

By: Swinford

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 company, limited liability company,  
3 limited liability partnership, or other legal entity, whether  
4 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) "Member" means a person or entity shown on the  
16 books of a cooperative as the owner of governance rights of a  
17 membership interest of the cooperative and includes patron and  
18 nonpatron members.

19           (10) "Membership interest" means a member's interest  
20 in a cooperative consisting of a member's financial rights, a  
21 member's right to assign financial rights, a member's governance  
22 rights, and a member's right to assign governance rights.  
23 Membership interest includes a patron membership interest and a  
24 nonpatron membership interest.

25           (11) "Members' meeting" means a regular or special  
26 members' meeting.

27           (12) "Nonpatron membership interest" means a

1 membership interest that does not require the holder to conduct  
2 patronage business for or with the cooperative to receive financial  
3 rights or distributions.

4 (13) "Patron" means a person or entity that conducts  
5 patronage business with a cooperative.

6 (14) "Patronage" means business, transactions, or  
7 services done for or with the cooperative as defined by the  
8 cooperative.

9 (15) "Patron member" means a member who holds a patron  
10 membership interest.

11 (16) "Patron membership interest" means a membership  
12 interest that requires the holder to conduct patronage business for  
13 or with the cooperative, as specified by the cooperative, to  
14 receive financial rights or distributions.

15 [Sections 53.003-53.050 reserved for expansion]

16 SUBCHAPTER B. PURPOSE AND POWERS

17 Sec. 53.051. ORGANIZATIONAL PURPOSE. A cooperative may be  
18 formed and organized on a cooperative plan under this chapter to  
19 market, process, or otherwise change the form or marketability of  
20 crops, livestock, and other agricultural products, including  
21 manufacturing and further processing of products, and other  
22 purposes that are necessary or convenient to facilitate the  
23 production or marketing of agricultural products by patron members  
24 or that are related to the business of the cooperative.

25 Sec. 53.052. POWERS. (a) In addition to other powers, a  
26 cooperative:

27 (1) may perform each act or thing necessary or proper

1 to the conduct of the cooperative's business or the accomplishment  
2 of the purposes of the cooperative;

3 (2) has the rights, powers, or privileges granted by  
4 the laws of this state to other cooperatives, except those that are  
5 inconsistent with this chapter; and

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

7 (b) A cooperative may buy, sell, or deal in its own  
8 products, the products of the cooperative's individual members,  
9 patrons, or nonmembers, the products of another cooperative  
10 association or of its members or patrons, or the products of another  
11 person or entity. A cooperative may negotiate the price for which  
12 the products the cooperative sells may be sold.

13 (c) A cooperative may enter into or become a party to a  
14 contract or agreement for the cooperative or for the cooperative's  
15 individual members or patrons or between the cooperative and its  
16 members.

17 (d) A cooperative may purchase and hold, lease, mortgage,  
18 encumber, sell, exchange, or convey real property, buildings, and  
19 personal property as the business of the cooperative may require,  
20 including the sale or other disposition of assets required by the  
21 business of the cooperative as determined by the board.

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

25 (f) A cooperative may issue bonds or other evidence of  
26 indebtedness and may borrow money to finance the business of the  
27 cooperative.

1       (g) A cooperative may make advances to the cooperative's  
2 members or patrons on products delivered by the members or patrons  
3 to the cooperative.

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

6       (i) A cooperative may lend to or borrow money from  
7 individual members, cooperatives, or associations from which it is  
8 constituted and give security that it considers sufficient in  
9 dealing with the members, cooperatives, or associations.

10       (j) A cooperative may purchase, acquire, hold, or dispose of  
11 an ownership interest in another business entity, whether organized  
12 under the laws of this state or another state, and assume all  
13 rights, interests, privileges, responsibilities, and obligations  
14 arising out of the ownership interest.

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

18               (1) as a federation of associations;

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

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

23       (l) A cooperative may purchase, own, and hold ownership  
24 interests, memberships, interests in nonstock capital, or  
25 evidences of indebtedness of any domestic business entity or  
26 foreign business entity if reasonably necessary or incidental to  
27 accomplish the purposes stated in the articles of organization.

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

4       (n) A cooperative may take, receive, and hold real and  
5 personal property, including the principal of and interest on money  
6 or other funds and rights in a contract, in trust for any purpose  
7 not inconsistent with the purposes of the cooperative stated in its  
8 articles of organization and may exercise fiduciary powers in  
9 relation to the taking, receiving, or holding of the property.

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

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

26       (c) The term of a marketing contract may not exceed 10  
27 years, but a marketing contract may be made self-renewing for

1 subsequent periods of five years each, subject to the right of  
2 either party to terminate by giving written notice of the  
3 termination as specified in the contract.

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

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

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

1 cooperative or the agent or attorney of a bona fide creditor  
2 attempting to collect a debt of the cooperative.

3 (g) A person is liable to the cooperative for civil damages  
4 if the person:

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

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

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

15 (1) a verified, written explanation of the proof of  
16 claim of an owner establishing a right to receive the abandoned  
17 property;

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

19 (3) the name, address, and exemption number of the  
20 corporation or organization to which the property was or is to be  
21 distributed; and

22 (4) the approximate date of distribution.

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



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

4           [Sections 53.055-53.100 reserved for expansion]

5                   SUBCHAPTER C. ORGANIZATION

6       Sec. 53.101. ORGANIZERS. A cooperative may be organized by  
7 one or more organizers who must be adult individuals and who may act  
8 for themselves or as agents for other entities. An organizer of the  
9 cooperative is not required to become a member of the cooperative.

10       Sec. 53.102. COOPERATIVE NAME. (a) The name of a  
11 cooperative must be distinguished from the names of other domestic  
12 business entities and foreign business entities authorized or  
13 registered to do business in this state and any name the right to  
14 which is reserved at the time of organization.

15       (b) The cooperative name is reserved exclusively for the  
16 cooperative during its existence.

