

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 deposits of money from other
24 cooperatives, associations, or the cooperative's members.

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

1 dealing with the members, cooperatives, or associations.

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

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

12 (1) as a federation of associations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 if the person knowingly:

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

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

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

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

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

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

19 (4) the approximate date of distribution.

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

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

1 [Sections 53.055-53.100 reserved for expansion]

2 SUBCHAPTER C. FILINGS

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

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

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

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

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

22 (2) contains an inaccurate or erroneous statement; or

23 (3) was defectively or erroneously signed, sealed,
24 acknowledged, or verified.

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

27 (c) Except as provided by Subsection (d), after the

1 certificate of correction is filed by the secretary of state, the
2 filing instrument is considered to have been corrected on the date
3 the filing instrument was originally filed.

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

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

12 Sec. 53.104. SIGNATURE AND GENERAL FILING REQUIREMENTS.

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

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

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

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

26 (1) an original filing instrument;

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

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

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

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

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

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

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

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

1 Sec. 53.106. PENALTY FOR SUBMISSION OF A FALSE OR
2 FRAUDULENT FILING INSTRUMENT. Section 4.008, Business
3 Organizations Code, applies to a filing instrument under this
4 chapter.

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

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

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

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

15 [Sections 53.108-53.150 reserved for expansion]

16 SUBCHAPTER D. ORGANIZATION

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

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

25 (b) A cooperative may conduct business under a name other
26 than the name stated in the certificate of formation if the
27 cooperative files an assumed name certificate in accordance with

1 Chapter 71, Business & Commerce Code.

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

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

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

7 (3) common law.

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

10 (1) the name of the cooperative;

11 (2) the purpose of the cooperative;

12 (3) the principal place of business for the
13 cooperative;

14 (4) the period of duration for the cooperative, if the
15 duration is not perpetual;

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

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

26 (7) a statement that a patron membership interest with
27 voting power is restricted to one vote for each member regardless of

1 the amount of the patron membership interest held in the affairs of
2 the cooperative, or a statement describing a different allocation
3 of voting power as provided for in this chapter;

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

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

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

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

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

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

1 the plan.

2 (c) The certificate of formation must contain the
3 provisions described by Subsections (a) and (b), except that the
4 names and mailing addresses of the directors of the initial board
5 may be omitted after their successors have been elected by the
6 members or the certificate of formation is amended or restated in
7 its entirety.

8 (d) The certificate of formation may contain any other
9 lawful provision. The certificate of formation is not required to
10 state any of the powers provided to the cooperative under this
11 chapter.

12 (e) The certificate of formation must be signed by the
13 organizers.

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

1 (g) When the certificate of formation is filed with the
2 secretary of state and the required fee is paid, it is presumed
3 that:

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

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

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

10 Sec. 53.154. AMENDMENT OF CERTIFICATE OF FORMATION. (a)

11 The certificate of formation of a cooperative may be amended as
12 follows:

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

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

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

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

27 (A) when approved by a majority of the votes

1 cast; or

2 (B) if the cooperative has a certificate of
3 formation or bylaws that require more than majority approval or
4 other conditions for approval, when approved by a proportion of the
5 votes cast or a number of total members as required by the
6 certificate of formation or bylaws and when the conditions for
7 approval in the certificate of formation or bylaws have been
8 complied with.

9 (b) After an amendment has been adopted, the cooperative
10 shall file with the secretary of state a certificate of amendment
11 signed by the chair, vice chair, records officer, or assistant
12 records officer that:

13 (1) states the name of the cooperative;

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

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

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

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

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

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

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

27 (4) the votes cast adopting the amendment.

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

4 (e) A majority of directors may amend the certificate of
5 formation if the cooperative does not have any members with voting
6 rights.

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

16 (b) Unless otherwise provided by the certificate of
17 formation or bylaws, member approval is not required to file a
18 restated certificate of formation if the restated text consists
19 only of the text of a certificate of formation and amendments
20 previously filed with the secretary of state.

