

By: Swinford

H.B. No. 1617

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 chapter 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) "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.

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

(4) "Business entity" means:

(A) a corporation, limited liability company, limited partnership, limited liability partnership, or other

1 similar entity, whether domestic or foreign;

2 (B) an association; or

3 (C) a body vested with the power or function of an
4 entity described by Paragraph (A) or (B).

5 (5) "Certificate of formation" means the certificate
6 of formation of a cooperative as originally filed and subsequently
7 amended.

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. The term includes patron
22 and 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. The term
27 includes a patron membership interest and a nonpatron membership

1 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 a certificate of formation under
15 this chapter;

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

18 (3) \$300 for filing a restated certificate of
19 formation 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 certificate of merger or
23 certificate of conversion under this chapter, which is in addition
24 to any fee imposed for filing formation documents for a domestic
25 business entity or cooperative created by the merger or conversion;

26 (6) \$40 for filing a certificate of termination under
27 this 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 other agreement for the cooperative or for the
7 cooperative's individual members or patrons or between the
8 cooperative and its 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 selling or otherwise disposing 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 money on account from and
24 maintain credit balances for the benefit of other cooperatives,
25 associations, or the cooperative's members.

26 (i) A cooperative may extend trade credit to or borrow money
27 from individual members, cooperatives, or associations from which

1 it is constituted using security that it considers sufficient in
2 dealing with the members, cooperatives, or associations.

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

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

13 (1) as a federation of associations;

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

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

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

23 (m) A cooperative may take, receive, and hold real and
24 personal property, including the principal of and interest on money
25 or other funds and rights in a contract, in trust for any purpose
26 not inconsistent with the purposes of the cooperative stated in its
27 certificate of formation and may exercise fiduciary powers in

1 relation to the taking, receiving, or holding of the property.

2 (n) This section does not authorize a cooperative to engage
3 in the business of a depository institution by receiving or holding
4 deposits, as that term is defined by 12 U.S.C. Section 1813, or to
5 engage in the business of a fiduciary for hire for a purpose not
6 reasonably necessary or incidental to accomplish the purposes
7 stated in the cooperative's certificate of formation.

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

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

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

1 termination as specified in the contract.

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

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

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

1 (g) A person is liable to the cooperative for civil damages
2 if the person knowingly:

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

5 (2) distributes false information about the finances
6 or management of a cooperative.

7 [Sections 53.054-53.100 reserved for expansion]

8 SUBCHAPTER C. FILINGS

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

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

16 Sec. 53.102. ABANDONMENT BEFORE EFFECTIVENESS. The parties
17 to a filing instrument may abandon the filed instrument if the
18 instrument has not taken effect by filing a certificate of
19 abandonment in accordance with Section 4.057, Business
20 Organizations Code.

21 Sec. 53.103. CORRECTING AN ERRONEOUS OR DEFECTIVE
22 INSTRUMENT. (a) A cooperative may, by filing a certificate of
23 correction in accordance with Subchapter C, Chapter 4, Business
24 Organizations Code, correct any instrument filed with the secretary
25 of state if the instrument:

26 (1) is an inaccurate record of the event or
27 transaction evidenced in the instrument;

1 (2) contains an inaccurate or erroneous statement; or
2 (3) was defectively or erroneously signed, sealed,
3 acknowledged, or verified.

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

6 (c) Except as provided by Subsection (d), after the
7 certificate of correction is filed by the secretary of state, the
8 filing instrument is considered to have been corrected on the date
9 the filing instrument was originally filed.

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

13 (e) A certificate issued by the secretary of state before a
14 filing instrument is corrected, with respect to the effect of
15 filing the original filing instrument, applies to the corrected
16 filing instrument as of the date the corrected filing instrument is
17 considered to have been filed under this section.

18 Sec. 53.104. SIGNATURE AND GENERAL FILING REQUIREMENTS.

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

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

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

1 (d) A photographic, photostatic, facsimile, electronic, or
2 similar reproduction of a filing instrument, signature,
3 acknowledgment of filing, certificate, or communication may be
4 filed or issued in place of:

5 (1) an original filing instrument;

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

7 (3) an original certificate or acknowledgment of
8 filing or other written communication from the secretary of state
9 relating to a filing instrument.

10 (e) To be accepted and filed by the secretary of state, an
11 instrument that is submitted for filing must satisfy the filing
12 requirements of this chapter, the requirements of any other law
13 that is made applicable to the instrument or cooperative by this
14 chapter, and any administrative rule adopted by the secretary of
15 state relating to the instrument.

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

19 (1) file the instrument by accepting it into the
20 filing system adopted by the secretary of state and assigning the
21 instrument a date of filing; and

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

24 (g) If a duplicate copy of a filing instrument is delivered
25 to the secretary of state, on accepting the filing instrument the
26 secretary of state shall endorse the duplicate copy with the word
27 "Filed" and the month, day, and year of filing and return the

1 duplicate copy to the cooperative or its representative with the
2 written acknowledgment or certificate evidencing filing.

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

7 Sec. 53.106. PENALTY FOR SUBMISSION OF A FALSE OR
8 FRAUDULENT FILING INSTRUMENT. Section 4.008, Business
9 Organizations Code, applies to a filing instrument under this
10 chapter.

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

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

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

19 (d) The secretary of state has the power reasonably
20 necessary to perform the duties imposed under this chapter.

21 [Sections 53.108-53.150 reserved for expansion]

22 SUBCHAPTER D. ORGANIZATION

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

27 Sec. 53.152. COOPERATIVE NAME. (a) The name of a

1 cooperative must comply with Subchapters A and B, Chapter 5,
2 Business Organizations Code, in the manner required of a domestic
3 filing entity.

4 (b) A cooperative may conduct business under a name other
5 than the name stated in the certificate of formation if the
6 cooperative files an assumed name certificate in accordance with
7 Chapter 71, Business & Commerce Code.