17       Sec. 53.103. ARTICLES OF ORGANIZATION. (a) The organizers  
18 shall prepare the articles of organization, which must include:

19           (1) the name of the cooperative;

20           (2) the purpose of the cooperative;

21           (3) the principal place of business for the  
22 cooperative and the name and address of its registered agent in this  
23 state;

24           (4) the period of duration for the cooperative, if the  
25 duration is not perpetual;

26           (5) the capital structure of the cooperative,  
27 including a statement of the classes and relative rights,

1 preferences, and restrictions granted to or imposed on each type of  
2 member interest, the rights to share in profits or distributions of  
3 the cooperative, and the authority to issue member interests, which  
4 may be designated to be determined by the board;

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

9 (7) a statement that a patron membership interest with  
10 voting power is restricted to one vote for each member regardless of  
11 the amount of the patron membership interest held in the affairs of  
12 the cooperative, or a statement describing a different allocation  
13 of voting power as provided for in this chapter;

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

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

19 (10) a statement as to how profits and losses are to be  
20 allocated and cash distributed between patron membership interests  
21 collectively and nonpatron membership interests collectively;

22 (11) a statement that net income allocated to a patron  
23 membership interest as determined by the board in excess of  
24 dividends and additions to reserves is to be distributed on the  
25 basis of patronage and that the records of the cooperative are to  
26 include the interests of patron membership interests and nonpatron  
27 membership interests, which may be additionally described in the

1 bylaws of any class and in the reserves; and

2 (12) the registered address of the cooperative.

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

8 (c) The articles of organization may contain any other  
9 lawful provision.

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

12 (e) The original articles of organization shall be filed  
13 with the secretary of state. The secretary of state shall determine  
14 the fee for filing the articles of organization.

15 (f) When the articles of organization are filed with the  
16 secretary of state and the required fee is paid, it is presumed  
17 that:

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

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

22 (3) the secretary of state will issue a certificate of  
23 organization to the cooperative.

24 Sec. 53.104. AMENDMENT OF ARTICLES OF ORGANIZATION. (a)  
25 The articles of organization of a cooperative may be amended as  
26 follows:

27 (1) the board by majority vote must pass a resolution

1 stating the text of the proposed amendment;

2 (2) the text of the proposed amendment and an attached  
3 mail ballot if the board has provided for a mail ballot in the  
4 resolution, or a description of an alternative voting method  
5 approved by the board and stated in the resolution, must be mailed  
6 or distributed with a regular or special meeting notice to each  
7 member;

8 (3) the notice must designate the time and place of the  
9 meeting for the proposed amendment to be considered and voted on;  
10 and

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

14 (A) when approved by a majority of the votes  
15 cast; or

16 (B) if the cooperative has articles of  
17 organization or bylaws that require more than majority approval or  
18 other conditions for approval, when approved by a proportion of the  
19 votes cast or a number of total members as required by the articles  
20 of organization or bylaws and when the conditions for approval in  
21 the articles of organization or bylaws have been complied with.

22 (b) After an amendment has been adopted, the amendment shall  
23 be signed by the chair, vice chair, records officer, or assistant  
24 records officer and a copy of the amendment filed with the secretary  
25 of state.

26 (c) A certificate shall be prepared stating:

27 (1) the vote and meeting of the board adopting a

1 resolution of the proposed amendment;

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

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

5 (4) the votes cast adopting the amendment.

6 (d) The certificate shall be signed by the chair, vice  
7 chair, records officer, or financial officer and filed with the  
8 records of the cooperative.

9 (e) A majority of directors may amend the articles of  
10 organization if the cooperative does not have any members with  
11 voting rights.

12 Sec. 53.105. AMENDMENT OF ORGANIZATIONAL DOCUMENTS TO BE  
13 GOVERNED BY THIS CHAPTER. (a) A business entity organized and  
14 doing business under other laws of this state or under the laws of  
15 another state that has or will conduct business as a cooperative may  
16 become subject to this chapter by amending its organizational  
17 documents to conform to the requirements of articles of  
18 organization under this chapter.

19 (b) A business entity organized under other laws of this  
20 state may amend its organizational documents to comply with the  
21 provisions of this chapter and file the amended articles of  
22 organization with the secretary of state to be a cooperative  
23 governed under this chapter. The status of the business entity  
24 under the other laws terminates with the filing of articles of  
25 organization to be governed under this chapter.

26 (c) A business entity organized under laws of another state  
27 may amend its organizational documents to comply with the

1 provisions of this chapter. After the organizational documents are  
2 amended, the business entity shall file a certified copy of the  
3 organizational documents as amended with the secretary of state to  
4 comply with the provisions of this chapter, including the fees and  
5 other requirements prescribed for filing articles of organization.  
6 After filing, the business entity is a cooperative in this state  
7 organized under and subject to the provisions of this chapter.

8 Sec. 53.106. EXISTENCE. (a) The existence of a cooperative  
9 begins on the date the articles of organization are filed with the  
10 secretary of state.

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

13 Sec. 53.107. REGISTERED AGENT; CHANGE OF REGISTERED OFFICE  
14 OR REGISTERED AGENT. (a) Each cooperative must continuously  
15 maintain in this state:

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

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

19 (A) an individual resident of this state whose  
20 business office is the same as the cooperative's registered office;  
21 or

22 (B) a domestic corporation, or a foreign  
23 corporation authorized to transact business in this state, whose  
24 business office is the same as the cooperative's registered office.

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

27 (1) the name of the cooperative;

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

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

5           (4) the name of the cooperative's current registered  
6 agent;

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

9           (6) a certification that the address of the  
10 cooperative's registered office and the address of the business  
11 office of the cooperative's registered agent are identical; and

12           (7) a certification that the change in the  
13 cooperative's registered agent or registered office was authorized  
14 by an affirmative vote of a majority of the board of directors of  
15 the cooperative.

16           (c) The statement under Subsection (b) shall be signed and  
17 delivered to the secretary of state. If the secretary of state finds  
18 that the statement meets the requirements of this section, the  
19 secretary of state shall file the statement. The change of address  
20 of the registered office or the appointment of a new registered  
21 agent is effective when filed by the secretary of state.

22           (d) A registered agent of a cooperative may resign as agent  
23 by filing a written notice, signed with one original and one copy,  
24 with the secretary of state. The secretary of state shall mail a  
25 copy of the statement to the cooperative. The appointment of the  
26 registered agent terminates on the 30th day after the date the  
27 secretary of state receives notice.