21 (c) A restated certificate of formation must be signed by an
22 authorized officer of the cooperative and filed in accordance with
23 Section 3.059, Business Organizations Code.

24 (d) A restated certificate of formation may omit the name
25 and address of each organizer and may insert the names and addresses
26 of the current directors of the cooperative in place of similar
27 information concerning the initial directors.

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

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

17 (c) The plan of conversion must include:

18 (1) the name of the association that is the converting
19 entity;

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

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

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

26 (5) the manner and basis of converting the membership
27 interests of the converting entity into membership interests of the

1 cooperative; and

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

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

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

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

12 (A) the name, entity type, and jurisdiction of
13 organization of the converting entity;

14 (B) the name of the cooperative that is the
15 converted entity;

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

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

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

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

27 (i) the converting entity before the

1 conversion; or

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

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

6 (A) this section;

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

8 (C) the governing documents of the converting
9 entity; and

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

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

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

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

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

23 (h) When the conversion takes effect:

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

27 (2) each right or title to or interest in property

1 owned by the converting entity continues to be owned, subject to any
2 existing lien or other encumbrance on the property, by the
3 cooperative without:

4 (A) reversion or impairment;

5 (B) further act or deed; or

6 (C) any transfer or assignment having occurred;

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

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

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

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

25 (7) if a member of the converted entity is liable after
26 the conversion takes effect for the liabilities or obligations of
27 the converted entity in the person's capacity as a member, the

1 person is liable for the liabilities and obligations of the
2 converting entity that existed before the conversion took effect
3 only to the extent that the person:

4 (A) agrees in writing to be liable for the
5 liabilities or obligations;

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

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

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

17 (b) To effect the conversion, the business entity must take
18 any action that may be required for a conversion under the laws of
19 the entity's jurisdiction of formation and the entity's governing
20 documents.

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

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

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

3 Sec. 53.159. REGISTERED AGENT AND REGISTERED OFFICE; CHANGE
4 OF REGISTERED OFFICE OR REGISTERED AGENT. (a) Each cooperative
5 must continuously maintain in this state:

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

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

9 (A) an individual resident of this state whose
10 business office is the same as the cooperative's registered office;
11 or

12 (B) a domestic business entity, or a foreign
13 business entity authorized to transact business in this state,
14 whose business office is the same as the cooperative's registered
15 office.

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

18 (1) the name of the cooperative;

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

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

23 (4) the name of the cooperative's current registered
24 agent;

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

27 (6) a certification that the address of the

1 cooperative's registered office and the address of the business
2 office of the cooperative's registered agent are identical; and

3 (7) a certification that the change in the
4 cooperative's registered agent or registered office was authorized
5 by an affirmative vote of a majority of the board of directors of
6 the cooperative.

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

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

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

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

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

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

8 (1) issue a certificate of termination; and

9 (2) deliver the certificate of termination by regular
10 or certified mail to the cooperative at its registered office or
11 principal place of business.

12 (d) The certificate of termination must state:

13 (1) that the cooperative has been involuntarily
14 terminated; and

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

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

19 (f) The secretary of state shall reinstate a cooperative
20 that has been involuntarily terminated under this section if the
21 cooperative files a certificate of reinstatement with the secretary
22 of state as prescribed for a filing entity by Section 11.253,
23 Business Organizations Code, and:

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

26 (2) the secretary of state finds that the
27 circumstances that led to the involuntary termination did not exist

1 at the time of termination.

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

10 (h) Section 11.253(d), Business Organizations Code, applies
11 to a cooperative that is reinstated under Subsection (f) to the same
12 extent it applies to a filing entity reinstated under Section
13 11.253, Business Organizations Code.

14 [Sections 53.161-53.200 reserved for expansion]

15 SUBCHAPTER E. BYLAWS

16 Sec. 53.201. BYLAWS. (a) A cooperative shall adopt bylaws
17 governing:

- 18 (1) the cooperative's business affairs and structure;
19 (2) the qualifications, classification, rights, and
20 obligations of the cooperative's members; and
21 (3) the classifications, allocations, and
22 distributions of membership interests.

