTS

4 Sec. 53.251. INTERESTS. (a) The authorized amount and  
5 divisions of patron membership interests and nonpatron membership  
6 interests may be increased or decreased or established or altered  
7 in accordance with the restrictions in this chapter by amending the  
8 articles of organization at a regular members' meeting or at a  
9 special members' meeting called for the purpose of acting on the  
10 amendment.

11 (b) Authorized membership interests may be issued on terms  
12 prescribed in the articles of organization, bylaws, or as  
13 determined by the board. The cooperative shall disclose to any  
14 person or entity who acquires a membership interest issued by the  
15 cooperative the organization, capital structure, and business  
16 prospects and risks of the cooperative and the nature of the  
17 governance and financial rights of the membership interest acquired  
18 and of other classes of membership and membership interests. The  
19 cooperative shall notify all members of the membership interests  
20 being offered by the cooperative. A membership interest may not be  
21 issued until the subscription price of the membership interest has  
22 been paid in cash or a cash equivalent or property with the  
23 agreed-on value.

24 (c) The patron membership interests collectively may have  
25 at least 15 percent of the cooperative's financial rights to profit  
26 allocations and distributions.

27 (d) After issuance by the cooperative, a membership

1 interest in a cooperative may be sold or transferred only with the  
2 approval of the board.

3 (e) The cooperative may solicit and issue nonpatron  
4 membership interests on terms determined by the board and disclosed  
5 in the articles of organization, bylaws, or by separate disclosure  
6 to the members. Each member acquiring a nonpatron membership  
7 interest must sign a member control agreement that describes the  
8 rights and obligations of the member as they relate to the nonpatron  
9 membership interest, the financial and governance rights, the  
10 transferability of the nonpatron membership interest, the division  
11 and allocations of profits and losses among the membership  
12 interests and membership classes, and financial rights on  
13 liquidation. If the bylaws do not otherwise provide for the  
14 allocation of the profits and losses between patron membership  
15 interests and nonpatron membership interests, the allocation of  
16 profits and losses among nonpatron membership interests  
17 individually and patron membership interests collectively shall be  
18 allocated on the basis of the value of contributions to capital made  
19 according to the patron membership interests collectively and the  
20 nonpatron membership interests individually to the extent the  
21 contributions have been accepted by the cooperative. Distributions  
22 of cash or other assets of the cooperative shall be allocated among  
23 the membership interests as provided in the articles of  
24 organization and bylaws, subject to the provisions of this chapter.  
25 If not otherwise provided, distributions shall be made on the basis  
26 of value of the capital contributions of the patron membership  
27 interests collectively and the nonpatron membership interests to

1 the extent the contributions have been accepted by the cooperative.

2 (f) The bylaws may provide that the cooperative or the  
3 patron members, individually or collectively, have the first  
4 privilege to purchase the membership interest of any class of  
5 patron member's membership interest offered for sale. The first  
6 privilege to purchase a patron membership interest may be complied  
7 with by notice to other patron members that the patron membership  
8 interest is for sale and a procedure by which patron members may  
9 proceed to attempt to purchase and acquire the patron membership  
10 interest. A patron membership interest acquired by the cooperative  
11 may be held to be reissued or may be retired and canceled.

12 (g) Subject to the bylaws, a member may dissent from and  
13 obtain payment for the fair value of the member's nonpatron  
14 membership interest in the cooperative if the articles of  
15 organization or bylaws are amended in a manner that materially and  
16 adversely affects the rights and preferences of the nonpatron  
17 membership interest of the dissenting member. The dissenting  
18 member must file a notice of intent to demand fair value of the  
19 membership interest with the records officer of the cooperative  
20 before the 30th day after the amendment of the bylaws and notice of  
21 the amendment to members, or the right of the dissenting member to  
22 demand payment of fair value for the membership interest is waived.  
23 If a proposed amendment of the articles of organization or bylaws is  
24 approved by the members, a member who is entitled to dissent and who  
25 elects to exercise dissenter's rights must file a notice to demand  
26 fair value of the membership interest with the records officer of  
27 the cooperative before the vote on the proposed action and may not

1 vote in favor of the proposed action, or the right to demand fair  
2 value for the membership interest by the dissenting member is  
3 waived. After receipt of the dissenting member's demand notice and  
4 approval of the amendment, the cooperative shall not later than the  
5 60th day after the date of the approval of the amendment rescind the  
6 amendment or remit the fair value for the one member's interest to  
7 the dissenting member before the 180th day after the date the  
8 cooperative received the notice. On receipt of the fair value for  
9 the membership interest, the member has no further member rights in  
10 the cooperative.

11 Sec. 53.252. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS. (a)  
12 The bylaws shall prescribe the allocation of profits and losses  
13 between patron membership interests collectively and other  
14 membership interests. If the bylaws do not otherwise provide, the  
15 profits and losses between patron membership interests  
16 collectively and other membership interests shall be allocated on  
17 the basis of the value of contributions to capital made by the  
18 patron membership interests collectively and other membership  
19 interests and accepted by the cooperative. The allocation of  
20 profits to the patron membership interests collectively may not be  
21 less than 15 percent of the total profits in any fiscal year of the  
22 cooperative.

23 (b) The bylaws shall prescribe the distribution of cash or  
24 other assets of the cooperative among the membership interests of  
25 the cooperative. If not otherwise provided in the bylaws,  
26 distribution shall be made to the patron membership interests  
27 collectively and other members on the basis of the value of

1 contributions to capital made and accepted by the cooperative by  
2 the patron membership interests collectively and other membership  
3 interests. The distributions to patron membership interests  
4 collectively may not be less than 15 percent of the total  
5 distributions in any fiscal year of the cooperative.

6 Sec. 53.253. ALLOCATIONS AND DISTRIBUTIONS TO PATRON  
7 MEMBERS. (a) The board of a cooperative may set aside a portion of  
8 net income allocated to the patron membership interests to create  
9 or maintain a capital reserve.

10 (b) In addition to a capital reserve, the board may, for  
11 patron membership interests:

12 (1) set aside an amount not to exceed five percent of  
13 the annual net income of the cooperative for promoting and  
14 encouraging the cooperative; and

15 (2) establish and accumulate reserves for new  
16 buildings, machinery and equipment, depreciation, losses, and  
17 other proper purposes.

18 (c) Net income allocated to patron members that exceeds  
19 dividends on equity and additions to reserves shall be distributed  
20 to patron members on the basis of patronage. A cooperative may  
21 establish allocation units, whether functional, divisional,  
22 departmental, geographic, or otherwise, establish pooling  
23 arrangements, and account for and distribute net income to patrons  
24 on the basis of allocation units and pooling arrangements. A  
25 cooperative may offset the net loss of an allocation unit or pooling  
26 arrangement against the net income of other allocation units or  
27 pooling arrangements.