1       (e) If a cooperative fails for 30 days or longer to appoint  
2 and maintain a registered agent in this state, or fails for 30 days  
3 or longer after a change of its registered office or registered  
4 agent to file a statement of the change, the cooperative is  
5 considered to be transacting business without authority and  
6 automatically forfeits any franchises, rights, or privileges  
7 acquired under the laws of this state.

8       (f) When the secretary of state determines that a  
9 cooperative is transacting business without authority under  
10 Subsection (e), the secretary of state shall mail by certified mail  
11 to the cooperative a notice of the failure. Unless the cooperative  
12 provides a statement under Subsection (b) not later than the 30th  
13 day after the date of the delivery of notice, the cooperative is  
14 considered nonoperational and forfeits its certificate of  
15 organization issued by the secretary of state. A cooperative  
16 considered nonoperational under this subsection may at any time  
17 within two years after the forfeiture of its certificate be revived  
18 and reinstated by filing the necessary statement under this chapter  
19 and paying a reinstatement fee established by the secretary of  
20 state by rule, plus a penalty of \$100. The reinstatement fee may  
21 not exceed the costs of reinstating the certificate. The  
22 cooperative retains its registered name during the two-year period  
23 under this subsection.

24       Sec. 53.108. RULES; FILING FEES. The secretary of state  
25 may adopt rules necessary to implement this chapter and may  
26 determine the filing fee for documents under this chapter.

27       [Sections 53.109-53.150 reserved for expansion]



SUBCHAPTER D. BYLAWS

1  
2 Sec. 53.151. BYLAWS. (a) A cooperative shall adopt bylaws  
3 governing the cooperative's business affairs and structure, the  
4 qualifications, classification, rights, and obligations of its  
5 members, and the classifications, allocations, and distributions  
6 of membership interests.

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

10 (1) the notice of the meeting contains a statement  
11 that the bylaws or restated bylaws will be voted on and copies are  
12 included with the notice, or copies are available on request from  
13 the cooperative and summary statement of each proposed bylaw or  
14 amendment is included with the notice;

15 (2) a quorum is registered as being present or  
16 represented by mail or alternative voting method if the mail or  
17 alternative voting method is authorized by the board; and

18 (3) the bylaw or amendment is approved by a majority of  
19 votes cast, or for a cooperative with articles of organization or  
20 bylaws requiring more than majority approval or other conditions  
21 for approval, the bylaw or amendment is approved when the  
22 conditions for approval in the articles of organization or bylaws  
23 are complied with.

24 (c) Until the next annual or special members' meeting, the  
25 majority of directors may adopt and amend bylaws for the  
26 cooperative that are consistent with Subsection (d) and that may be  
27 additionally amended or repealed by the members at an annual or

1 special members' meeting.

2 (d) Bylaws may contain any provision relating to the  
3 management or regulation of the affairs of the cooperative that is  
4 not inconsistent with the laws of this state or the articles of  
5 organization and must include:

6 (1) the number of directors and the qualifications,  
7 manner of election, powers, duties, and compensation, if any, of  
8 directors;

9 (2) the qualifications of members and any limitation  
10 on their number;

11 (3) the manner of admission, withdrawal, suspension,  
12 and expulsion of members; and

13 (4) the governance rights, financial rights,  
14 assignability of governance or financial rights, and other rights,  
15 privileges, and obligations of members and their membership  
16 interests, which may be additionally described in a member control  
17 agreement.

18 [Sections 53.152-53.200 reserved for expansion]

19 SUBCHAPTER E. MEMBERSHIP INTERESTS

20 Sec. 53.201. INTERESTS. (a) The authorized amount and  
21 divisions of patron membership interests and nonpatron membership  
22 interests may be increased or decreased or established or altered  
23 in accordance with the restrictions in this chapter by amending the  
24 articles of organization at a regular members' meeting or at a  
25 special members' meeting called for the purpose of acting on the  
26 amendment.

27 (b) Authorized membership interests may be issued on terms

1 prescribed in the articles of organization, bylaws, or as  
2 determined by the board. The cooperative shall disclose to any  
3 person or entity who acquires a membership interest issued by the  
4 cooperative the organization, capital structure, and business  
5 prospects and risks of the cooperative and the nature of the  
6 governance and financial rights of the membership interest acquired  
7 and of other classes of membership and membership interests. The  
8 cooperative shall notify all members of the membership interests  
9 being offered by the cooperative. A membership interest may not be  
10 issued until the subscription price of the membership interest has  
11 been paid in cash or a cash equivalent or property with the  
12 agreed-on value.

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

16 (d) After issuance by the cooperative, a membership  
17 interest in a cooperative may be sold or transferred only with the  
18 approval of the board.

19 (e) The cooperative may solicit and issue nonpatron  
20 membership interests on terms determined by the board and disclosed  
21 in the articles of organization, bylaws, or by separate disclosure  
22 to the members. Each member acquiring a nonpatron membership  
23 interest must sign a member control agreement that describes the  
24 rights and obligations of the member as they relate to the nonpatron  
25 membership interest, the financial and governance rights, the  
26 transferability of the nonpatron membership interest, the division  
27 and allocations of profits and losses among the membership

1 interests and membership classes, and financial rights on  
2 liquidation. If the bylaws do not otherwise provide for the  
3 allocation of the profits and losses between patron membership  
4 interests and nonpatron membership interests, the allocation of  
5 profits and losses among nonpatron membership interests  
6 individually and patron membership interests collectively shall be  
7 allocated on the basis of the value of contributions to capital made  
8 according to the patron membership interests collectively and the  
9 nonpatron membership interests individually to the extent the  
10 contributions have been accepted by the cooperative. Distributions  
11 of cash or other assets of the cooperative shall be allocated among  
12 the membership interests as provided in the articles of  
13 organization and bylaws, subject to the provisions of this chapter.  
14 If not otherwise provided, distributions shall be made on the basis  
15 of value of the capital contributions of the patron membership  
16 interests collectively and the nonpatron membership interests to  
17 the extent the contributions have been accepted by the cooperative.