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

- 26 (1) the notice of the meeting contains a statement
27 that the bylaws or restated bylaws will be voted on and copies are

1 included with the notice, or copies are available on request from
2 the cooperative and summary statement of each proposed bylaw or
3 amendment is included with the notice;

4 (2) a quorum is registered as being present or
5 represented by mail or alternative voting method if the mail or
6 alternative voting method is authorized by the board; and

7 (3) the bylaw or amendment is approved by a majority of
8 votes cast, or for a cooperative with a certificate of formation or
9 bylaws requiring more than majority approval or other conditions
10 for approval, the bylaw or amendment is approved when the
11 conditions for approval in the certificate of formation or bylaws
12 are complied with.

13 (c) Until the next annual or special members' meeting, the
14 majority of directors may adopt and amend bylaws for the
15 cooperative that are consistent with Subsection (d) and that may be
16 additionally amended or repealed by the members at an annual or
17 special members' meeting.

18 (d) Bylaws may contain any provision relating to the
19 management or regulation of the affairs of the cooperative that is
20 not inconsistent with the laws of this state or the certificate of
21 formation and must include:

22 (1) the number of directors and the qualifications,
23 manner of election, powers, duties, and compensation, if any, of
24 directors;

25 (2) the qualifications of members and any limitation
26 on their number;

27 (3) the manner of admission, withdrawal, suspension,

1 and expulsion of members; and

2 (4) the governance rights, financial rights,
3 assignability of governance or financial rights, and other rights,
4 privileges, and obligations of members and their membership
5 interests, which may be additionally described in a member control
6 agreement.

7 [Sections 53.202-53.250 reserved for expansion]

8 SUBCHAPTER F. MEMBERSHIP INTERESTS

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

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

1 agreed-on value.

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

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

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

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

15 (2) the financial and governance rights, including
16 financial rights on liquidation;

17 (3) the transferability of the nonpatron membership
18 interest; and

19 (4) the division and allocations of profits and losses
20 among the membership interests and membership classes.

21 (f) If the bylaws do not otherwise provide for the
22 allocation of the profits and losses between patron membership
23 interests and nonpatron membership interests, the allocation of
24 profits and losses among nonpatron membership interests
25 individually and patron membership interests collectively shall be
26 allocated on the basis of the value of contributions to capital made
27 according to the patron membership interests collectively and the

1 nonpatron membership interests individually to the extent the
2 contributions have been accepted by the cooperative.

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

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

21 (i) Subject to the bylaws, a member may dissent from and
22 obtain payment for the fair value of the member's nonpatron
23 membership interest in the cooperative if the certificate of
24 formation or bylaws are amended in a manner that materially and
25 adversely affects the rights and preferences of the nonpatron
26 membership interest of the dissenting member. The dissenting
27 member must file a notice of intent to demand fair value of the

1 membership interest with the records officer of the cooperative
2 before the 30th day after the amendment of the bylaws and notice of
3 the amendment to members, or the right of the dissenting member to
4 demand payment of fair value for the membership interest is waived.

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

20 Sec. 53.252. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS. (a)
21 The bylaws shall prescribe the allocation of profits and losses
22 between patron membership interests collectively and other
23 membership interests. If the bylaws do not otherwise provide, the
24 profits and losses between patron membership interests
25 collectively and other membership interests shall be allocated on
26 the basis of the value of contributions to capital made by the
27 patron membership interests collectively and other membership

1 interests and accepted by the cooperative. The allocation of
2 profits to the patron membership interests collectively may not be
3 less than 15 percent of the total profits in any fiscal year of the
4 cooperative.

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

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

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

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

24 (2) establish and accumulate reserves for new
25 buildings, machinery and equipment, depreciation, losses, and
26 other proper purposes.

27 (c) Net income allocated to patron members that exceeds

1 dividends on equity and additions to reserves shall be distributed
2 to patron members on the basis of patronage.