1       (d) Distribution of net income shall be made at least  
2 annually. The board shall present to the members at the annual  
3 meeting a report covering the operations of the cooperative during  
4 the preceding fiscal year of the organization.

5       (e) A cooperative may distribute net income to patron  
6 members in cash, capital credits, allocated patronage equities,  
7 revolving fund certificates, or its own or other securities.

8       (f) A cooperative may provide in its bylaws that nonmember  
9 patrons are allowed to participate in the distribution of net  
10 income payable to patron members on equal terms with patron  
11 members.

12       (g) If a nonmember patron with patronage credits is not  
13 qualified or eligible for membership, a refund owed may be credited  
14 to the patron's individual account. The board may issue a  
15 certificate of interest to reflect the credited amount. After the  
16 patron is issued a certificate of interest, the patron may  
17 participate in the distribution of income on the same basis as a  
18 patron member.

19       [Sections 53.254-53.300 reserved for expansion]

20                               SUBCHAPTER G. MEMBERS

21       Sec. 53.301. GROUPING OF MEMBERS. (a) A cooperative may  
22 group members and patron members in districts, units, or another  
23 basis if and as authorized by its articles of organization and  
24 bylaws, which may include authorization for the board to determine  
25 the groupings.

26       (b) The board may do anything necessary to implement the use  
27 of districts or units, including setting the time and place and

1 prescribing the rules of conduct for holding a meeting by a district  
2 or unit to elect delegates to members' meetings.

3 Sec. 53.302. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE  
4 DEBTS. (a) A member who knowingly, intentionally, or repeatedly  
5 violates a provision of the articles of organization, bylaws,  
6 member control agreement, or marketing contract with the  
7 cooperative may be required by the board to surrender the financial  
8 right of membership interest of any class owned by the member.

9 (b) The cooperative shall refund to the member for the  
10 surrendered financial right of membership interest the lesser of  
11 the book value or market value of the financial right of the  
12 membership interest payable in not more than seven years from the  
13 date of surrender or transfer all of any patron member's financial  
14 rights to a class of financial rights held by members who are not  
15 patron members, or to a certificate of interest that carries  
16 liquidation rights on par with a membership interest and is  
17 redeemable within seven years after the transfer as provided in the  
18 certificate.

19 (c) A membership interest required to be surrendered may be  
20 reissued or retired and canceled by the board.

21 (d) A member who knowingly, intentionally, or repeatedly  
22 violates a provision of the articles of organization, bylaws,  
23 member control agreement, or marketing contract may be required by  
24 the board to surrender the member's entitlement to vote in the  
25 cooperative.

26 (e) A member is not, merely because of the member's status,  
27 personally liable for the acts, debts, liabilities, or obligations

1 of a cooperative. A member is liable for any unpaid subscription  
2 for the membership interest, unpaid membership fees, or debt for  
3 which the member has separately contracted with the cooperative.

4 Sec. 53.303. REGULAR MEMBERS' MEETINGS. (a) Regular  
5 members' meetings shall be held annually at a time determined by the  
6 board, unless otherwise provided for in the bylaws.

7 (b) The regular members' meeting shall be held at the  
8 principal place of business of the cooperative or at another  
9 conveniently located place as determined by the bylaws or the  
10 board.

11 (c) The officers shall submit reports to the members at the  
12 regular members' meeting covering the business of the cooperative  
13 for the previous fiscal year that show the condition of the  
14 cooperative at the end of the fiscal year of the organization.

15 (d) Directors shall be elected at the regular members'  
16 meeting for the terms of office prescribed in the bylaws, other than  
17 directors elected at a district or unit meeting.

18 (e) The cooperative shall give notice of regular members'  
19 meetings by mailing a notice to each member at the member's last  
20 known mailing address or by other notification approved by the  
21 board and agreed to by the members. Notice of a regular members'  
22 meeting shall be published or otherwise given by an approved method  
23 at least two weeks before the date of the meeting or mailed at least  
24 15 days before the date of the meeting.

25 Sec. 53.304. SPECIAL MEMBERS' MEETINGS. (a) A special  
26 members' meeting may be called by:

27 (1) a majority vote of the board; or

1           (2) a written petition submitted to the chair of at  
2 least 20 percent of the patron members, 20 percent of the nonpatron  
3 members, or 20 percent of all members collectively.

4           (b) The cooperative shall give notice of a special members'  
5 meeting by mailing a notice to each member personally at the  
6 person's last known mailing address or an alternative method  
7 approved by the board and the member individually or the members  
8 generally. For a member that is an entity, notice mailed or  
9 delivered by an alternative method must be to an officer of the  
10 entity. The notice shall state the time, place, and purpose of the  
11 special members' meeting. The notice shall be issued not later than  
12 the 10th day after the date the members' petition is submitted and  
13 the meeting held within 30 days after the date the members' petition  
14 is submitted.

15           Sec. 53.305. CERTIFICATION OF MEETING NOTICE. (a) After  
16 mailing or delivering of the special or regular members' meeting  
17 notices, the chair or records officer shall execute a certificate  
18 containing the date of mailing or delivery of the notices and a  
19 statement that the notices were mailed or delivered as prescribed  
20 by law.

21           (b) The certificate shall be made a part of the record of the  
22 meeting.

23           Sec. 53.306. FAILURE TO RECEIVE MEETING NOTICE. Failure of  
24 a member to receive notice of a special or regular members' meeting  
25 does not invalidate an action taken by the members at the meeting.

26           Sec. 53.307. QUORUM. (a) The quorum for a members' meeting  
27 is:

1           (1) 10 percent of the total number of members for a  
2 cooperative with 500 or fewer members; or

3           (2) 50 members for a cooperative with more than 500  
4 members.

5           (b) In determining a quorum at a meeting, on a question  
6 submitted to a vote by mail or an alternative method, members  
7 present in person or represented by mail vote or the alternative  
8 voting method shall be counted. The attendance of a sufficient  
9 number of members to establish a quorum shall be determined by a  
10 registration of the members of the cooperative present at the  
11 meeting. Registration shall be verified by the chair or the records  
12 officer and reported in the minutes of the meeting.

13           (c) An action by a cooperative is invalid in the absence of a  
14 quorum at the meeting at which the action was taken.