18 (f) The bylaws may provide that the cooperative or the  
19 patron members, individually or collectively, have the first  
20 privilege to purchase the membership interest of any class of  
21 patron member's membership interest offered for sale. The first  
22 privilege to purchase a patron membership interest may be complied  
23 with by notice to other patron members that the patron membership  
24 interest is for sale and a procedure by which patron members may  
25 proceed to attempt to purchase and acquire the patron membership  
26 interest. A patron membership interest acquired by the cooperative  
27 may be held to be reissued or may be retired and canceled.

1       (g) Subject to the bylaws, a member may dissent from and  
2 obtain payment for the fair value of the member's nonpatron  
3 membership interest in the cooperative if the articles of  
4 organization or bylaws are amended in a manner that materially and  
5 adversely affects the rights and preferences of the nonpatron  
6 membership interest of the dissenting member. The dissenting  
7 member must file a notice of intent to demand fair value of the  
8 membership interest with the records officer of the cooperative  
9 before the 30th day after the amendment of the bylaws and notice of  
10 the amendment to members, or the right of the dissenting member to  
11 demand payment of fair value for the membership interest is waived.  
12 If a proposed amendment of the articles of organization or bylaws is  
13 approved by the members, a member who is entitled to dissent and who  
14 elects to exercise dissenter's rights must file a notice to demand  
15 fair value of the membership interest with the records officer of  
16 the cooperative before the vote on the proposed action and may not  
17 vote in favor of the proposed action, or the right to demand fair  
18 value for the membership interest by the dissenting member is  
19 waived. After receipt of the dissenting member's demand notice and  
20 approval of the amendment, the cooperative shall not later than the  
21 60th day after the date of the approval of the amendment rescind the  
22 amendment or remit the fair value for the one member's interest to  
23 the dissenting member before the 180th day after the date the  
24 cooperative received the notice. On receipt of the fair value for  
25 the membership interest, the member has no further member rights in  
26 the cooperative.

27       Sec. 53.202. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS. (a)

1 The bylaws shall prescribe the allocation of profits and losses  
2 between patron membership interests collectively and other  
3 membership interests. If the bylaws do not otherwise provide, the  
4 profits and losses between patron membership interests  
5 collectively and other membership interests shall be allocated on  
6 the basis of the value of contributions to capital made by the  
7 patron membership interests collectively and other membership  
8 interests and accepted by the cooperative. The allocation of  
9 profits to the patron membership interests collectively may not be  
10 less than 15 percent of the total profits in any fiscal year of the  
11 cooperative.

12 (b) The bylaws shall prescribe the distribution of cash or  
13 other assets of the cooperative among the membership interests of  
14 the cooperative. If not otherwise provided in the bylaws,  
15 distribution shall be made to the patron membership interests  
16 collectively and other members on the basis of the value of  
17 contributions to capital made and accepted by the cooperative by  
18 the patron membership interests collectively and other membership  
19 interests. The distributions to patron membership interests  
20 collectively may not be less than 15 percent of the total  
21 distributions in any fiscal year of the cooperative.

22 Sec. 53.203. ALLOCATIONS AND DISTRIBUTIONS TO PATRON  
23 MEMBERS. (a) The board of a cooperative may set aside a portion of  
24 net income allocated to the patron membership interests to create  
25 or maintain a capital reserve.

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

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

4           (2) establish and accumulate reserves for new  
5 buildings, machinery and equipment, depreciation, losses, and  
6 other proper purposes.

7           (c) Net income allocated to patron members that exceeds  
8 dividends on equity and additions to reserves shall be distributed  
9 to patron members on the basis of patronage. A cooperative may  
10 establish allocation units, whether functional, divisional,  
11 departmental, geographic, or otherwise, establish pooling  
12 arrangements, and account for and distribute net income to patrons  
13 on the basis of allocation units and pooling arrangements. A  
14 cooperative may offset the net loss of an allocation unit or pooling  
15 arrangement against the net income of other allocation units or  
16 pooling arrangements.

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

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

24           (f) A cooperative may provide in its bylaws that nonmember  
25 patrons are allowed to participate in the distribution of net  
26 income payable to patron members on equal terms with patron  
27 members.

1       (g) If a nonmember patron with patronage credits is not  
2 qualified or eligible for membership, a refund owed may be credited  
3 to the patron's individual account. The board may issue a  
4 certificate of interest to reflect the credited amount. After the  
5 patron is issued a certificate of interest, the patron may  
6 participate in the distribution of income on the same basis as a  
7 patron member.

8           [Sections 53.204-53.250 reserved for expansion]

9                   SUBCHAPTER F. MEMBERS

10       Sec. 53.251. GROUPING OF MEMBERS. (a) A cooperative may  
11 group members and patron members in districts, units, or another  
12 basis if and as authorized by its articles of organization and  
13 bylaws, which may include authorization for the board to determine  
14 the groupings.

15       (b) The board may do anything necessary to implement the use  
16 of districts or units, including setting the time and place and  
17 prescribing the rules of conduct for holding a meeting by a district  
18 or unit to elect delegates to members' meetings.

19       Sec. 53.252. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE  
20 DEBTS. (a) A member who knowingly, intentionally, or repeatedly  
21 violates a provision of the articles of organization, bylaws,  
22 member control agreement, or marketing contract with the  
23 cooperative may be required by the board to surrender the financial  
24 right of membership interest of any class owned by the member.

25       (b) The cooperative shall refund to the member for the  
26 surrendered financial right of membership interest the lesser of  
27 the book value or market value of the financial right of the



1 membership interest payable in not more than seven years from the  
2 date of surrender or transfer all of any patron member's financial  
3 rights to a class of financial rights held by members who are not  
4 patron members, or to a certificate of interest that carries  
5 liquidation rights on par with a membership interest and is  
6 redeemable within seven years after the transfer as provided in the  
7 certificate.

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

10 (d) A member who knowingly, intentionally, or repeatedly  
11 violates a provision of the articles of organization, bylaws,  
12 member control agreement, or marketing contract may be required by  
13 the board to surrender the member's entitlement to vote in the  
14 cooperative.