8 (c) A cooperative's name may not infringe on the rights of
9 another person under:

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

12 (2) Chapter 16 or 71, Business & Commerce Code; or

13 (3) common law.

14 Sec. 53.153. CERTIFICATE OF FORMATION. (a) The organizers
15 shall prepare the certificate of formation, which must include:

16 (1) the name of the cooperative;

17 (2) the purpose of the cooperative;

18 (3) the principal place of business for the
19 cooperative;

20 (4) the period of duration for the cooperative, if the
21 duration is not perpetual;

22 (5) the capital structure of the cooperative,
23 including a statement of the classes and relative rights,
24 preferences, and restrictions granted to or imposed on each type of
25 member interest, the rights to share in profits or distributions of
26 the cooperative, and the authority to issue member interests, which
27 may be designated to be determined by the board;

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

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

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

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

15 (10) a statement as to how profits and losses are to be
16 allocated and cash distributed between patron membership interests
17 collectively and nonpatron membership interests collectively;

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

25 (12) the street address of the cooperative's initial
26 registered office and the name of the cooperative's registered
27 agent at the office.

1 (b) The certificate of formation must indicate whether a
2 cooperative is being formed under a plan of conversion or a plan of
3 merger. If the cooperative is being formed under a plan of
4 conversion, the certificate of formation must state the name,
5 address, date of formation, organizational form, and jurisdiction
6 of formation of the entity being converted to a cooperative under
7 the plan.

8 (c) The certificate of formation must contain the
9 provisions described by Subsections (a) and (b), except that the
10 names and mailing addresses of the directors of the initial board
11 may be omitted after their successors have been elected by the
12 members or the certificate of formation is amended or restated in
13 its entirety.

14 (d) The certificate of formation may contain any other
15 lawful provision. The certificate of formation is not required to
16 state any of the powers provided to the cooperative under this
17 chapter.

18 (e) The certificate of formation must be signed by the
19 organizers.

20 (f) Except as otherwise provided by this subsection, the
21 original certificate of formation must be filed with the secretary
22 of state. The certificate of formation for a cooperative that is
23 formed under a plan of merger or conversion must be filed with the
24 certificate of merger or certificate of conversion and is not
25 required to be filed separately. If the secretary of state
26 determines that the certificate of formation submitted with a
27 certificate of merger or a certificate of conversion meets the

1 requirements of this chapter, the secretary of state shall file the
2 certificate of formation and deliver a written acknowledgment of
3 filing to the cooperative. In the case of a merger or conversion,
4 the certificate of formation of the cooperative that is the
5 converted entity or that is created under the plan of merger becomes
6 effective when the merger or conversion becomes effective.

7 (g) When the certificate of formation is filed with the
8 secretary of state and the required fee is paid, it is presumed
9 that:

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

12 (2) the cooperative has been organized by this state
13 as a separate legal entity; and

14 (3) the secretary of state will deliver a written
15 acknowledgment of filing to the cooperative.

16 Sec. 53.154. AMENDMENT OF CERTIFICATE OF FORMATION. (a)
17 The certificate of formation of a cooperative may be amended as
18 follows:

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

21 (2) the text of the proposed amendment and an attached
22 mail ballot if the board has provided for a mail ballot in the
23 resolution, or a description of an alternative voting method
24 approved by the board and stated in the resolution, must be mailed
25 or distributed with a regular or special meeting notice to each
26 member;

27 (3) the notice must designate the time and place of the

1 meeting for the proposed amendment to be considered and voted on;
2 and

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

6 (A) when approved by a majority of the votes
7 cast; or

8 (B) if the cooperative has a certificate of
9 formation or bylaws that require more than majority approval or
10 other conditions for approval, when approved by a proportion of the
11 votes cast or a number of total members as required by the
12 certificate of formation or bylaws and when the conditions for
13 approval in the certificate of formation or bylaws have been
14 complied with.

15 (b) After an amendment has been adopted, the cooperative
16 shall file with the secretary of state a certificate of amendment
17 signed by the chair, vice chair, records officer, or assistant
18 records officer that:

19 (1) states the name of the cooperative;

20 (2) identifies by reference or description each
21 provision being added, altered, or deleted;

22 (3) provides the amended text of each provision that
23 is added or altered; and

24 (4) includes a statement that the amendment was
25 approved in the manner required by this section and by the
26 cooperative's governing documents.

27 (c) A certificate of amendment shall be prepared stating:

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

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

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

6 (4) the votes cast adopting the amendment.

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

10 (e) A majority of directors may amend the certificate of
11 formation if the cooperative does not have any members with voting
12 rights.

13 Sec. 53.155. RESTATED CERTIFICATE OF FORMATION. (a) A
14 cooperative may authorize, execute, and file a restated certificate
15 of formation using the procedures for amending the certificate of
16 formation under Section 53.154. The restated certificate of
17 formation must restate the entire text of the cooperative's
18 certificate of formation and incorporate all amendments previously
19 filed with the secretary of state. The restated certificate of
20 formation may incorporate new amendments not previously filed with
21 the secretary of state.

22 (b) Unless otherwise provided by the certificate of
23 formation or bylaws, member approval is not required to file a
24 restated certificate of formation if the restated text consists
25 only of the text of a certificate of formation and amendments
26 previously filed with the secretary of state.

27 (c) A restated certificate of formation must be signed by an

1 authorized officer of the cooperative and filed in accordance with
2 Section 3.059, Business Organizations Code.

3 (d) A restated certificate of formation may omit the name
4 and address of each organizer and may insert the names and addresses
5 of the current directors of the cooperative in place of similar
6 information concerning the initial directors.

7 Sec. 53.156. CONVERSION OF AN EXISTING ASSOCIATION TO BE
8 GOVERNED BY THIS CHAPTER. (a) Notwithstanding any other law of
9 this state, an association incorporated under this code or
10 organized under another law of this state before September 1, 2009,
11 is authorized to convert and become subject to the provisions of
12 this chapter by adopting a plan of conversion.