3 (d) A cooperative may:

4 (1) establish allocation units, whether functional,
5 divisional, departmental, geographic, or otherwise;

6 (2) establish pooling arrangements; and

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

9 (e) A cooperative may offset the net loss of an allocation
10 unit or pooling arrangement against the net income of other
11 allocation units or pooling arrangements.

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

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

19 (h) A cooperative may provide in its bylaws that nonmember
20 patrons are allowed to participate in the distribution of net
21 income payable to patron members on equal terms with patron
22 members.

23 (i) If a nonmember patron with patronage credits is not
24 qualified or eligible for membership, a refund owed may be credited
25 to the patron's individual account. The board may issue a
26 certificate of interest to reflect the credited amount. After the
27 patron is issued a certificate of interest, the patron may

1 participate in the distribution of income on the same basis as a
2 patron member.

3 [Sections 53.254-53.300 reserved for expansion]

4 SUBCHAPTER G. MEMBERS

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

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

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

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

21 (2) the member's entitlement to vote in the
22 cooperative.

23 (b) For the surrendered financial right of membership
24 interest, the cooperative shall:

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

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

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

5 (B) a certificate of interest that carries
6 liquidation rights on par with a membership interest and that is
7 redeemable within seven years after the transfer as provided in the
8 certificate.

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

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

14 (1) any unpaid subscription for the membership
15 interest;

16 (2) unpaid membership fees; or

17 (3) debt for which the member has separately
18 contracted with the cooperative.

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

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

26 (c) The officers shall submit reports to the members at the
27 regular members' meeting covering the business of the cooperative

1 during the preceding fiscal year that show the condition of the
2 cooperative at the end of the fiscal year of the organization.

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

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

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

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

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

19 (b) The cooperative shall give notice of a special members'
20 meeting by mailing a notice to each member personally at the
21 person's last known mailing address, or by an alternative method
22 approved by the board and the member individually or the members
23 generally. For a member that is an entity, notice mailed or
24 delivered by an alternative method must be to an officer of the
25 entity. The notice shall state the time, place, and purpose of the
26 special members' meeting. The notice shall be issued not later than
27 the 10th day after the date the members' petition is submitted and

1 the meeting shall be held not later than the 30th day after the date
2 the members' petition is submitted.

3 Sec. 53.305. CERTIFICATION OF MEETING NOTICE. (a) After
4 mailing or delivering the special or regular members' meeting
5 notices, the chair or records officer shall execute a certificate
6 containing the date of mailing or delivery of the notices and a
7 statement that the notices were mailed or delivered as prescribed
8 by law.

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

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

14 Sec. 53.307. QUORUM. (a) The quorum for a members' meeting
15 is:

16 (1) 10 percent of the total number of members for a
17 cooperative with 500 or fewer members; or

18 (2) 50 members for a cooperative with more than 500
19 members.

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

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

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

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

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

23 (d) A cooperative may provide in the certificate of
24 formation or bylaws that a unit or district of members is entitled
25 to be represented at a members' meeting by delegates chosen by the
26 members of the unit or district. The delegates may vote on matters
27 at the members' meeting in the same manner as a member. The

1 delegates may only exercise the voting rights on a basis of and with
2 the number of votes as provided by the certificate of formation or
3 bylaws. If approval by a certain number of members is required for
4 the adoption of amendments, a winding up and termination, a merger,
5 a conversion, or a sale of assets, the votes of delegates shall be
6 counted as votes by the members represented by the delegate. Patron
7 members may be represented by a delegate who is a patron member.
8 Nonpatron members may be represented by a delegate if authorized in
9 the bylaws.