15           Sec. 53.308. MEMBER VOTING RIGHTS. (a) A patron member is  
16 only entitled to one vote on an issue to be voted on by members who  
17 hold a patron membership interest, except that a patron member of a  
18 cooperative described by Section 53.309 may be entitled to more  
19 than one vote as provided by that section. On any matter of the  
20 cooperative, the entire patron members' voting power shall be voted  
21 collectively based on the vote of the majority of patron members  
22 voting on the issue. A nonpatron member has voting rights according  
23 to the member's nonpatron membership interest granted in the  
24 bylaws, subject to the provisions of this chapter.

25           (b) A member or delegate may exercise the member's voting  
26 rights on any matter that is before the members as provided by the  
27 articles of organization or bylaws at a members' meeting from the

1 time the member or delegate arrives at the members' meeting, unless  
2 the articles of organization or bylaws specify an earlier and  
3 specific time for the expiration of the member's right to vote.

4 (c) A member's vote at a members' meeting must be in person  
5 or by mail if a mail vote is authorized by the board or by an  
6 alternative method authorized by the board and not by proxy except  
7 as provided by Subsection (d).

8 (d) A cooperative may provide in the articles of  
9 organization or bylaws that a unit or district of members is  
10 entitled to be represented at a members' meeting by delegates  
11 chosen by the members of the unit or district. The delegates may  
12 vote on matters at the members' meeting in the same manner as a  
13 member. The delegates may only exercise the voting rights on a  
14 basis of and with the number of votes as provided by the articles of  
15 organization or bylaws. If the approval by a certain number of the  
16 members is required for the adoption of amendments, a dissolution,  
17 a merger, a conversion, or a sale of assets, the votes of delegates  
18 shall be counted as votes by the members represented by the  
19 delegate. Patron members may be represented by a delegate who is a  
20 patron member. Nonpatron members may be represented by a delegate  
21 if authorized in the bylaws.

22 (e) A member who is or will be absent from a members' meeting  
23 may vote by mail or by an approved alternative method on any motion,  
24 resolution, or amendment that the board submits for vote by mail or  
25 alternative method to the members. A properly executed ballot  
26 shall be accepted by the board and counted as the vote of the absent  
27 member at the meeting.

1       (f) The ballot used for a vote under Subsection (e) must:

2               (1) be in the form prescribed by the board;

3               (2) contain the exact text of the proposed motion,  
4 resolution, or amendment to be acted on at the meeting;

5               (3) contain the text of the motion, resolution, or  
6 amendment for which the member may indicate an affirmative or  
7 negative vote; and

8               (4) allow the member to express a choice by marking an  
9 appropriate choice on the ballot and mailing, delivering, or  
10 otherwise submitting the ballot to the cooperative in a plain,  
11 sealed envelope inside another envelope bearing the member's name  
12 or by an alternative method approved by the board.

13       Sec. 53.309. PATRON MEMBER VOTING IN COOPERATIVES  
14 CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR  
15 ASSOCIATIONS. (a) The articles of organization or the bylaws of a  
16 cooperative that is constituted wholly or partly of other  
17 cooperatives or associations may authorize the patron members of a  
18 subsidiary cooperative to have an additional vote for:

19               (1) a stipulated amount of business transacted between  
20 the parent cooperative and the subsidiary cooperative to which the  
21 patron member is a member;

22               (2) a stipulated number of patron members in the  
23 subsidiary cooperative;

24               (3) a stipulated amount of equity allocated to or held  
25 by the subsidiary cooperative in the parent cooperative; or

26               (4) a combination of the reasons in Subdivisions  
27 (1)-(3).

1       (b) The articles of organization or the bylaws of a  
2 cooperative that is organized into units or districts of patron  
3 members may authorize the delegates elected by its patron members  
4 to have an additional vote for:

5           (1) a stipulated amount of business transacted between  
6 the patron members in the unit or district and the cooperative;

7           (2) a stipulated amount of equity allocated to or held  
8 by the patron members of the units or districts of the cooperative;  
9 or

10          (3) a combination of the reasons in Subdivisions (1)  
11 and (2).

12           [Sections 53.310-53.350 reserved for expansion]

13                   SUBCHAPTER H. ADMINISTRATION

14           Sec. 53.351. GOVERNANCE. A cooperative is governed by its  
15 board.

16           Sec. 53.352. NUMBER OF DIRECTORS. The board must have at  
17 least three directors.

18           Sec. 53.353. ELECTION OF DIRECTORS. (a) Directors are  
19 elected for the term, at the time, and in the manner provided by  
20 this section and the bylaws. A majority of the directors must be  
21 members, and at least one director must be elected exclusively by  
22 the members holding patron membership interests. The voting  
23 entitlement of the directors may be allocated according to  
24 allocation units or equity classifications of the cooperative  
25 provided that at least one-half of the voting power on general  
26 matters of the cooperative must be allocated to one or more  
27 directors elected by members holding a patron membership interest.

1       (b) Directors are elected for the terms of office prescribed  
2 in the bylaws. Other than directors elected at a district meeting,  
3 all directors are elected at the regular members' meeting.

4       (c) For a cooperative with districts or other units, members  
5 may elect directors on a district or unit basis if provided for by  
6 the bylaws. The directors may be nominated or elected at a district  
7 meeting if authorized by the bylaws. Directors who are nominated at  
8 district meetings are elected at the annual regular members'  
9 meeting by vote of the entire membership unless the bylaws provide  
10 that a director who is nominated at a district meeting is to be  
11 elected by vote of the members of the district at the annual regular  
12 members' meeting.

13       (d) A member must vote in person at a meeting for a director  
14 unless an alternative method of voting is authorized for the  
15 election of directors by the articles of organization or bylaws.

16       (e) If alternative voting for directors is authorized:

17               (1) the ballot must be in a form prescribed by the  
18 board;

19               (2) a member shall mark the ballot for the candidate  
20 chosen and mail the ballot to the cooperative in a sealed plain  
21 envelope inside another envelope bearing the member's name, or  
22 shall vote in the alternative manner prescribed by the board; and

23               (3) the ballot shall be accepted and counted as the  
24 vote of the absent member if the ballot of the member is received by  
25 the cooperative on or before the date of the regular members'  
26 meeting.

27       (f) If a member is not a natural person and the bylaws do not

1 provide otherwise, the member may nominate one or more natural  
2 persons for election to the board.

3 Sec. 53.354. FILLING VACANCIES. If a director who was  
4 elected by patron members vacates the director's position, the  
5 board shall appoint a patron member of the cooperative to fill the  
6 vacancy until the next regular or special members' meeting. If the  
7 vacating director was not a patron member, the board shall appoint a  
8 patron member to fill the vacancy. At the next regular or special  
9 members' meeting, the members or patron members shall elect a  
10 director for the unexpired term of the vacant position.

11 Sec. 53.355. REMOVAL OF DIRECTORS. At a members' meeting  
12 the class of members who elected a director may remove the director  
13 for cause related to the duties of the position and fill the vacancy  
14 caused by the removal.