13 (b) To effect a conversion, the converting association must
14 act on and the members of the association must approve a plan of
15 conversion in the manner provided for the approval of a plan of
16 merger by an association if the association does not survive the
17 merger. If another applicable law or the governing documents of the
18 association do not provide a method to approve a merger if the
19 association does not survive the merger, the members of the
20 association may approve a plan of conversion in the manner provided
21 by Chapter 10, Business Organizations Code, for the adoption and
22 approval of a conversion by a domestic entity.

23 (c) The plan of conversion must include:

24 (1) the name of the association that is the converting
25 entity;

26 (2) the name of the cooperative that is the converted
27 entity;

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

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

5 (5) the manner and basis of converting the membership
6 interests of the converting entity into membership interests of the
7 cooperative; and

8 (6) the certificate of formation of the cooperative,
9 which must meet the requirements of Section 53.153 and may be
10 included as an attachment or exhibit to the plan of conversion.

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

13 (e) On approval of the plan of conversion, a certificate of
14 conversion must be filed with the secretary of state for the
15 conversion to be effective. The certificate of conversion must
16 include:

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

18 (A) the name, entity type, and jurisdiction of
19 organization of the converting entity;

20 (B) the name of the cooperative that is the
21 converted entity;

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

24 (D) that a signed plan of conversion is on file at
25 the principal place of business of the converting entity and
26 certifying the address of the principal place of business;

27 (E) that a signed plan of conversion will be on

1 file at the principal place of business of the converted entity and
2 certifying the address of the principal place of business; and

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

6 (i) the converting entity before the
7 conversion; or

8 (ii) the converted entity after the
9 conversion;

10 (2) a statement that the plan of conversion has been
11 approved as required by:

12 (A) this section;

13 (B) the law governing the converting entity; and

14 (C) the governing documents of the converting
15 entity; and

16 (3) the certificate of formation of the cooperative
17 that is to be formed under the plan of conversion.

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

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

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

25 (g) An association may not convert under this section if, as
26 a result of the conversion, a member of the association would become
27 personally liable for a liability or other obligation of the

1 cooperative without that person's consent.

2 (h) When the conversion takes effect:

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

6 (2) each right or title to or interest in property
7 owned by the converting entity continues to be owned, subject to any
8 existing lien or other encumbrance on the property, by the
9 cooperative without:

10 (A) reversion or impairment;

11 (B) further act or deed; or

12 (C) any transfer or assignment having occurred;

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

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

20 (5) a proceeding pending by or against the converting
21 entity or by or against any of the converting entity's members in
22 their capacities as members may be continued by or against the
23 cooperative and by or against the previous members without
24 substituting a party;

25 (6) the membership interests of the converting entity
26 are converted into membership interests of the converted entity as
27 provided in the plan of conversion and the former members of the

1 converting entity are entitled only to the rights provided in the
2 plan of conversion or under a right of dissent and appraisal as
3 provided by law; and

4 (7) if a member of the converted entity is liable after
5 the conversion takes effect for the liabilities or obligations of
6 the converted entity in the person's capacity as a member, the
7 person is liable for the liabilities and obligations of the
8 converting entity that existed before the conversion took effect
9 only to the extent that the person:

10 (A) agrees in writing to be liable for the
11 liabilities or obligations;

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

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

17 Sec. 53.157. CONVERSION OF AN EXISTING BUSINESS ENTITY TO
18 BE GOVERNED BY THIS CHAPTER. (a) A business entity other than an
19 association described by Section 53.156 may convert to a
20 cooperative governed by this chapter by adopting a plan of
21 conversion and by filing a certificate of conversion as provided by
22 Section 53.156.

23 (b) To effect the conversion, the business entity must take
24 any action that may be required for a conversion under the laws of
25 the entity's jurisdiction of formation and the entity's governing
26 documents.

27 (c) The conversion must be permitted by the laws under which

1 the business entity is incorporated or organized, or by its
2 governing documents if the governing documents are not inconsistent
3 with the laws of the entity's jurisdiction of formation.

4 Sec. 53.158. EXISTENCE. (a) The existence of a cooperative
5 begins when the filing of the certificate of formation takes effect
6 as provided by Subchapter C.

7 (b) A cooperative has a perpetual duration unless the
8 certificate of formation provides for a limited period of duration.

9 Sec. 53.159. REGISTERED AGENT AND REGISTERED OFFICE; CHANGE
10 OF REGISTERED OFFICE OR REGISTERED AGENT. (a) Each cooperative
11 must continuously maintain in this state:

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

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

15 (A) an individual resident of this state whose
16 business office is the same as the cooperative's registered office;
17 or

18 (B) a domestic business entity, or a foreign
19 business entity authorized to transact business in this state,
20 whose business office is the same as the cooperative's registered
21 office.

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

24 (1) the name of the cooperative;

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

27 (3) the address of the cooperative's new registered

1 office if the cooperative is changing its registered office;

2 (4) the name of the cooperative's current registered
3 agent;

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

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

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

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

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

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

26 Sec. 53.160. FAILURE TO MAINTAIN REGISTERED AGENT OR
27 REGISTERED OFFICE; INVOLUNTARY TERMINATION AND REINSTATEMENT. (a)

1 If the secretary of state determines that a cooperative has failed
2 to maintain a registered agent or registered office in this state as
3 required by law, the secretary of state may notify the cooperative
4 of the failure by regular or certified mail addressed to the
5 cooperative's registered office or principal place of business as
6 shown on the records of the secretary of state.

7 (b) The secretary of state may involuntarily terminate a
8 cooperative at any time after the 90th day after the date that
9 notice under Subsection (a) was mailed if the cooperative has
10 continuously failed to maintain a registered agent or registered
11 office as required by law.

12 (c) If the secretary of state involuntarily terminates a
13 cooperative under this section, the secretary of state shall:

14 (1) issue a certificate of termination; and

15 (2) deliver the certificate of termination by regular
16 or certified mail to the cooperative at its registered office or
17 principal place of business.