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

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

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

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

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

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

1 Sec. 53.309. PATRON MEMBER VOTING IN COOPERATIVES
2 CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR
3 ASSOCIATIONS. (a) The certificate of formation or the bylaws of a
4 cooperative that is constituted wholly or partly of other
5 cooperatives or associations may authorize the patron members of a
6 subsidiary cooperative to have an additional vote for:

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

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

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

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

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

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

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

24 or

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

27 [Sections 53.310-53.350 reserved for expansion]

1 SUBCHAPTER H. ADMINISTRATION

2 Sec. 53.351. GOVERNANCE. A cooperative is governed by its
3 board.

4 Sec. 53.352. NUMBER OF DIRECTORS. The board must have at
5 least three directors.

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

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

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

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

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

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

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

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

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

18 Sec. 53.354. FILLING VACANCIES. If a director who was
19 elected by patron members vacates the director's position, the
20 board shall appoint a patron member of the cooperative to fill the
21 vacancy until the next regular or special members' meeting. If the
22 vacating director was not a patron member, the board shall appoint a
23 patron member to fill the vacancy. At the next regular or special
24 members' meeting, the members or patron members shall elect a
25 director for the unexpired term of the vacant position.

26 Sec. 53.355. REMOVAL OF DIRECTORS. At a members' meeting
27 the class of members who elected a director may remove the director

1 for cause related to the duties of the position and fill the vacancy
2 caused by the removal.

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

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

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

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

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

17 (4) an act or omission occurring before the date when
18 the provision in the certificate of formation eliminating or
19 limiting liability becomes effective.

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

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

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

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

26 (c) The offices of records officer and financial officer may
27 be combined.

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

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

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

10 Sec. 53.358. VOTE OF OWNERSHIP INTERESTS HELD BY
11 COOPERATIVE. A cooperative that holds an ownership interest in
12 another business entity may, by direction of the cooperative's
13 board, elect or appoint a person to represent the cooperative at a
14 meeting of that business entity. The representative may represent
15 the cooperative and cast the cooperative's vote at the business
16 entity's meeting.

17 [Sections 53.359-53.400 reserved for expansion]

18 SUBCHAPTER I. MERGER AND CONVERSION

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

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

25 (1) the name, organizational form, and jurisdiction of
26 formation of each of the constituent cooperatives and other
27 business entities;

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

3 (3) the manner and basis of converting the membership
4 or ownership interests of the constituent cooperatives or business
5 entities into membership or ownership interests in the surviving or
6 new cooperative or business entity;

7 (4) the terms of the merger;

8 (5) the proposed effect of the merger on the members
9 and patron members of the cooperative;

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

14 (7) any amendments made under the plan to the
15 certificate of formation or organizational documents of a surviving
16 cooperative or business entity.

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

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

23 (2) the name of each surviving or new business entity
24 that is primarily obligated to pay the fair value of an interest of
25 an owner or member of a domestic business entity subject to
26 dissenters' rights that is a party to the merger, if the owner or
27 member complies with the requirements for dissent and appraisal

1 applicable to the entity; and

2 (3) the manner and basis of allocating each liability
3 and obligation of each business entity that is a party to the merger
4 to one or more of the surviving or new entities, or an alternative
5 arrangement that provides for the payment and discharge of each
6 liability and obligation.

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

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

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

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

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

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

20 (2) the plan is approved by two-thirds of the votes
21 cast, or for a cooperative with a certificate of formation or bylaws
22 that require more than two-thirds of the votes cast or other
23 conditions for approval, as required by the certificate of
24 formation or bylaws.

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

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

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

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

10 (3) a statement that the approval of the owners or
11 members of a business entity that is a party to the plan of merger is
12 not required under the laws of the entity's jurisdiction of
13 formation, if applicable.

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

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

20 (f) If the plan of merger creates a new cooperative, the
21 certificate of formation must also be filed with the secretary of
22 state.

23 (g) If the plan of merger creates a new domestic business
24 entity to be formed or organized under the laws of this state and
25 the entity is required to file a certificate of formation, the
26 certificate of formation must also be filed with the secretary of
27 state.

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

6 (b) Notwithstanding any other law of this state, an
7 association organized under a law of this state before September 1,
8 2009, other than an association organized under this code before
9 that date, may merge with a cooperative governed by this chapter by
10 adopting and approving a plan of merger in the manner prescribed by
11 the law governing the association, or if the law governing the
12 association does not provide a method, in the same manner as a
13 cooperative governed by this chapter.