15 (e) A member is not, merely because of the member's status,  
16 personally liable for the acts, debts, liabilities, or obligations  
17 of a cooperative. A member is liable for any unpaid subscription  
18 for the membership interest, unpaid membership fees, or debt for  
19 which the member has separately contracted with the cooperative.

20 Sec. 53.253. REGULAR MEMBERS' MEETINGS. (a) Regular  
21 members' meetings shall be held annually at a time determined by the  
22 board, unless otherwise provided for in the bylaws.

23 (b) The regular members' meeting shall be held at the  
24 principal place of business of the cooperative or at another  
25 conveniently located place as determined by the bylaws or the  
26 board.

27 (c) The officers shall submit reports to the members at the

1 regular members' meeting covering the business of the cooperative  
2 for the previous fiscal year that show the condition of the  
3 cooperative at the end of the fiscal year of the organization.

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

7 (e) The cooperative shall give notice of regular members'  
8 meetings by mailing a notice to each member at the member's last  
9 known mailing address or by other notification approved by the  
10 board and agreed to by the members. Notice of a regular members'  
11 meeting shall be published or otherwise given by an approved method  
12 at least two weeks before the date of the meeting or mailed at least  
13 15 days before the date of the meeting.

14 Sec. 53.254. SPECIAL MEMBERS' MEETINGS. (a) A special  
15 members' meeting may be called by:

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

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

20 (b) The cooperative shall give notice of a special members'  
21 meeting by mailing a notice to each member personally at the  
22 person's last known mailing address or an alternative method  
23 approved by the board and the member individually or the members  
24 generally. For a member that is an entity, notice mailed or  
25 delivered by an alternative method must be to an officer of the  
26 entity. The notice shall state the time, place, and purpose of the  
27 special members' meeting. The notice shall be issued not later than

1 the 10th day after the date the members' petition is submitted and  
2 the meeting held within 30 days after the date the members' petition  
3 is submitted.

4 Sec. 53.255. CERTIFICATION OF MEETING NOTICE. (a) After  
5 mailing or delivering of the special or regular members' meeting  
6 notices, the chair or records officer shall execute a certificate  
7 containing the date of mailing or delivery of the notices and a  
8 statement that the notices were mailed or delivered as prescribed  
9 by law.

10 (b) The certificate shall be made a part of the record of the  
11 meeting.

12 Sec. 53.256. FAILURE TO RECEIVE MEETING NOTICE. Failure of  
13 a member to receive notice of a special or regular members' meeting  
14 does not invalidate an action taken by the members at the meeting.

15 Sec. 53.257. QUORUM. (a) The quorum for a members' meeting  
16 is:

17 (1) 10 percent of the total number of members for a  
18 cooperative with 500 or fewer members; or

19 (2) 50 members for a cooperative with more than 500  
20 members.

21 (b) In determining a quorum at a meeting, on a question  
22 submitted to a vote by mail or an alternative method, members  
23 present in person or represented by mail vote or the alternative  
24 voting method shall be counted. The attendance of a sufficient  
25 number of members to establish a quorum shall be determined by a  
26 registration of the members of the cooperative present at the  
27 meeting. Registration shall be verified by the chair or the records

1 officer and reported in the minutes of the meeting.

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

4 Sec. 53.258. MEMBER VOTING RIGHTS. (a) A patron member is  
5 only entitled to one vote on an issue to be voted on by members who  
6 hold a patron membership interest, except that a patron member of a  
7 cooperative described by Section 53.259 may be entitled to more  
8 than one vote as provided by that section. On any matter of the  
9 cooperative, the entire patron members' voting power shall be voted  
10 collectively based on the vote of the majority of patron members  
11 voting on the issue. A nonpatron member has voting rights according  
12 to the member's nonpatron membership interest granted in the  
13 bylaws, subject to the provisions of this chapter.

14 (b) A member or delegate may exercise the member's voting  
15 rights on any matter that is before the members as provided by the  
16 articles of organization or bylaws at a members' meeting from the  
17 time the member or delegate arrives at the members' meeting, unless  
18 the articles of organization or bylaws specify an earlier and  
19 specific time for the expiration of the member's right to vote.

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

24 (d) A cooperative may provide in the articles of  
25 organization or bylaws that a unit or district of members is  
26 entitled to be represented at a members' meeting by delegates  
27 chosen by the members of the unit or district. The delegates may

1 vote on matters at the members' meeting in the same manner as a  
2 member. The delegates may only exercise the voting rights on a  
3 basis of and with the number of votes as provided by the articles of  
4 organization or bylaws. If the approval by a certain number of the  
5 members is required for the adoption of amendments, a dissolution,  
6 a merger, a consolidation, or a sale of assets, the votes of  
7 delegates shall be counted as votes by the members represented by  
8 the delegate. Patron members may be represented by a delegate who  
9 is a patron member. Nonpatron members may be represented by a  
10 delegate if authorized in the bylaws.

11 (e) A member who is or will be absent from a members' meeting  
12 may vote by mail or by an approved alternative method on any motion,  
13 resolution, or amendment that the board submits for vote by mail or  
14 alternative method to the members. A properly executed ballot  
15 shall be accepted by the board and counted as the vote of the absent  
16 member at the meeting.

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

18 (1) be in the form prescribed by the board;  
19 (2) contain the exact text of the proposed motion,  
20 resolution, or amendment to be acted on at the meeting;

21 (3) contain the text of the motion, resolution, or  
22 amendment for which the member may indicate an affirmative or  
23 negative vote; and

24 (4) allow the member to express a choice by marking an  
25 appropriate choice on the ballot and mailing, delivering, or  
26 otherwise submitting the ballot to the cooperative in a plain,  
27 sealed envelope inside another envelope bearing the member's name

1 or by an alternative method approved by the board.

2 Sec. 53.259. PATRON MEMBER VOTING IN COOPERATIVES  
3 CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR  
4 ASSOCIATIONS. (a) The articles of organization or the bylaws of a  
5 cooperative that is constituted wholly or partly of other  
6 cooperatives or associations may authorize the patron members of a  
7 subsidiary cooperative to have an additional vote for:

8 (1) a stipulated amount of business transacted between  
9 the parent cooperative and the subsidiary cooperative to which the  
10 patron member is a member;

11 (2) a stipulated number of patron members in the  
12 subsidiary cooperative;

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

15 (4) a combination of the reasons in Subdivisions  
16 (1)-(3).