18 (d) The certificate of termination must state:

19 (1) that the cooperative has been involuntarily
20 terminated; and

21 (2) the date of and cause of the termination.

22 (e) Except as otherwise provided by this section, the
23 existence of the cooperative is terminated on the issuance of the
24 certificate of termination by the secretary of state.

25 (f) The secretary of state shall reinstate a cooperative
26 that has been involuntarily terminated under this section if the
27 cooperative files a certificate of reinstatement with the secretary

1 of state as prescribed for a filing entity by Section 11.253,
2 Business Organizations Code, and:

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

5 (2) the secretary of state finds that the
6 circumstances that led to the involuntary termination did not exist
7 at the time of termination.

8 (g) The secretary of state may not reinstate a cooperative
9 if the cooperative name is the same as or deceptively similar or
10 similar to a name of a cooperative or other domestic or foreign
11 business entity already on file, reserved, or registered with the
12 secretary of state. This subsection does not prevent a cooperative
13 from being reinstated if the cooperative files an amendment to its
14 certificate of formation, accompanied by the required fee, to
15 change its name to a name that does not violate this subsection.

16 (h) Section 11.253(d), Business Organizations Code, applies
17 to a cooperative that is reinstated under Subsection (f) to the same
18 extent it applies to a filing entity reinstated under Section
19 11.253, Business Organizations Code.

20 [Sections 53.161-53.200 reserved for expansion]

21 SUBCHAPTER E. BYLAWS

22 Sec. 53.201. BYLAWS. (a) A cooperative shall adopt bylaws
23 governing:

24 (1) the cooperative's business affairs and structure;

25 (2) the qualifications, classification, rights, and
26 obligations of the cooperative's members; and

27 (3) the classifications, allocations, and

1 distributions of membership interests.

2 (b) The directors of a cooperative may adopt or amend the
3 cooperative's bylaws as provided by Subsection (c) or at a regular
4 or special members' meeting if:

5 (1) the notice of the meeting contains a statement
6 that the bylaws or restated bylaws will be voted on and copies are
7 included with the notice, or copies are available on request from
8 the cooperative and summary statement of each proposed bylaw or
9 amendment is included with the notice;

10 (2) a quorum is registered as being present or
11 represented by mail or alternative voting method if the mail or
12 alternative voting method is authorized by the board; and

13 (3) the bylaw or amendment is approved by a majority of
14 votes cast, or for a cooperative with a certificate of formation or
15 bylaws requiring more than majority approval or other conditions
16 for approval, the bylaw or amendment is approved when the
17 conditions for approval in the certificate of formation or bylaws
18 are complied with.

19 (c) Until the next annual or special members' meeting, the
20 majority of directors may adopt and amend bylaws for the
21 cooperative that are consistent with Subsection (d) and that may be
22 additionally amended or repealed by the members at an annual or
23 special members' meeting.

24 (d) Bylaws may contain any provision relating to the
25 management or regulation of the affairs of the cooperative that is
26 not inconsistent with the laws of this state or the certificate of
27 formation and must include:

1 (1) the number of directors and the qualifications,
2 manner of election, powers, duties, and compensation, if any, of
3 directors;

4 (2) the qualifications of members and any limitation
5 on their number;

6 (3) the manner of admission, withdrawal, suspension,
7 and expulsion of members; and

8 (4) the governance rights, financial rights,
9 assignability of governance or financial rights, and other rights,
10 privileges, and obligations of members and their membership
11 interests, which may be additionally described in a member control
12 agreement.

13 [Sections 53.202-53.250 reserved for expansion]

14 SUBCHAPTER F. MEMBERSHIP INTERESTS

15 Sec. 53.251. INTERESTS. (a) The authorized amount and
16 divisions of patron membership interests and nonpatron membership
17 interests may be increased or decreased or established or altered
18 in accordance with the restrictions in this chapter by amending the
19 certificate of formation at a regular members' meeting or at a
20 special members' meeting called for the purpose of acting on the
21 amendment.

22 (b) Authorized membership interests may be issued on terms
23 prescribed in the certificate of formation, bylaws, or as
24 determined by the board. The cooperative shall disclose to any
25 person or entity who acquires a membership interest issued by the
26 cooperative the organization, capital structure, and business
27 prospects and risks of the cooperative and the nature of the

1 governance and financial rights of the membership interest acquired
2 and of other classes of membership and membership interests. The
3 cooperative shall notify all members of the membership interests
4 being offered by the cooperative. A membership interest may not be
5 issued until the subscription price of the membership interest has
6 been paid in cash or a cash equivalent or property with the
7 agreed-on value.

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

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

14 (e) The cooperative may solicit and issue nonpatron
15 membership interests on terms determined by the board and disclosed
16 in the certificate of formation, bylaws, or by separate disclosure
17 to the members. Each member acquiring a nonpatron membership
18 interest must sign a member control agreement that describes:

19 (1) the rights and obligations of the member as they
20 relate to the nonpatron membership interest;

21 (2) the financial and governance rights, including
22 financial rights on liquidation;

23 (3) the transferability of the nonpatron membership
24 interest; and

25 (4) the division and allocations of profits and losses
26 among the membership interests and membership classes.

27 (f) If the bylaws do not otherwise provide for the

1 allocation of the profits and losses between patron membership
2 interests and nonpatron membership interests, the allocation of
3 profits and losses among nonpatron membership interests
4 individually and patron membership interests collectively shall be
5 allocated on the basis of the value of contributions to capital made
6 according to the patron membership interests collectively and the
7 nonpatron membership interests individually to the extent the
8 contributions have been accepted by the cooperative.

9 (g) Distributions of cash or other assets of the cooperative
10 shall be allocated among the membership interests as provided in
11 the certificate of formation and bylaws, subject to the provisions
12 of this chapter. If not otherwise provided, distributions shall be
13 made on the basis of value of the capital contributions of the
14 patron membership interests collectively and the nonpatron
15 membership interests to the extent the contributions have been
16 accepted by the cooperative.