15 Sec. 53.356. LIMITATION OF DIRECTOR'S LIABILITY. (a)  
16 Except as provided by Subsection (b), a director's personal  
17 liability to the cooperative or its members for monetary damages  
18 for a breach of fiduciary duty as a director may be eliminated or  
19 limited in the articles of organization.

20 (b) The articles of organization may not eliminate or limit  
21 the liability of a director for:

22 (1) a breach of the director's duty of loyalty to the  
23 cooperative or its members;

24 (2) an act or omission that is not in good faith, that  
25 involves intentional misconduct, or that is a knowing violation of  
26 law;

27 (3) a transaction from which the director derived an

1 improper personal benefit; or

2 (4) an act or omission occurring before the date when  
3 the provision in the articles of organization eliminating or  
4 limiting liability becomes effective.

5 Sec. 53.357. OFFICERS. (a) The board shall:

6 (1) elect a chair and one or more vice chairs; and

7 (2) elect or appoint a records officer and a financial  
8 officer.

9 (b) The board may elect additional officers as the articles  
10 of organization or bylaws authorize or require.

11 (c) The offices of records officer and financial officer may  
12 be combined.

13 (d) The chair and first vice chair must be directors and  
14 members. The financial officer, records officer, and other  
15 officers are not required to be directors or members.

16 (e) The board may employ a chief executive officer to manage  
17 the day-to-day affairs and business of the cooperative.

18 (f) At a members' meeting, members may remove an officer,  
19 other than the chief executive officer, for cause related to the  
20 duties of the position of the officer and fill the vacancy caused by  
21 the removal.

22 Sec. 53.358. VOTE OF OWNERSHIP INTERESTS HELD BY  
23 COOPERATIVE. A cooperative that holds an ownership interest in  
24 another business entity may, by direction of the cooperative's  
25 board, elect or appoint a person to represent the cooperative at a  
26 meeting of that business entity. The representative may represent  
27 the cooperative and cast the cooperative's vote at the business

1 entity's meeting.

2 [Sections 53.359-53.400 reserved for expansion]

3 SUBCHAPTER I. MERGER AND CONVERSION

4 Sec. 53.401. MERGER. (a) A cooperative may merge with one  
5 or more cooperatives or other business entities as provided by this  
6 subchapter.

7 (b) To initiate a merger, a written plan of merger must be  
8 prepared by the board or by a committee selected by the board to  
9 prepare a plan. The plan must contain:

10 (1) the name, organizational form, and jurisdiction of  
11 formation of each of the constituent cooperatives and other  
12 business entities;

13 (2) the name of each surviving or new cooperative or  
14 other business entity that is created by the plan;

15 (3) the manner and basis of converting the membership  
16 or ownership interests of the constituent cooperatives or business  
17 entities into membership or ownership interests in the surviving or  
18 new cooperative or business entity;

19 (4) the terms of the merger;

20 (5) the proposed effect of the merger on the members  
21 and patron members of the cooperative;

22 (6) for a merger that creates a new cooperative or  
23 business entity, the articles of organization or applicable  
24 organizational documents of each entity to be filed with the state  
25 in which the entity is organized; and

26 (7) any amendments made under the plan to the articles  
27 of organization or organizational documents of a surviving

1 cooperative or business entity.

2 (c) If more than one business entity survives or is created  
3 under the plan of merger, the plan must include, in addition to each  
4 other requirement of this section:

5 (1) the manner and basis of allocating and vesting the  
6 property of each entity that is a party to the merger among the  
7 entities that survive or are created by the merger;

8 (2) the name of each surviving or new business entity  
9 that is primarily obligated to pay the fair value of an interest of  
10 an owner or member of a domestic business entity subject to  
11 dissenters' rights that is a party to the merger, if the owner or  
12 member complies with the requirements for dissent and appraisal  
13 applicable to the entity; and

14 (3) the manner and basis of allocating each liability  
15 and obligation of each business entity that is a party to the merger  
16 to one or more of the surviving or new entities, or an alternative  
17 arrangement that provides for the payment and discharge of each  
18 liability and obligation.

19 Sec. 53.402. NOTICE. (a) The board shall mail a merger  
20 plan or otherwise transmit or deliver notice to each member. The  
21 notice must contain:

22 (1) the full text of the plan; and

23 (2) the time and place of the meeting at which the plan  
24 will be considered.

25 (b) A cooperative with more than 200 members may provide the  
26 merger notice in the same manner as the notice of a regular members'  
27 meeting.

1       Sec. 53.403. ADOPTION OF MERGER PLAN. (a) A plan of merger  
2 is adopted if:

3           (1) a quorum of the members is registered as being  
4 present or represented by mail vote at the meeting; and

5           (2) the plan is approved by two-thirds of the votes  
6 cast, or for a cooperative with articles of organization or bylaws  
7 that require more than two-thirds of the votes cast or other  
8 conditions for approval, as required by the articles of  
9 organization or bylaws.

10          (b) After the plan has been adopted, articles of merger must  
11 be filed with the secretary of state for the merger to take effect.

12          (c) The articles of merger must be signed by an officer or  
13 other authorized representative on behalf of each cooperative and  
14 each business entity that is a party to the merger and must include:

15           (1) the plan of merger or a certified statement  
16 permitted by Section 10.151, Business Organizations Code;

17           (2) a statement that the plan of merger has been  
18 approved as required by this chapter and the laws of the  
19 jurisdiction of formation of each business entity; and

20           (3) a statement that the approval of the owners or  
21 members of a business entity that is a party to the plan of merger is  
22 not required under the laws of the entity's jurisdiction of  
23 formation, if applicable.

24          (d) The articles of organization of each surviving  
25 cooperative subject to this chapter are considered amended as  
26 provided in the plan of merger.

27          (e) Except as otherwise provided by Section 53.101, the

1 merger is effective when the articles of merger are filed in the  
2 office of the secretary of state.

3 (f) If the plan of merger creates a new cooperative, the  
4 articles of organization must also be filed with the secretary of  
5 state.

6 (g) If the plan of merger creates a new domestic business  
7 entity to be formed or organized under the laws of this state and  
8 the entity is required to file a certificate of formation, the  
9 certificate of formation must also be filed with the secretary of  
10 state.

11 Sec. 53.404. MERGER AUTHORIZED. (a) Notwithstanding any  
12 other law of this state, an existing association incorporated under  
13 this code may merge with a cooperative governed by this chapter by  
14 adopting and approving a plan of merger in the same manner as a  
15 cooperative governed by this chapter.