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

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

23 (2) a stipulated amount of equity allocated to or held  
24 by the patron members of the units or districts of the cooperative;  
25 or

26 (3) a combination of the reasons in Subdivisions (1)  
27 and (2).

1           [Sections 53.260-53.300 reserved for expansion]

2                           SUBCHAPTER G. ADMINISTRATION

3           Sec. 53.301. GOVERNANCE. A cooperative is governed by its  
4 board.

5           Sec. 53.302. NUMBER OF DIRECTORS. The board must have at  
6 least three directors.

7           Sec. 53.303. ELECTION OF DIRECTORS. (a) Directors are  
8 elected for the term, at the time, and in the manner provided by  
9 this section and the bylaws. A majority of the directors must be  
10 members, and at least one director must be elected exclusively by  
11 the members holding patron membership interests. The voting  
12 entitlement of the directors may be allocated according to  
13 allocation units or equity classifications of the cooperative  
14 provided that at least one-half of the voting power on general  
15 matters of the cooperative must be allocated to one or more  
16 directors elected by members holding a patron membership interest.

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

20           (c) For a cooperative with districts or other units, members  
21 may elect directors on a district or unit basis if provided for by  
22 the bylaws. The directors may be nominated or elected at a district  
23 meeting if authorized by the bylaws. Directors who are nominated at  
24 district meetings are elected at the annual regular members'  
25 meeting by vote of the entire membership unless the bylaws provide  
26 that a director who is nominated at a district meeting is to be  
27 elected by vote of the members of the district at the annual regular

1 members' meeting.

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

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

6 (1) the ballot must be in a form prescribed by the  
7 board;

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

12 (3) the ballot shall be accepted and counted as the  
13 vote of the absent member if the ballot of the member is received by  
14 the cooperative on or before the date of the regular members'  
15 meeting.

16 (f) If a member is not a natural person and the bylaws do not  
17 provide otherwise, the member may nominate one or more natural  
18 persons for election to the board.

19 Sec. 53.304. FILLING VACANCIES. If a director who was  
20 elected by patron members vacates the director's position, the  
21 board shall appoint a patron member of the cooperative to fill the  
22 vacancy until the next regular or special members' meeting. If the  
23 vacating director was not a patron member, the board shall appoint a  
24 patron member to fill the vacancy. At the next regular or special  
25 members' meeting, the members or patron members shall elect a  
26 director for the unexpired term of the vacant position.

27 Sec. 53.305. REMOVAL OF DIRECTORS. At a members' meeting



1 the class of members who elected a director may remove the director  
2 for cause related to the duties of the position and fill the vacancy  
3 caused by the removal.

4 Sec. 53.306. LIMITATION OF DIRECTOR'S LIABILITY. (a)  
5 Except as provided by Subsection (b), a director's personal  
6 liability to the cooperative or its members for monetary damages  
7 for a breach of fiduciary duty as a director may be eliminated or  
8 limited in the articles of organization.

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

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

13 (2) an act or omission that is not in good faith, that  
14 involves intentional misconduct, or that is a knowing violation of  
15 law;

16 (3) a transaction from which the director derived an  
17 improper personal benefit; or

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

21 Sec. 53.307. OFFICERS. (a) The board shall:

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

23 (2) elect or appoint a records officer and a financial  
24 officer.

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

27 (c) The offices of records officer and financial officer may

1 be combined.

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

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

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

11 Sec. 53.308. VOTE OF OWNERSHIP INTERESTS HELD BY  
12 COOPERATIVE. A cooperative that holds an ownership interest in  
13 another business entity may, by direction of the cooperative's  
14 board, elect or appoint a person to represent the cooperative at a  
15 meeting of that business entity. The representative may represent  
16 the cooperative and cast the cooperative's vote at the business  
17 entity's meeting.

18 [Sections 53.309-53.350 reserved for expansion]

19 SUBCHAPTER H. MERGER AND CONSOLIDATION

20 Sec. 53.351. MERGER AND CONSOLIDATION. (a) Unless  
21 otherwise prohibited, cooperatives organized under the laws of this  
22 state may merge or consolidate with each other or other business  
23 entities organized under the laws of this state or another state by  
24 complying with the provisions of this section or the law of the  
25 state where the surviving or new business entity will exist.

26 (b) To initiate a merger or consolidation of a cooperative,  
27 a written plan of merger or consolidation must be prepared by the

1 board or by a committee selected by the board to prepare a plan. The  
2 plan shall contain:

3 (1) the names of the constituent cooperatives and  
4 other business entities;

5 (2) the name of the surviving or new cooperative or  
6 other business entity;

7 (3) the manner and basis of converting the membership  
8 or ownership interests of the constituent cooperatives or business  
9 entities into membership or ownership interests in the surviving or  
10 new cooperative or business entity;

11 (4) the terms of the merger or consolidation;

12 (5) the proposed effect of the consolidation or merger  
13 on the members and patron members of the cooperative; and

14 (6) for a consolidation, the articles of organization  
15 of the entity or organizational documents to be filed with the state  
16 in which the entity is organized.

17 Sec. 53.352. NOTICE. (a) The board shall mail a merger or  
18 consolidation plan or otherwise transmit or deliver notice to each  
19 member. The notice must contain:

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

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

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

26 Sec. 53.353. ADOPTION OF MERGER OR CONSOLIDATION PLAN. (a)

27 A plan of merger or consolidation is adopted if:

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

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

8           (b) After the plan has been adopted, articles of merger or  
9 consolidation that contain the plan and state that the plan was  
10 adopted according to this chapter shall be signed by the chair, vice  
11 chair, records officer, or documents officer of each cooperative  
12 merging or consolidating.

13           (c) If the new business entity will exist in this state, the  
14 articles of merger or consolidation shall be filed in the office of  
15 the secretary of state.

16           (d) For a merger, the articles of organization of the  
17 surviving cooperative subject to this chapter are considered  
18 amended to the extent provided in the articles of merger.