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

27 (i) Subject to the bylaws, a member may dissent from and

1 obtain payment for the fair value of the member's nonpatron
2 membership interest in the cooperative if the certificate of
3 formation or bylaws are amended in a manner that materially and
4 adversely affects the rights and preferences of the nonpatron
5 membership interest of the dissenting member. The dissenting
6 member must file a notice of intent to demand fair value of the
7 membership interest with the records officer of the cooperative
8 before the 30th day after the amendment of the bylaws and notice of
9 the amendment to members, or the right of the dissenting member to
10 demand payment of fair value for the membership interest is waived.

11 (j) If a proposed amendment of the certificate of formation
12 or bylaws is approved by the members, a member who is entitled to
13 dissent and who elects to exercise dissenter's rights must file a
14 notice to demand fair value of the membership interest with the
15 records officer of the cooperative before the vote on the proposed
16 action and may not vote in favor of the proposed action, or the
17 right to demand fair value for the membership interest by the
18 dissenting member is waived. After receipt of the dissenting
19 member's demand notice and approval of the amendment, the
20 cooperative, not later than the 60th day after the date of the
21 approval of the amendment, shall rescind the amendment or remit the
22 fair value for the one member's interest to the dissenting member
23 before the 180th day after the date the cooperative received the
24 notice. On receipt of the fair value for the membership interest,
25 the member has no further member rights in the cooperative.

26 Sec. 53.252. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS. (a)
27 The bylaws shall prescribe the allocation of profits and losses

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

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

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

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

27 (1) set aside an amount not to exceed five percent of

1 the annual net income of the cooperative for promoting and
2 encouraging the cooperative; and

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

6 (c) Net income allocated to patron members that exceeds
7 dividends on equity and additions to reserves shall be distributed
8 to patron members on the basis of patronage.

9 (d) A cooperative may:

10 (1) establish allocation units, whether functional,
11 divisional, departmental, geographic, or otherwise;

12 (2) establish pooling arrangements; and

13 (3) account for and distribute net income to patrons
14 on the basis of allocation units and pooling arrangements.

15 (e) A cooperative may offset the net loss of an allocation
16 unit or pooling arrangement against the net income of other
17 allocation units or pooling arrangements.

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

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

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

1 members.

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

9 [Sections 53.254-53.300 reserved for expansion]

10 SUBCHAPTER G. MEMBERS

11 Sec. 53.301. GROUPING OF MEMBERS. (a) A cooperative may
12 group members and patron members in districts, units, or another
13 basis if and as authorized by its certificate of formation and
14 bylaws, which may include authorization for the board to determine
15 the groupings.

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

20 Sec. 53.302. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE
21 DEBTS. (a) A member who knowingly, intentionally, or repeatedly
22 violates a provision of the certificate of formation, bylaws,
23 member control agreement, or marketing contract with the
24 cooperative may be required by the board to surrender:

25 (1) the financial right of membership interest of any
26 class owned by the member; or

27 (2) the member's entitlement to vote in the

1 cooperative.

2 (b) For the surrendered financial right of membership
3 interest, the cooperative shall:

4 (1) refund to the member the lesser of the book value
5 or market value of the financial right of the membership interest,
6 payable in not more than seven years from the date of surrender; or

7 (2) transfer all of any patron member's financial
8 rights to:

9 (A) a class of financial rights held by members
10 who are not patron members; or

11 (B) a certificate of interest that carries
12 liquidation rights on par with a membership interest and that is
13 redeemable within seven years after the transfer as provided in the
14 certificate.

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

17 (d) A member is not, merely because of the member's status,
18 personally liable for the acts, debts, liabilities, or obligations
19 of a cooperative. A member is liable for:

20 (1) any unpaid subscription for the membership
21 interest;

22 (2) unpaid membership fees; or

23 (3) debt for which the member has separately
24 contracted with the cooperative.

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

1 (b) The regular members' meeting shall be held at the
2 principal place of business of the cooperative or at another
3 conveniently located place as determined by the bylaws or the
4 board.

5 (c) The officers shall submit reports to the members at the
6 regular members' meeting covering the business of the cooperative
7 during the preceding fiscal year that show the condition of the
8 cooperative at the end of the fiscal year of the organization.

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

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

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

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

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

25 (b) The cooperative shall give notice of a special members'
26 meeting by mailing a notice to each member personally at the
27 person's last known mailing address, or by an alternative method

1 approved by the board and the member individually or the members
2 generally. For a member that is an entity, notice mailed or
3 delivered by an alternative method must be to an officer of the
4 entity. The notice shall state the time, place, and purpose of the
5 special members' meeting. The notice shall be issued not later than
6 the 10th day after the date the members' petition is submitted and
7 the meeting shall be held not later than the 30th day after the date
8 the members' petition is submitted.

9 Sec. 53.305. CERTIFICATION OF MEETING NOTICE. (a) After
10 mailing or delivering the special or regular members' meeting
11 notices, the chair or records officer shall execute a certificate
12 containing the date of mailing or delivery of the notices and a
13 statement that the notices were mailed or delivered as prescribed
14 by law.

15 (b) The certificate shall be made a part of the record of the
16 meeting.

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

20 Sec. 53.307. QUORUM. (a) The quorum for a members' meeting
21 is:

22 (1) 10 percent of the total number of members for a
23 cooperative with 500 or fewer members; or

24 (2) 50 members for a cooperative with more than 500
25 members.

26 (b) In determining a quorum at a meeting, on a question
27 submitted to a vote by mail or an alternative method, members

1 present in person or represented by mail vote or the alternative
2 voting method shall be counted. The attendance of members shall be
3 determined by a registration of the members of the cooperative
4 present at the meeting or voting by mail. Registration shall be
5 verified by the chair or the records officer and reported in the
6 minutes of the meeting.