14 Sec. 53.405. EFFECT OF MERGER. (a) When a merger takes
15 effect:

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

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

25 (A) reversion or impairment;

26 (B) any further act or deed; or

27 (C) any transfer or assignment having occurred;

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

5 (4) each surviving or new domestic business entity to
6 which a liability or obligation is allocated under the plan of
7 merger is the primary obligor for the liability or obligation, and,
8 except as otherwise provided by the plan of merger or by law or
9 contract, no other party to the merger, other than a surviving
10 domestic business entity liable or otherwise obligated at the time
11 of the merger, and no other new domestic business entity created
12 under the plan of merger is liable for the liability or obligation;

13 (5) any proceeding pending by or against a cooperative
14 or another business entity that is a party to the merger may be
15 continued as if the merger did not occur, or the surviving or new
16 cooperative or business entity to which the matter involved in the
17 proceeding is allocated under the plan of merger may be substituted
18 in the proceeding;

19 (6) the certificate of formation and bylaws of each
20 surviving cooperative and the organizational documents and other
21 governing documents of each surviving business entity shall be
22 amended to the extent provided by the plan of merger;

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

26 (8) each new business entity to be formed or organized
27 under the laws of this state the organizational documents of which

1 are included in the plan of merger is formed when an executed copy
2 of the certificate of merger is delivered to or filed with the
3 governmental entity to which the organizational documents of the
4 business entity are required to be delivered or filed and when any
5 other requirements of law for formation are complied with;

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

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

26 (b) If the plan of merger does not provide for the
27 allocation and vesting of the right, title, and interest in any

1 particular property, each surviving and new cooperative or business
2 entity that is a party to the merger owns an undivided interest in
3 the property pro rata to the total number of surviving and new
4 cooperatives and business entities resulting from the merger. If
5 the plan of merger does not provide for the allocation of a
6 liability or obligation of a party to the merger, each surviving or
7 new cooperative or business entity that is a party to the merger is
8 jointly and severally liable for the liability or obligation.

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

11 (d) If a surviving entity in a merger is not a cooperative or
12 domestic business entity, the surviving entity is considered to
13 have:

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

18 (2) agreed to promptly pay any dissenting owners or
19 members of each cooperative or domestic business entity that is a
20 party to the merger who have the right of dissent and appraisal
21 under state law any amount to which the dissenting owners or members
22 are entitled under the law governing the formation of the entity.

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

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

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

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

5 The plan must include:

6 (1) the name of the cooperative that is the converting
7 entity;

8 (2) the name, organizational form, and jurisdiction of
9 formation of the converted entity;

10 (3) a statement that the converting entity is
11 continuing its existence in the organizational form of the
12 converted entity;

13 (4) the manner and basis of converting the membership
14 interests of the cooperative into membership or ownership interests
15 in the converted entity;

16 (5) the terms of the conversion;

17 (6) the proposed effect of the conversion on the
18 members and patron members of the cooperative; and

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

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

24 (d) After approval of the plan of conversion, a certificate
25 of conversion must be filed with the secretary of state for the
26 conversion to take effect. The certificate of conversion must
27 include:

1 (1) the plan of conversion, or a statement certifying:
2 (A) the name of the cooperative that is the
3 converting entity;
4 (B) the name, entity type, and jurisdiction of
5 organization of the business entity that is the converted entity;
6 (C) that the converting entity is continuing its
7 existence in the organizational form of the converted entity;
8 (D) that a signed plan of conversion is on file at
9 the principal place of business of the converting entity and
10 certifying the address of the principal place of business;
11 (E) that a signed plan of conversion will be on
12 file at the principal place of business of the converted entity and
13 certifying the address of the principal place of business; and
14 (F) that a copy of the plan of conversion will be
15 furnished, without cost, on written request to any owner or member
16 of the converting entity or the converted entity by:
17 (i) the converting entity before the
18 conversion; or
19 (ii) the converted entity after the
20 conversion;
21 (2) a statement that the plan of conversion has been
22 approved as required by this section, by the law governing the
23 converting entity, and by the governing documents of the converting
24 entity; and
25 (3) if the converted entity is a domestic business
26 entity, any certificate of formation or organizational document
27 required to form the entity under a law of this state.