16 (b) Notwithstanding any other law of this state, an existing  
17 association organized under a law of this state, other than an  
18 association organized under this code, may merge with a cooperative  
19 governed by this chapter by adopting and approving a plan of merger  
20 in the manner prescribed by the law governing the association, or if  
21 the law governing the association does not provide a method, in the  
22 same manner as a cooperative governed by this chapter.

23 Sec. 53.405. EFFECT OF MERGER. (a) When a merger takes  
24 effect:

25 (1) the separate existence of each domestic business  
26 entity that is a party to the merger, other than a surviving or new  
27 business entity, ceases;

1           (2) all rights, title, and interests to all real  
2 property and other property owned by each entity that is a party to  
3 the merger is allocated to and vested, subject to any existing lien  
4 or other encumbrance on the property, in one or more of the  
5 surviving or new business entities as provided in the plan of merger  
6 without:

7                   (A) reversion or impairment;

8                   (B) any further act or deed; or

9                   (C) any transfer or assignment having occurred;

10           (3) all liabilities and obligations of each entity  
11 that is a party to the merger are allocated to one or more of the  
12 surviving or new entities in the manner provided by the plan of  
13 merger;

14           (4) each surviving or new domestic business entity to  
15 which a liability or obligation is allocated under the plan of  
16 merger is the primary obligor for the liability or obligation, and,  
17 except as otherwise provided by the plan of merger or by law or  
18 contract, no other party to the merger, other than a surviving  
19 domestic business entity liable or otherwise obligated at the time  
20 of the merger, and no other new domestic business entity created  
21 under the plan of merger is liable for the liability or obligation;

22           (5) a proceeding pending by or against a cooperative  
23 or another business entity that is a party to the merger may be  
24 continued as if the merger did not occur, or the surviving or new  
25 cooperative or business entity to which the matter involved in the  
26 proceeding is allocated under the plan of merger may be substituted  
27 in the proceeding;

1           (6) the articles of organization and bylaws of each  
2 surviving cooperative and the organizational documents and other  
3 governing documents of each surviving business entity shall be  
4 amended to the extent provided in the plan of merger;

5           (7) each new cooperative, the articles of organization  
6 of which are included in the plan of merger under Section 53.403, is  
7 formed as a cooperative under this chapter;

8           (8) each new business entity to be formed or organized  
9 under the laws of this state the organizational documents of which  
10 are included in the plan of merger is formed when an executed copy  
11 of the articles of merger is delivered to or filed with the  
12 governmental entity to which the organizational documents of the  
13 business entity are required to be delivered or filed and when any  
14 other requirements of law for formation are complied with;

15           (9) the ownership or membership interests of each  
16 cooperative and business entity that is a party to the merger that  
17 are to be converted or exchanged, in whole or in part, into  
18 ownership or membership interests, obligations, rights to purchase  
19 securities, or other securities of one or more of the surviving or  
20 new entities, into cash or other property, including ownership or  
21 membership interests, obligations, rights to purchase securities,  
22 or other securities of any entity, or into any combination of these  
23 are converted and exchanged and the former owners or members who  
24 held ownership or membership interests of each cooperative and  
25 domestic business entity that is a party to the merger are entitled  
26 only to the rights provided by the plan of merger or, if applicable,  
27 any rights to receive the fair value for the ownership interests

1 provided by other state law; and

2 (10) notwithstanding Subdivision (4), the surviving  
3 or new entity named in the plan of merger as primarily obligated to  
4 pay the fair value of an ownership or membership interest under  
5 Section 53.401(c) is the primary obligor for that payment and all  
6 other surviving or new entities are secondarily liable for that  
7 payment.

8 (b) If the plan of merger does not provide for the  
9 allocation and vesting of the right, title, and interest in any  
10 particular property, each surviving and new cooperative or business  
11 entity that is a party to the merger owns an undivided interest in  
12 the property pro rata to the total number of surviving and new  
13 cooperatives and business entities resulting from the merger. If  
14 the plan of merger does not provide for the allocation of a  
15 liability or obligation of a party to the merger, each surviving or  
16 new cooperative or business entity that is a party to the merger is  
17 jointly and severally liable for the liability or obligation.

18 (c) The right of a creditor may not be impaired by a merger  
19 without the creditor's consent.

20 (d) If a surviving entity in a merger is not a cooperative or  
21 domestic business entity, the surviving entity is considered to  
22 have:

23 (1) appointed the secretary of state as the entity's  
24 agent for service of process in a proceeding to enforce any  
25 obligation of a cooperative or domestic business entity that is a  
26 party to the merger; and

27 (2) agreed to promptly pay any dissenting owners or

1 members of each cooperative or domestic business entity that is a  
2 party to the merger who have the right of dissent and appraisal  
3 under state law any amount to which the dissenting owners or members  
4 are entitled under the law governing the formation of the entity.

5 (e) If the surviving entity in a merger is not a cooperative  
6 or domestic business entity, the entity must register to transact  
7 business in this state if the entity is required to register for  
8 that purpose by another law of this state.

9 Sec. 53.406. CONVERSION TO OTHER FORM OF BUSINESS ENTITY.

10 (a) A cooperative may convert to another form of business entity by  
11 adopting and approving a plan of conversion.

12 (b) To initiate a conversion, the board or a committee  
13 selected by the board must prepare a written plan of conversion.

14 The plan must include:

15 (1) the name of the cooperative that is the converting  
16 entity;

17 (2) the name, organizational form, and jurisdiction of  
18 formation of the converted entity;

19 (3) a statement that the converting entity is  
20 continuing its existence in the organizational form of the  
21 converted entity;

22 (4) the manner and basis of converting the membership  
23 interests of the cooperative into membership or ownership interests  
24 in the converted entity;

25 (5) the terms of the conversion;

26 (6) the proposed effect of the conversion on the  
27 members and patron members of the cooperative; and

1           (7) if the converted entity is a domestic business  
2 entity, any certificate of formation or similar organizational  
3 document that is required by law to form the entity.

4           (c) A plan of conversion may include other provisions  
5 relating to the conversion allowed by law.

6           (d) After approval of the plan of conversion, a certificate  
7 of conversion must be filed with the secretary of state for the  
8 conversion to take effect. The certificate of conversion must  
9 include:

10           (1) the plan of conversion, or a statement certifying:

11                   (A) the name of the cooperative that is the  
12 converting entity;

13                   (B) the name, entity type, and jurisdiction of  
14 organization of the business entity that is the converted entity;

15                   (C) that the converting entity is continuing its  
16 existence in the organizational form of the converted entity;

17                   (D) that a signed plan of conversion is on file at  
18 the principal place of business of the converting entity and  
19 certifying the address of the principal place of business;

20                   (E) that a signed plan of conversion will be on  
21 file at the principal place of business of the converted entity and  
22 certifying the address of the principal place of business; and

23                   (F) that a copy of the plan of conversion will be  
24 furnished, without cost, on written request to any owner or member  
25 of the converting entity or the converted entity by:

26                           (i) the converting entity before the  
27 conversion; or

1                   (ii) the converted entity after the  
2 conversion;

3                   (2) a statement that the plan of conversion has been  
4 approved as required by this section, by the law governing the  
5 converting entity, and by the governing documents of the converting  
6 entity; and

7                   (3) if the converted entity is a domestic business  
8 entity, any certificate of formation or organizational document  
9 required to form the entity under a law of this state.