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

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

19 (b) A member or delegate may exercise the member's voting
20 rights on any matter that is before the members as provided by the
21 certificate of formation or bylaws at a members' meeting from the
22 time the member or delegate arrives at the members' meeting, unless
23 the certificate of formation or bylaws specify an earlier and
24 specific time for the expiration of the member's right to vote.

25 (c) A member's vote at a members' meeting must be in person
26 or by mail if a mail vote is authorized by the board or by an
27 alternative method authorized by the board and not by proxy except

1 as provided by Subsection (d).

2 (d) A cooperative may provide in the certificate of
3 formation or bylaws that a unit or district of members is entitled
4 to be represented at a members' meeting by delegates chosen by the
5 members of the unit or district. The delegates may vote on matters
6 at the members' meeting in the same manner as a member. The
7 delegates may only exercise the voting rights on a basis of and with
8 the number of votes as provided by the certificate of formation or
9 bylaws. If approval by a certain number of members is required for
10 the adoption of amendments, a winding up and termination, a merger,
11 a conversion, or a sale of assets, the votes of delegates shall be
12 counted as votes by the members represented by the delegate. Patron
13 members may be represented by a delegate who is a patron member.
14 Nonpatron members may be represented by a delegate if authorized in
15 the bylaws.

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

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

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

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

26 (3) contain the text of the motion, resolution, or
27 amendment for which the member may indicate an affirmative or

1 negative vote; and

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

7 Sec. 53.309. PATRON MEMBER VOTING IN COOPERATIVES
8 CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR
9 ASSOCIATIONS. (a) The certificate of formation or the bylaws of a
10 cooperative that is constituted wholly or partly of other
11 cooperatives or associations may authorize the patron members of a
12 subsidiary cooperative to have an additional vote for:

13 (1) a stipulated amount of business transacted between
14 the parent cooperative and the subsidiary cooperative to which the
15 patron member is a member;

16 (2) a stipulated number of patron members in the
17 subsidiary cooperative;

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

20 (4) a combination of the reasons specified in
21 Subdivisions (1)-(3).

22 (b) The certificate of formation or the bylaws of a
23 cooperative that is organized into units or districts of patron
24 members may authorize the delegates elected by its patron members
25 to have an additional vote for:

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

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

4 (3) a combination of the reasons specified in
5 Subdivisions (1) and (2).

6 [Sections 53.310-53.350 reserved for expansion]

7 SUBCHAPTER H. ADMINISTRATION

8 Sec. 53.351. GOVERNANCE. A cooperative is governed by its
9 board.

10 Sec. 53.352. NUMBER OF DIRECTORS. The board must have at
11 least three directors.

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

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

25 (c) For a cooperative with districts or other units, members
26 may elect directors on a district or unit basis if provided for by
27 the bylaws. The directors may be nominated or elected at a district

1 meeting if authorized by the bylaws. Directors who are nominated at
2 district meetings are elected at the annual regular members'
3 meeting by vote of the entire membership unless the bylaws provide
4 that a director who is nominated at a district meeting is to be
5 elected by vote of the members of the district at the annual regular
6 members' meeting.

7 (d) A member must vote in person at a meeting for a director
8 unless an alternative method of voting is authorized for the
9 election of directors by the certificate of formation or bylaws.

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

11 (1) the ballot must be in a form prescribed by the
12 board;

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

17 (3) the ballot shall be accepted and counted as the
18 vote of the absent member if the ballot of the member is received by
19 the cooperative on or before the date of the regular members'
20 meeting.

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

24 Sec. 53.354. FILLING VACANCIES. If a director who was
25 elected by patron members vacates the director's position, the
26 board shall appoint a patron member of the cooperative to fill the
27 vacancy until the next regular or special members' meeting. If the

1 vacating director was not a patron member, the board shall appoint a
2 patron member to fill the vacancy. At the next regular or special
3 members' meeting, the members or patron members shall elect a
4 director for the unexpired term of the vacant position.

5 Sec. 53.355. REMOVAL OF DIRECTORS. At a members' meeting
6 the class of members who elected a director may remove the director
7 for cause related to the duties of the position and fill the vacancy
8 caused by the removal.

9 Sec. 53.356. LIMITATION OF DIRECTOR'S LIABILITY. (a)
10 Except as provided by Subsection (b), a director's personal
11 liability to the cooperative or its members for monetary damages
12 for a breach of fiduciary duty as a director may be eliminated or
13 limited in the certificate of formation.

14 (b) The certificate of formation may not eliminate or limit
15 the liability of a director for:

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

18 (2) an act or omission that is not in good faith, that
19 involves intentional misconduct, or that is a knowing violation of
20 law;

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

23 (4) an act or omission occurring before the date when
24 the provision in the certificate of formation eliminating or
25 limiting liability becomes effective.

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

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

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

3 (b) The board may elect additional officers as the
4 certificate of formation or bylaws authorize or require.

5 (c) The offices of records officer and financial officer may
6 be combined.

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

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

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

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

23 [Sections 53.359-53.400 reserved for expansion]

24 SUBCHAPTER I. MERGER AND CONVERSION

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

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

4 (1) the name, organizational form, and jurisdiction of
5 formation of each of the constituent cooperatives and other
6 business entities;

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

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

13 (4) the terms of the merger;

14 (5) the proposed effect of the merger on the members
15 and patron members of the cooperative;

16 (6) for a merger that creates a new cooperative or
17 business entity, the certificate of formation or applicable
18 organizational documents of each entity to be filed with the state
19 in which the entity is organized; and

20 (7) any amendments made under the plan to the
21 certificate of formation or organizational documents of a surviving
22 cooperative or business entity.