19           (e) Unless a later date is provided in the plan, the merger  
20 or consolidation is effective when the articles of merger or  
21 consolidation are filed in the office of the secretary of state.

22           (f) The secretary of state shall issue a certificate of  
23 organization of the merged or consolidated cooperative.

24           Sec. 53.354. EFFECT OF MERGER OR CONSOLIDATION. (a) After  
25 the effective date, the cooperatives or other business entities  
26 that are parties to the plan become a single entity. For a merger,  
27 the surviving business entity is the business entity designated in

1 the plan. For a consolidation, the new cooperative or other  
2 business entity is the business entity provided for in the plan.  
3 Except for the surviving or new business entity, the separate  
4 existence of each business entity that is a party to the plan ceases  
5 on the effective date of the merger or consolidation.

6 (b) The surviving or new business entity possesses all of  
7 the rights and property of each of the merged or consolidated  
8 business entities and is responsible for all their obligations.  
9 The title to property of the merged or consolidated business entity  
10 is vested in the surviving or new business entity without reversion  
11 or impairment of the title caused by the merger or consolidation.

12 (c) The right of a creditor may not be impaired by the merger  
13 or consolidation without the creditor's consent.

14 Sec. 53.355. FEE. The secretary of state shall set the  
15 filing fee for a merger or consolidation plan under this  
16 subchapter.

17 [Sections 53.356-53.400 reserved for expansion]

18 SUBCHAPTER I. LIQUIDATION

19 Sec. 53.401. LIQUIDATION. (a) A cooperative may be  
20 liquidated as provided in the articles of organization in a manner  
21 consistent with other business entities organized in this state or,  
22 if not provided, may be liquidated in the same manner as a limited  
23 liability company organized in this state.

24 (b) In addition to the methods in Subsection (a), the  
25 members may authorize a liquidation by adopting a resolution at a  
26 members' meeting. The notice of the members' meeting shall include  
27 a statement that the disposition of all of the assets of the

1 cooperative will be considered at the meeting. If a quorum is  
2 present in person, by mail ballot, or alternative method approved  
3 by the board at the members' meeting, the resolution approving of  
4 the liquidation is adopted if:

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

6 (2) for a cooperative with articles of organization or  
7 bylaws requiring more than two-thirds for approval or other  
8 conditions for approval, the conditions for approval in the  
9 articles of organization or bylaws are complied with.

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

14 [Sections 53.402-53.450 reserved for expansion]

15 SUBCHAPTER J. DISSOLUTION

16 Sec. 53.451. METHODS OF DISSOLUTION. A cooperative may be  
17 dissolved by the members or by the order of a court.

18 Sec. 53.452. WINDING UP. (a) After a notice of intent to  
19 dissolve has been filed with the secretary of state, the board or  
20 the officers acting under the direction of the board shall proceed  
21 as soon as possible to:

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

25 (2) pay or make provision for the payment of all debts,  
26 obligations, and liabilities of the cooperative according to their  
27 priorities.

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

5       (c) Tangible and intangible property, including money,  
6 remaining after the discharge of the debts, obligations, and  
7 liabilities of the cooperative may be distributed to the members  
8 and former members as provided in the bylaws. If previously  
9 authorized by the members, the tangible and intangible property of  
10 the cooperative may be liquidated and disposed of at the discretion  
11 of the board.

12       Sec. 53.453. REVOCATION OF DISSOLUTION PROCEEDINGS. (a)  
13 Dissolution proceedings may be revoked before the articles of  
14 dissolution are filed with the secretary of state.

15       (b) The chair may call a members' meeting to determine  
16 whether to revoke the dissolution proceedings. The question of the  
17 proposed revocation shall be submitted to the members at the  
18 members' meeting called to consider the revocation. The  
19 dissolution proceedings are revoked if the revocation is approved  
20 at the members' meeting by a majority of the members of the  
21 cooperative, or for a cooperative with articles of organization or  
22 bylaws requiring a greater number of members, the number of members  
23 required by the articles of organization or bylaws.

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

27       Sec. 53.454. STATUTE OF LIMITATIONS. The claim of a

1 creditor or claimant against a dissolving cooperative is barred if  
2 the claim has not been enforced by legal, administrative, or  
3 arbitration proceedings relating to the claim initiated not later  
4 than two years after the date the notice of intent to dissolve is  
5 filed with the secretary of state.

6 Sec. 53.455. ARTICLES OF DISSOLUTION. (a) Articles of  
7 dissolution of a cooperative may be filed with the secretary of  
8 state only after payment of the claims of all known creditors and  
9 claimants has been made or provided for and the remaining property  
10 distributed by the board. The articles of dissolution must state  
11 that:

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

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

19 (3) legal, administrative, or arbitration proceedings  
20 by or against the cooperative are not pending or that adequate  
21 provision has been made for the satisfaction of a judgment, order,  
22 or decree that may be entered against the cooperative in any pending  
23 proceeding.

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

26 (c) The secretary of state shall issue to the dissolved  
27 cooperative or its legal representative a certificate of



1 dissolution that contains:

2 (1) the name of the dissolved cooperative;

3 (2) the date the articles of dissolution were filed  
4 with the secretary of state; and

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

6 Sec. 53.456. APPLICATION FOR COURT-SUPERVISED VOLUNTARY  
7 DISSOLUTION. After a notice of intent to dissolve is filed with the  
8 secretary of state and before a certificate of dissolution is  
9 issued, the cooperative, or, for good cause shown, a member or  
10 creditor, may apply to a district court for the county in which the  
11 registered address is located to have the dissolution conducted or  
12 continued under the supervision of the court as provided by Section  
13 53.463.