10                  (e) When a conversion takes effect, each member of the  
11 converting entity has a membership or ownership interest in the  
12 converted entity. This subsection does not apply to a member who  
13 agrees to an alternative disposition of the person's interest under  
14 the conversion.

15                  (f) A cooperative may not convert under this section if, as  
16 a result of the conversion, a member of the converting entity would  
17 become personally liable for a liability or other obligation of the  
18 converted entity without that person's consent.

19                  (g) When the conversion takes effect:

20                   (1) the converting entity continues to exist without  
21 interruption in the organizational form of the converted entity  
22 rather than in the organizational form of the entity before the  
23 conversion;

24                   (2) all rights, title, and interests to all property  
25 owned by the converting entity continues to be owned, subject to any  
26 existing lien or other encumbrance on the property, by the entity as  
27 converted without:

1           (A) reversion or impairment;

2           (B) further act or deed; or

3           (C) any transfer or assignment having occurred;

4           (3) all liabilities and obligations of the converting  
5 entity continue to be liabilities and obligations of the converted  
6 entity in its new organizational form without impairment or  
7 diminution because of the conversion;

8           (4) the rights of creditors or other parties with  
9 respect to or against the previous members of the converting entity  
10 in their capacities as members continue to exist and may be enforced  
11 by the creditors and obligees as if the conversion had not occurred;

12           (5) a proceeding pending by or against the converting  
13 entity or by or against any of the converting entity's members in  
14 their capacities as members may be continued by or against the  
15 converted entity and by or against the previous members without  
16 substituting a party;

17           (6) the membership interests of the converting entity  
18 are converted into ownership or membership interests of the  
19 converted entity as provided in the plan of conversion, and the  
20 former members of the converting entity are entitled only to the  
21 rights provided in the plan of conversion or under a right of  
22 dissent and appraisal as provided by law; and

23           (7) if a member of the converted entity is liable after  
24 the conversion takes effect for the liabilities or obligations of  
25 the converted entity in the person's capacity as a member, the  
26 person is liable for the liabilities and obligations of the  
27 converting entity that existed before the conversion took effect

1 only to the extent that the person:

2 (A) agrees in writing to be liable for the  
3 liabilities or obligations;

4 (B) was liable before the conversion took effect  
5 for the liabilities or obligations; or

6 (C) becomes liable under other applicable law for  
7 the existing liabilities and obligations of the converted entity as  
8 a result of becoming an owner or member of the converted entity.

9 Sec. 53.407. ABANDONMENT OF MERGER OR CONVERSION. (a) At  
10 any time after a plan of merger or plan of conversion is approved as  
11 provided by this chapter and before the merger or conversion takes  
12 effect, a cooperative or domestic business entity that is a party to  
13 the plan may abandon the plan, without action by the owners or  
14 members, under the procedures provided by the plan of merger or plan  
15 of conversion. A cooperative or domestic business entity's right  
16 to abandon a plan of merger or plan of conversion is subject to the  
17 contractual rights of any party to the merger or conversion.

18 (b) If the plan of merger or plan of conversion does not  
19 provide procedures for abandonment, the board of directors or  
20 governing authority of the parties to the plan may determine the  
21 procedures for abandonment.

22 (c) If articles of merger or a certificate of conversion has  
23 been filed, the merger or conversion may be abandoned before its  
24 effectiveness in accordance with Section 53.102.

25 [Sections 53.408-53.450 reserved for expansion]

26 SUBCHAPTER J. LIQUIDATION

27 Sec. 53.451. LIQUIDATION. (a) A cooperative may be

1 liquidated as provided in the articles of organization in a manner  
2 consistent with other business entities formed or organized in this  
3 state or, if not provided, may be liquidated in the same manner as a  
4 limited liability company formed or organized in this state.

5 (b) In addition to the methods in Subsection (a), the  
6 members may authorize a liquidation by adopting a resolution at a  
7 members' meeting. The notice of the members' meeting shall include  
8 a statement that the disposition of all of the assets of the  
9 cooperative will be considered at the meeting. If a quorum is  
10 present in person, by mail ballot, or alternative method approved  
11 by the board at the members' meeting, the resolution approving of  
12 the liquidation is adopted if:

13 (1) approved by two-thirds of the votes cast; or

14 (2) for a cooperative with articles of organization or  
15 bylaws requiring more than two-thirds for approval or other  
16 conditions for approval, the conditions for approval in the  
17 articles of organization or bylaws are complied with.

18 (c) The board of directors by resolution may liquidate a  
19 cooperative if the board obtains an opinion of an accountant that  
20 the cooperative is unlikely to continue as a business, based on its  
21 current finances.

22 [Sections 53.452-53.500 reserved for expansion]

23 SUBCHAPTER K. DISSOLUTION

24 Sec. 53.501. METHODS OF DISSOLUTION. A cooperative may be  
25 dissolved by the members or by the order of a court.

26 Sec. 53.502. WINDING UP. (a) After a notice of intent to  
27 dissolve has been filed with the secretary of state, the board or

1 the officers acting under the direction of the board shall proceed  
2 as soon as possible to:

3 (1) collect or make provision for the collection of  
4 all debts due or owing to the cooperative, including unpaid  
5 subscriptions for shares; and

6 (2) pay or make provision for the payment of all debts,  
7 obligations, and liabilities of the cooperative according to their  
8 priorities.

9 (b) After a notice of intent to dissolve has been filed with  
10 the secretary of state, the board may sell, lease, transfer, or  
11 otherwise dispose of all or substantially all of the property and  
12 assets of the cooperative without a vote of the members.

13 (c) Tangible and intangible property, including money,  
14 remaining after the discharge of the debts, obligations, and  
15 liabilities of the cooperative may be distributed to the members  
16 and former members as provided in the bylaws. If previously  
17 authorized by the members, the tangible and intangible property of  
18 the cooperative may be liquidated and disposed of at the discretion  
19 of the board.

20 Sec. 53.503. REVOCATION OF DISSOLUTION PROCEEDINGS. (a)  
21 Dissolution proceedings may be revoked before the articles of  
22 dissolution are filed with the secretary of state.