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

26 (1) the manner and basis of allocating and vesting the
27 property of each entity that is a party to the merger among the

1 entities that survive or are created by the merger;

2 (2) the name of each surviving or new business entity
3 that is primarily obligated to pay the fair value of an interest of
4 an owner or member of a domestic business entity subject to
5 dissenters' rights that is a party to the merger, if the owner or
6 member complies with the requirements for dissent and appraisal
7 applicable to the entity; and

8 (3) the manner and basis of allocating each liability
9 and obligation of each business entity that is a party to the merger
10 to one or more of the surviving or new entities, or an alternative
11 arrangement that provides for the payment and discharge of each
12 liability and obligation.

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

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

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

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

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

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

26 (2) the plan is approved by two-thirds of the votes
27 cast, or for a cooperative with a certificate of formation or bylaws

1 that require more than two-thirds of the votes cast or other
2 conditions for approval, as required by the certificate of
3 formation or bylaws.

4 (b) After the plan has been adopted, a certificate of merger
5 must be filed with the secretary of state for the merger to take
6 effect.

7 (c) The certificate of merger must be signed by an officer
8 or other authorized representative on behalf of each cooperative
9 and each business entity that is a party to the merger and must
10 include:

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

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

16 (3) a statement that the approval of the owners or
17 members of a business entity that is a party to the plan of merger is
18 not required under the laws of the entity's jurisdiction of
19 formation, if applicable.

20 (d) The certificate of formation of each surviving
21 cooperative subject to this chapter is considered amended as
22 provided in the plan of merger.

23 (e) Except as otherwise provided by Section 53.101, the
24 merger is effective when the certificate of merger is filed in the
25 office of the secretary of state.

26 (f) If the plan of merger creates a new cooperative, the
27 certificate of formation must also be filed with the secretary of

1 state.

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

7 Sec. 53.404. MERGER AUTHORIZED. (a) Notwithstanding any
8 other law of this state, an association incorporated under this
9 code before September 1, 2009, may merge with a cooperative
10 governed by this chapter by adopting and approving a plan of merger
11 in the same manner as a cooperative governed by this chapter.

12 (b) Notwithstanding any other law of this state, an
13 association organized under a law of this state before September 1,
14 2009, other than an association organized under this code before
15 that date, may merge with a cooperative governed by this chapter by
16 adopting and approving a plan of merger in the manner prescribed by
17 the law governing the association, or if the law governing the
18 association does not provide a method, in the same manner as a
19 cooperative governed by this chapter.

20 Sec. 53.405. EFFECT OF MERGER. (a) When a merger takes
21 effect:

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

25 (2) all rights, title, and interests to all real
26 property and other property owned by each entity that is a party to
27 the merger is allocated to and vested, subject to any existing lien

1 or other encumbrance on the property, in one or more of the
2 surviving or new business entities as provided in the plan of merger
3 without:

4 (A) reversion or impairment;

5 (B) any further act or deed; or

6 (C) any transfer or assignment having occurred;

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

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

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

25 (6) the certificate of formation and bylaws of each
26 surviving cooperative and the organizational documents and other
27 governing documents of each surviving business entity shall be

1 amended to the extent provided by the plan of merger;

2 (7) each new cooperative, the certificate of formation
3 of which is included in the plan of merger under Section 53.403, is
4 formed as a cooperative under this chapter;

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

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

26 (10) notwithstanding Subdivision (4), the surviving
27 or new entity named in the plan of merger as primarily obligated to

1 pay the fair value of an ownership or membership interest under
2 Section 53.401(c) is the primary obligor for that payment and all
3 other surviving or new entities are secondarily liable for that
4 payment.

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

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

17 (d) If a surviving entity in a merger is not a cooperative or
18 domestic business entity, the surviving entity is considered to
19 have:

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

24 (2) agreed to promptly pay any dissenting owners or
25 members of each cooperative or domestic business entity that is a
26 party to the merger who have the right of dissent and appraisal
27 under state law any amount to which the dissenting owners or members

1 are entitled under the law governing the formation of the entity.

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

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

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

9 (b) To initiate a conversion, the board or a committee
10 selected by the board must prepare a written plan of conversion.
11 The plan must include:

12 (1) the name of the cooperative that is the converting
13 entity;

14 (2) the name, organizational form, and jurisdiction of
15 formation of the converted entity;

16 (3) a statement that the converting entity is
17 continuing its existence in the organizational form of the
18 converted entity;

19 (4) the manner and basis of converting the membership
20 interests of the cooperative into membership or ownership interests
21 in the converted entity;

22 (5) the terms of the conversion;

23 (6) the proposed effect of the conversion on the
24 members and patron members of the cooperative; and

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

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

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

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

8 (A) the name of the cooperative that is the
9 converting entity;

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

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

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

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

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

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

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

27 (2) a statement that the plan of conversion has been

1 approved as required by this section, by the law governing the
2 converting entity, and by the governing documents of the converting
3 entity; and

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

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

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

16 (g) When the conversion takes effect:

17 (1) the converting entity continues to exist without
18 interruption in the organizational form of the converted entity
19 rather than in the organizational form of the entity before the
20 conversion;

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

25 (A) reversion or impairment;

26 (B) further act or deed; or

27 (C) any transfer or assignment having occurred;

1 (3) all liabilities and obligations of the converting
2 entity continue to be liabilities and obligations of the converted
3 entity in its new organizational form without impairment or
4 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 the 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 converted entity 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 ownership or membership interests of the
16 converted entity as provided in the plan of conversion, and the
17 former members of the converting entity are entitled only to the
18 rights provided in the plan of conversion or under a right of
19 dissent and appraisal as 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 effect
2 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 an owner or member of the converted entity.

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

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

19 (c) If a certificate of merger or certificate of conversion
20 has been filed, the merger or conversion may be abandoned before its
21 effectiveness in accordance with Section 53.102.

22 [Sections 53.408-53.450 reserved for expansion]

23 SUBCHAPTER J. LIQUIDATION

24 Sec. 53.451. LIQUIDATION. (a) A cooperative may be
25 liquidated as provided in the certificate of formation in a manner
26 consistent with other business entities formed or organized in this
27 state or, if not provided, may be liquidated in the same manner as a

1 limited liability company formed or organized in this state.