1 (e) When a conversion takes effect, each member of the
2 converting entity has a membership or ownership interest in the
3 converted entity. This subsection does not apply to a member who
4 agrees to an alternative disposition of the person's interest under
5 the conversion.

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

10 (g) When the conversion takes effect:

11 (1) the converting entity continues to exist without
12 interruption in the organizational form of the converted entity
13 rather than in the organizational form of the entity before the
14 conversion;

15 (2) all rights, title, and interests to all property
16 owned by the converting entity continues to be owned, subject to any
17 existing lien or other encumbrance on the property, by the entity as
18 converted without:

19 (A) reversion or impairment;

20 (B) further act or deed; or

21 (C) any transfer or assignment having occurred;

22 (3) all liabilities and obligations of the converting
23 entity continue to be liabilities and obligations of the converted
24 entity in its new organizational form without impairment or
25 diminution because of the conversion;

26 (4) the rights of creditors or other parties with
27 respect to or against the previous members of the converting entity

1 in their capacities as members continue to exist and may be enforced
2 by the creditors and obligees as if the conversion had not occurred;

3 (5) a proceeding pending by or against the converting
4 entity or by or against any of the converting entity's members in
5 their capacities as members may be continued by or against the
6 converted entity and by or against the previous members without
7 substituting a party;

8 (6) the membership interests of the converting entity
9 are converted into ownership or membership interests of the
10 converted entity as provided in the plan of conversion, and the
11 former members of the converting entity are entitled only to the
12 rights provided in the plan of conversion or under a right of
13 dissent and appraisal as provided by law; and

14 (7) if a member of the converted entity is liable after
15 the conversion takes effect for the liabilities or obligations of
16 the converted entity in the person's capacity as a member, the
17 person is liable for the liabilities and obligations of the
18 converting entity that existed before the conversion took effect
19 only to the extent that the person:

20 (A) agrees in writing to be liable for the
21 liabilities or obligations;

22 (B) was liable before the conversion took effect
23 for the liabilities or obligations; or

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

27 Sec. 53.407. ABANDONMENT OF MERGER OR CONVERSION. (a) At

1 any time after a plan of merger or plan of conversion is approved as
2 provided by this chapter and before the merger or conversion takes
3 effect, a cooperative or domestic business entity that is a party to
4 the plan may abandon the plan, without action by the owners or
5 members, under the procedures provided by the plan of merger or plan
6 of conversion. A cooperative or domestic business entity's right
7 to abandon a plan of merger or plan of conversion is subject to the
8 contractual rights of any party to the merger or conversion.

9 (b) If the plan of merger or plan of conversion does not
10 provide procedures for abandonment, the board of directors or
11 governing authority of the parties to the plan may determine the
12 procedures for abandonment.

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

16 [Sections 53.408-53.450 reserved for expansion]

17 SUBCHAPTER J. LIQUIDATION

18 Sec. 53.451. LIQUIDATION. (a) A cooperative may be
19 liquidated as provided in the certificate of formation in a manner
20 consistent with other business entities formed or organized in this
21 state or, if not provided, may be liquidated in the same manner as a
22 limited liability company formed or organized in this state.

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

1 present in person, by mail ballot, or alternative method approved
2 by the board at the members' meeting, the resolution approving of
3 the liquidation is adopted if:

- 4 (1) approved by two-thirds of the votes cast; or
5 (2) for a cooperative with a certificate of formation
6 or bylaws requiring more than two-thirds for approval or other
7 conditions for approval, the conditions for approval in the
8 certificate of formation or bylaws are complied with.