23 (b) The chair may call a members' meeting to determine  
24 whether to revoke the dissolution proceedings. The question of the  
25 proposed revocation shall be submitted to the members at the  
26 members' meeting called to consider the revocation. The  
27 dissolution proceedings are revoked if the revocation is approved

1 at the members' meeting by a majority of the members of the  
2 cooperative, or for a cooperative with articles of organization or  
3 bylaws requiring a greater number of members, the number of members  
4 required by the articles of organization or bylaws.

5 (c) Revocation of the dissolution proceedings is effective  
6 when a notice of revocation is filed with the secretary of state.  
7 After the notice is filed, the cooperative may resume business.

8 Sec. 53.504. STATUTE OF LIMITATIONS. The claim of a  
9 creditor or claimant against a dissolving cooperative is barred if  
10 the claim has not been enforced by legal, administrative, or  
11 arbitration proceedings relating to the claim initiated not later  
12 than two years after the date the notice of intent to dissolve is  
13 filed with the secretary of state.

14 Sec. 53.505. ARTICLES OF DISSOLUTION. (a) Articles of  
15 dissolution of a cooperative may be filed with the secretary of  
16 state only after payment of the claims of all known creditors and  
17 claimants has been made or provided for and the remaining property  
18 distributed by the board. The articles of dissolution must state  
19 that:

20 (1) all debts, obligations, and liabilities of the  
21 cooperative have been paid or discharged or adequate provisions  
22 have been made for them or time periods allowing claims have run and  
23 other claims are not outstanding;

24 (2) the remaining property, assets, and claims of the  
25 cooperative have been distributed among the members or under a  
26 liquidation authorized by the members; and

27 (3) legal, administrative, or arbitration proceedings

1 by or against the cooperative are not pending or that adequate  
2 provision has been made for the satisfaction of a judgment, order,  
3 or decree that may be entered against the cooperative in any pending  
4 proceeding.

5 (b) The cooperative is dissolved when the articles of  
6 dissolution are filed with the secretary of state.

7 (c) The secretary of state shall issue to the dissolved  
8 cooperative or its legal representative a certificate of  
9 dissolution that contains:

10 (1) the name of the dissolved cooperative;

11 (2) the date the articles of dissolution were filed  
12 with the secretary of state; and

13 (3) a statement that the cooperative is dissolved.

14 Sec. 53.506. APPLICATION FOR COURT-SUPERVISED VOLUNTARY  
15 DISSOLUTION. After a notice of intent to dissolve is filed with the  
16 secretary of state and before a certificate of dissolution is  
17 issued, the cooperative, or, for good cause shown, a member or  
18 creditor, may apply to a district court for the county in which the  
19 registered address is located to have the dissolution conducted or  
20 continued under the supervision of the court as provided by Section  
21 53.513.

22 Sec. 53.507. COURT-ORDERED REMEDIES OR DISSOLUTION. (a) A  
23 district court may grant equitable relief that it considers just  
24 and reasonable in the circumstances or may dissolve a cooperative  
25 and liquidate its assets and business:

26 (1) in a supervised voluntary dissolution that is  
27 applied for by the cooperative;

1           (2) in an action brought by a member if it is  
2 established that:

3           (A) the directors or the persons having the  
4 authority otherwise vested in the board are deadlocked in the  
5 management of the cooperative's affairs and the members are unable  
6 to break the deadlock;

7           (B) the directors or those in control of the  
8 cooperative in their capacities as members, directors, or officers  
9 have acted fraudulently, illegally, or in a manner unfairly  
10 prejudicial toward one or more members;

11           (C) the members of the cooperative are so divided  
12 in voting power that, for a period that includes the time when two  
13 consecutive regular members' meetings were held, they have failed  
14 to elect successors to directors whose terms have expired or would  
15 have expired on the election and qualification of their successors;

16           (D) the cooperative assets are being misapplied  
17 or wasted; or

18           (E) the period of duration as provided in the  
19 articles of organization has expired and has not been extended as  
20 provided in this chapter;

21           (3) in an action by a creditor when:

22           (A) the claim of the creditor against the  
23 cooperative has been reduced to judgment and an execution on the  
24 judgment has been returned unsatisfied; or

25           (B) the cooperative has admitted in writing that  
26 the claim of the creditor against the cooperative is due and payable  
27 and it is established that the cooperative is unable to pay its

1 debts in the ordinary course of business; or

2 (4) in an action by the attorney general to dissolve  
3 the cooperative under this chapter if it is established that a  
4 decree of dissolution is appropriate.

5 (b) In determining whether to order equitable relief or  
6 dissolution, the court shall take into consideration the financial  
7 condition of the cooperative but may not refuse to order equitable  
8 relief or dissolution solely on the ground that the cooperative has  
9 accumulated operating net income or current operating net income.

10 (c) In deciding whether to order dissolution of the  
11 cooperative, the court shall consider whether lesser relief  
12 suggested by one or more parties, such as a form of equitable relief  
13 or a partial liquidation, would be adequate to permanently relieve  
14 the circumstances established under Subsection (a)(2)(B) or (C).  
15 Lesser relief may be ordered if it would be appropriate under the  
16 facts and circumstances of the case.

17 (d) If the court finds that a party to a proceeding brought  
18 under this section has acted arbitrarily, vexatiously, or otherwise  
19 not in good faith, the court in its discretion may award reasonable  
20 expenses, including attorney's fees and disbursements, to any of  
21 the other parties.

22 (e) Proceedings under this section must be brought in a  
23 district court for the county in which the registered address of the  
24 cooperative is located.

25 (f) Members are not necessary parties to the action or  
26 proceeding unless relief is sought against them personally.

27 Sec. 53.508. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED

1 VOLUNTARY DISSOLUTION. (a) In dissolution proceedings, before a  
2 hearing is completed the court may:

3 (1) issue an injunction;

4 (2) appoint a receiver with all powers and duties that  
5 the court directs; and

6 (3) take action required to preserve the cooperative's  
7 assets wherever located and to carry on the business of the  
8 cooperative.

9 (b) After a hearing is completed, on notice directed to be  
10 given to the parties to the proceedings and to other parties in  
11 interest designated by the court, the court may appoint a receiver  
12 to collect the cooperative's assets, including an amount owed to  
13 the cooperative by a subscriber on account of an unpaid portion of  
14 the consideration for the issuance of shares. The receiver may,  
15 subject to the order of the court, continue the business of the  
16 cooperative and sell, lease, transfer, or otherwise dispose of the  
17 property and assets of the cooperative at either a public or private  
18 sale.