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

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

11 (2) for a cooperative with a certificate of formation
12 or bylaws requiring more than two-thirds for approval or other
13 conditions for approval, the conditions for approval in the
14 certificate of formation or bylaws are complied with.

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

19 [Sections 53.452-53.500 reserved for expansion]

20 SUBCHAPTER K. WINDING UP AND TERMINATION

21 Sec. 53.501. METHODS OF TERMINATION. A cooperative may be
22 terminated by the members or by the order of a court.

23 Sec. 53.502. WINDING UP. (a) After a notice of intent to
24 wind up and terminate has been filed with the secretary of state,
25 the board or the officers acting under the direction of the board
26 shall proceed as soon as possible to:

27 (1) collect or make provision for the collection of

1 all debts due or owing to the cooperative, including unpaid
2 subscriptions for shares; and

3 (2) pay or make provision for the payment of all debts,
4 obligations, and liabilities of the cooperative according to their
5 priorities.

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

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

18 Sec. 53.503. REVOCATION OF TERMINATION PROCEEDINGS. (a)
19 Termination proceedings may be revoked before the certificate of
20 termination is filed with the secretary of state.

21 (b) The chair may call a members' meeting to determine
22 whether to revoke the termination proceedings. The question of the
23 proposed revocation shall be submitted to the members at the
24 members' meeting called to consider the revocation. The
25 termination proceedings are revoked if the revocation is approved
26 at the members' meeting by a majority of the members of the
27 cooperative, or for a cooperative with a certificate of formation

1 or bylaws requiring a greater number of members, the number of
2 members required by the certificate of formation or bylaws.

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

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

12 Sec. 53.505. CERTIFICATE OF TERMINATION. (a) A
13 certificate of termination for a cooperative may be filed with the
14 secretary of state only after payment of the claims of all known
15 creditors and claimants has been made or provided for and the
16 remaining property distributed by the board. The certificate of
17 termination must state that:

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

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

25 (3) legal, administrative, or arbitration proceedings
26 by or against the cooperative are not pending or that adequate
27 provision has been made for the satisfaction of a judgment, order,

1 or decree that may be entered against the cooperative in any pending
2 proceeding.

3 (b) The existence of a cooperative terminates when the
4 certificate of termination is filed with the secretary of state.

5 (c) On receipt of a certificate of termination, the
6 secretary of state shall deliver to the terminated cooperative or
7 its legal representative a written acknowledgment of filing that
8 contains:

9 (1) the name of the terminated cooperative;

10 (2) the date the certificate of termination was filed
11 with the secretary of state; and

12 (3) a statement that the cooperative is terminated.

13 Sec. 53.506. APPLICATION FOR COURT-SUPERVISED VOLUNTARY
14 TERMINATION. After a notice of intent to wind up and terminate is
15 filed with the secretary of state and before a written
16 acknowledgment of filing of a certificate of termination is issued,
17 the cooperative, or, for good cause shown, a member or creditor, may
18 apply to a district court for the county in which the registered
19 address is located to have the termination conducted or continued
20 under the supervision of the court as provided by this subchapter.

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

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

27 (2) in an action brought by a member if it is

1 established that:

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

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

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

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

17 (E) the period of duration as provided in the
18 certificate of formation has expired and has not been extended as
19 provided in this chapter;

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

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

24 (B) the cooperative has admitted in writing that
25 the claim of the creditor against the cooperative is due and payable
26 and it is established that the cooperative is unable to pay its
27 debts in the ordinary course of business; or

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

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

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

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

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

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

26 Sec. 53.508. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED
27 VOLUNTARY TERMINATION. (a) In termination proceedings, before a

1 hearing is completed the court may:

2 (1) issue an injunction;

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

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

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

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

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

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

25 (3) claims proved and allowed to employees under the
26 provisions of the workers' compensation law, except that claims
27 under this subdivision may not be allowed if the cooperative

1 carried workers' compensation insurance at the time the injury was
2 sustained;

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

7 (5) other claims proved and allowed.

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

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

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

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

23 (1) the certificate of formation or written
24 acknowledgment of the filing of the certificate was procured
25 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 certificate of formation 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 TERMINATION
19 PROCEEDINGS. (a) In a proceeding to terminate 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 TERMINATION PROCEEDINGS. The involuntary or supervised voluntary
9 termination of a cooperative may be discontinued at any time during
10 the termination proceedings if it is established that cause for
11 termination 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 TERMINATION ORDER. (a) In
15 an involuntary or supervised voluntary termination, the court shall
16 enter an order terminating 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 terminating the
25 cooperative or association, the cooperative or association is
26 terminated.

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

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

5 Sec. 53.515. BARRING OF CLAIMS. (a) Except as otherwise
6 provided by this section, a person, and all those claiming through
7 or under the person, are forever barred from suing on a claim or
8 otherwise realizing on or enforcing a claim if the person becomes a
9 creditor or claimant before, during, or after the conclusion of
10 termination proceedings, and the person:

11 (1) does not file a claim or pursue a remedy in a
12 legal, administrative, or arbitration proceeding during the
13 pendency of the termination proceeding; or

14 (2) does not initiate a legal, administrative, or
15 arbitration proceeding before the termination proceedings
16 commenced.

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

22 (1) against the cooperative to the extent of
23 undistributed assets; or

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

27 (c) A debt, obligation, or liability incurred during the

1 dissolution proceedings shall be paid or provided for by the
2 cooperative before the distribution of assets to a member. A person
3 to whom such a debt, obligation, or liability is owed but not paid
4 may pursue any remedy against the officers, directors, or members
5 of the cooperative before the expiration of the applicable statute
6 of limitations. This subsection does not apply to termination
7 under the supervision or order of a court.

8 Sec. 53.516. RIGHT TO SUE OR DEFEND AFTER TERMINATION.

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

12 SECTION 2. This Act takes effect September 1, 2009.