14 Sec. 53.457. COURT-ORDERED REMEDIES OR DISSOLUTION. (a) A  
15 district court may grant equitable relief that it considers just  
16 and reasonable in the circumstances or may dissolve a cooperative  
17 and liquidate its assets and business:

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

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

22 (A) the directors or the persons having the  
23 authority otherwise vested in the board are deadlocked in the  
24 management of the cooperative's affairs and the members are unable  
25 to break the deadlock;

26 (B) the directors or those in control of the  
27 cooperative in their capacities as members, directors, or officers

1 have acted fraudulently, illegally, or in a manner unfairly  
2 prejudicial toward one or more members;

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

8 (D) the cooperative assets are being misapplied  
9 or wasted; or

10 (E) the period of duration as provided in the  
11 articles of organization has expired and has not been extended as  
12 provided in this chapter;

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

14 (A) the claim of the creditor against the  
15 cooperative has been reduced to judgment and an execution on the  
16 judgment has been returned unsatisfied; or

17 (B) the cooperative has admitted in writing that  
18 the claim of the creditor against the cooperative is due and payable  
19 and it is established that the cooperative is unable to pay its  
20 debts in the ordinary course of business; or

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

24 (b) In determining whether to order equitable relief or  
25 dissolution, the court shall take into consideration the financial  
26 condition of the cooperative but may not refuse to order equitable  
27 relief or dissolution solely on the ground that the cooperative has

1 accumulated operating net income or current operating net income.

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

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

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

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

19 Sec. 53.458. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED  
20 VOLUNTARY DISSOLUTION. (a) In dissolution proceedings, before a  
21 hearing is completed the court may:

22 (1) issue an injunction;

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

25 (3) take action required to preserve the cooperative's  
26 assets wherever located and to carry on the business of the  
27 cooperative.

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

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

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

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

18                (3) claims proved and allowed to employees under the  
19 provisions of the workers' compensation law, except that claims  
20 under this subdivision may not be allowed if the cooperative  
21 carried workers' compensation insurance at the time the injury was  
22 sustained;

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

27                (5) other claims proved and allowed.

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

4       Sec. 53.459. RECEIVER QUALIFICATIONS AND POWERS. (a) A  
5 receiver must be a natural person or a domestic or foreign  
6 corporation authorized to transact business in this state. A  
7 receiver shall give a bond as directed by the court with the  
8 sureties required by the court.

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

12       Sec. 53.460. DISSOLUTION ACTION BY ATTORNEY GENERAL;  
13 ADMINISTRATIVE DISSOLUTION. (a) A cooperative may be dissolved  
14 involuntarily by order of a court in this state in an action filed  
15 by the attorney general if it is established that:

16               (1) the articles and certificate of organization were  
17 procured through fraud;

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

20               (3) the cooperative has flagrantly violated a  
21 provision of this chapter, violated a provision of this chapter  
22 more than once, or violated more than one provision of this chapter;  
23 or

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

27       (b) An action may not be brought under Subsection (a) before

1 the 31st day after the date notice is given to the cooperative by  
2 the attorney general of the reason for filing the action. If the  
3 reason for filing the action is an act or omission of the  
4 cooperative and the act or omission may be corrected by an amendment  
5 of the articles of organization or bylaws or by performance of or  
6 abstention from the act, the attorney general may file the action  
7 only if the cooperative fails to make the correction before the 31st  
8 day after notice is given to the cooperative by the attorney  
9 general.

10 Sec. 53.461. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION  
11 PROCEEDINGS. (a) In a proceeding to dissolve a cooperative, the  
12 court may require a creditor or claimant of the cooperative to file  
13 a claim made under oath with the court administrator or with the  
14 receiver in a form prescribed by the court.

15 (b) If the court requires the filing of claims, the court  
16 shall:

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

19 (2) prescribe the form of a notice of the date set to  
20 be given to creditors and claimants.

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

26 Sec. 53.462. DISCONTINUANCE OF COURT-SUPERVISED  
27 DISSOLUTION PROCEEDINGS. The involuntary or supervised voluntary

1 dissolution of a cooperative may be discontinued at any time during  
2 the dissolution proceedings if it is established that cause for  
3 dissolution does not exist. The court shall dismiss the  
4 proceedings and direct the receiver, if any, to redeliver to the  
5 cooperative its remaining property and assets.

6 Sec. 53.463. COURT-SUPERVISED DISSOLUTION ORDER. (a) In  
7 an involuntary or supervised voluntary dissolution, the court shall  
8 enter an order dissolving the cooperative after the costs and  
9 expenses of the proceedings and all debts, obligations, and  
10 liabilities of the cooperative have been paid or discharged and the  
11 remaining property and assets have been distributed to its members  
12 or, if its property and assets are not sufficient to satisfy and  
13 discharge the costs, expenses, debts, obligations, and  
14 liabilities, when all the property and assets have been applied to  
15 their payment according to their priorities.

16 (b) When the court enters the order dissolving the  
17 cooperative or association, the cooperative or association is  
18 dissolved.

19 Sec. 53.464. FILING OF DISSOLUTION ORDER. After the court  
20 enters an order dissolving a cooperative, the court administrator  
21 shall cause a certified copy of the dissolution order to be filed  
22 with the secretary of state. The secretary of state may not charge  
23 a fee for filing the dissolution order.

24 Sec. 53.465. BARRING OF CLAIMS. (a) A person who is or  
25 becomes a creditor or claimant before, during, or after the  
26 conclusion of dissolution proceedings, who does not file a claim or  
27 pursue a remedy in a legal, administrative, or arbitration

1 proceeding during the pendency of the dissolution proceeding, or  
2 who does not initiate a legal, administrative, or arbitration  
3 proceeding before the dissolution proceedings commenced and all  
4 those claiming through or under the creditor or claimant are  
5 forever barred from suing on that claim or otherwise realizing upon  
6 or enforcing it, except as provided by this section.

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

12 (1) against the cooperative to the extent of  
13 undistributed assets; or

14 (2) if the undistributed assets are not sufficient to  
15 satisfy the claim, against a member up to the amount distributed to  
16 the member.

17 (c) A debt, obligation, or liability incurred during the  
18 dissolution proceedings shall be paid or provided for by the  
19 cooperative before the distribution of assets to a member. A person  
20 to whom such a debt, obligation, or liability is owed but not paid  
21 may pursue any remedy against the officers, directors, or members  
22 of the cooperative before the expiration of the applicable statute  
23 of limitations. This subsection does not apply to dissolution  
24 under the supervision or order of a court.

25 Sec. 53.466. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.  
26 After a cooperative has been dissolved, any of its former officers,  
27 directors, or members may assert or defend, in the name of the



1 cooperative, a claim by or against the cooperative.

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