19 (c) The assets of the cooperative or the proceeds resulting  
20 from a sale, lease, transfer, or other disposition shall be applied  
21 in the following order of priority:

22 (1) the costs and expenses of the proceedings,  
23 including attorney's fees and disbursements;

24 (2) debts, taxes, and assessments due the United  
25 States, this state, and other states, in that order;

26 (3) claims proved and allowed to employees under the  
27 provisions of the workers' compensation law, except that claims

1 under this subdivision may not be allowed if the cooperative  
2 carried workers' compensation insurance at the time the injury was  
3 sustained;

4 (4) claims, including the value of all compensation  
5 paid in a medium other than money, proved and allowed to employees  
6 for any services performed within the three months before the date  
7 the receiver was appointed; and

8 (5) other claims proved and allowed.

9 (d) After payment of the expenses of receivership and claims  
10 of creditors are proved, any remaining assets may be distributed to  
11 the members or distributed under an approved liquidation plan.

12 Sec. 53.509. RECEIVER QUALIFICATIONS AND POWERS. (a) A  
13 receiver must be a natural person or a domestic or foreign  
14 corporation authorized to transact business in this state. A  
15 receiver shall give a bond as directed by the court with the  
16 sureties required by the court.

17 (b) A receiver may sue and defend in all courts as receiver  
18 of the cooperative. The court appointing the receiver has  
19 exclusive jurisdiction of the cooperative and its property.

20 Sec. 53.510. DISSOLUTION ACTION BY ATTORNEY GENERAL;  
21 ADMINISTRATIVE DISSOLUTION. (a) A cooperative may be dissolved  
22 involuntarily by order of a court in this state in an action filed  
23 by the attorney general if it is established that:

24 (1) the articles and certificate of organization were  
25 procured through fraud;

26 (2) the cooperative was organized for a purpose not  
27 permitted by this chapter or prohibited by state law;

1           (3) the cooperative has flagrantly violated a  
2 provision of this chapter, violated a provision of this chapter  
3 more than once, or violated more than one provision of this chapter;  
4 or

5           (4) the cooperative has acted or failed to act in a  
6 manner that constitutes a surrender or abandonment of the  
7 cooperative's franchise, privileges, or enterprise.

8           (b) An action may not be brought under Subsection (a) before  
9 the 31st day after the date notice is given to the cooperative by  
10 the attorney general of the reason for filing the action. If the  
11 reason for filing the action is an act or omission of the  
12 cooperative and the act or omission may be corrected by an amendment  
13 of the articles of organization or bylaws or by performance of or  
14 abstention from the act, the attorney general may file the action  
15 only if the cooperative fails to make the correction before the 31st  
16 day after notice is given to the cooperative by the attorney  
17 general.

18           Sec. 53.511. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION  
19 PROCEEDINGS. (a) In a proceeding to dissolve a cooperative, the  
20 court may require a creditor or claimant of the cooperative to file  
21 a claim made under oath with the court administrator or with the  
22 receiver in a form prescribed by the court.

23           (b) If the court requires the filing of claims, the court  
24 shall:

25           (1) set a date, by order, at least 120 days after the  
26 date the order is filed, as the last day for filing claims; and

27           (2) prescribe the form of a notice of the date set to

1 be given to creditors and claimants.

2 (c) Before the date set by the court, the court may extend  
3 the time for filing claims. A creditor or claimant who fails to file  
4 a claim on or before the date may be barred by order of the court  
5 from claiming an interest in or receiving payment from the property  
6 or assets of the cooperative.

7 Sec. 53.512. DISCONTINUANCE OF COURT-SUPERVISED  
8 DISSOLUTION PROCEEDINGS. The involuntary or supervised voluntary  
9 dissolution of a cooperative may be discontinued at any time during  
10 the dissolution proceedings if it is established that cause for  
11 dissolution does not exist. The court shall dismiss the  
12 proceedings and direct the receiver, if any, to redeliver to the  
13 cooperative its remaining property and assets.

14 Sec. 53.513. COURT-SUPERVISED DISSOLUTION ORDER. (a) In  
15 an involuntary or supervised voluntary dissolution, the court shall  
16 enter an order dissolving the cooperative after the costs and  
17 expenses of the proceedings and all debts, obligations, and  
18 liabilities of the cooperative have been paid or discharged and the  
19 remaining property and assets have been distributed to its members  
20 or, if its property and assets are not sufficient to satisfy and  
21 discharge the costs, expenses, debts, obligations, and  
22 liabilities, when all the property and assets have been applied to  
23 their payment according to their priorities.

24 (b) When the court enters the order dissolving the  
25 cooperative or association, the cooperative or association is  
26 dissolved.

27 Sec. 53.514. FILING OF DISSOLUTION ORDER. After the court

1 enters an order dissolving a cooperative, the court administrator  
2 shall cause a certified copy of the dissolution order to be filed  
3 with the secretary of state. The secretary of state may not charge  
4 a fee for filing the dissolution order.

5 Sec. 53.515. BARRING OF CLAIMS. (a) A person who is or  
6 becomes a creditor or claimant before, during, or after the  
7 conclusion of dissolution proceedings, who does not file a claim or  
8 pursue a remedy in a legal, administrative, or arbitration  
9 proceeding during the pendency of the dissolution proceeding, or  
10 who does not initiate a legal, administrative, or arbitration  
11 proceeding before the dissolution proceedings commenced and all  
12 those claiming through or under the creditor or claimant are  
13 forever barred from suing on that claim or otherwise realizing upon  
14 or enforcing it, except as provided by this section.

15 (b) Not later than the first anniversary of the date the  
16 articles of dissolution are filed with the secretary of state or a  
17 dissolution order is entered, a creditor or claimant who shows good  
18 cause for not having previously filed the claim may apply to a court  
19 in this state to allow a claim:

20 (1) against the cooperative to the extent of  
21 undistributed assets; or

22 (2) if the undistributed assets are not sufficient to  
23 satisfy the claim, against a member up to the amount distributed to  
24 the member.

25 (c) A debt, obligation, or liability incurred during the  
26 dissolution proceedings shall be paid or provided for by the  
27 cooperative before the distribution of assets to a member. A person

1 to whom such a debt, obligation, or liability is owed but not paid  
2 may pursue any remedy against the officers, directors, or members  
3 of the cooperative before the expiration of the applicable statute  
4 of limitations. This subsection does not apply to dissolution  
5 under the supervision or order of a court.

6 Sec. 53.516. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.

7 After a cooperative has been dissolved, any of its former officers,  
8 directors, or members may assert or defend, in the name of the  
9 cooperative, a claim by or against the cooperative.

10 SECTION 2. This Act takes effect September 1, 2007.