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

13 [Sections 53.452-53.500 reserved for expansion]

14 SUBCHAPTER K. WINDING UP AND TERMINATION

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

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

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

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

27 (b) After a notice of intent to wind up and terminate has

1 been filed with the secretary of state, the board may sell, lease,
2 transfer, or otherwise dispose of all or substantially all of the
3 property and assets of the cooperative without a vote of the
4 members.

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

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

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

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

27 Sec. 53.504. STATUTE OF LIMITATIONS. The claim of a

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

6 Sec. 53.505. CERTIFICATE OF TERMINATION. (a) A
7 certificate of termination for a cooperative may be filed with the
8 secretary of state only after payment of the claims of all known
9 creditors and claimants has been made or provided for and the
10 remaining property distributed by the board. The certificate of
11 termination must state that:

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

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

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

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

26 (c) On receipt of a certificate of termination, the
27 secretary of state shall deliver to the terminated cooperative or

1 its legal representative a written acknowledgment of filing that
2 contains:

- 3 (1) the name of the terminated cooperative;
4 (2) the date the certificate of termination was filed
5 with the secretary of state; and
6 (3) a statement that the cooperative is terminated.

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

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

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

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

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

27 (B) the directors or those in control of the

1 cooperative in their capacities as members, directors, or officers
2 have acted fraudulently, illegally, or in a manner unfairly
3 prejudicial toward one or more members;

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

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

11 (E) the period of duration as provided in the
12 certificate of formation has expired and has not been extended as
13 provided in this chapter;

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

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

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

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

25 (b) In determining whether to order equitable relief or
26 termination, the court shall take into consideration the financial
27 condition of the cooperative but may not refuse to order equitable

1 relief or termination solely on the ground that the cooperative has
2 accumulated operating net income or current operating net income.

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

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

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

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

20 Sec. 53.508. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED
21 VOLUNTARY TERMINATION. (a) In termination proceedings, before a
22 hearing is completed the court may:

23 (1) issue an injunction;

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

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

1 cooperative.

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

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

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

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

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

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

1 (5) other claims proved and allowed.

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

5 Sec. 53.509. RECEIVER QUALIFICATIONS AND POWERS. (a) A
6 receiver must be a natural person or a domestic or foreign
7 corporation authorized to transact business in this state. A
8 receiver shall give a bond as directed by the court with the
9 sureties required by the court.

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

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

17 (1) the certificate of formation or written
18 acknowledgment of the filing of the certificate was procured
19 through fraud;

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

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

26 (4) the cooperative has acted or failed to act in a
27 manner that constitutes a surrender or abandonment of the

1 cooperative's franchise, privileges, or enterprise.

2 (b) An action may not be brought under Subsection (a) before
3 the 31st day after the date notice is given to the cooperative by
4 the attorney general of the reason for filing the action. If the
5 reason for filing the action is an act or omission of the
6 cooperative and the act or omission may be corrected by an amendment
7 of the certificate of formation or bylaws or by performance of or
8 abstention from the act, the attorney general may file the action
9 only if the cooperative fails to make the correction before the 31st
10 day after notice is given to the cooperative by the attorney
11 general.

12 Sec. 53.511. FILING CLAIMS IN COURT-SUPERVISED TERMINATION
13 PROCEEDINGS. (a) In a proceeding to terminate a cooperative, the
14 court may require a creditor or claimant of the cooperative to file
15 a claim made under oath with the court administrator or with the
16 receiver in a form prescribed by the court.

17 (b) If the court requires the filing of claims, the court
18 shall:

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

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

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

1 Sec. 53.512. DISCONTINUANCE OF COURT-SUPERVISED
2 TERMINATION PROCEEDINGS. The involuntary or supervised voluntary
3 termination of a cooperative may be discontinued at any time during
4 the termination proceedings if it is established that cause for
5 termination does not exist. The court shall dismiss the
6 proceedings and direct the receiver, if any, to redeliver to the
7 cooperative its remaining property and assets.

8 Sec. 53.513. COURT-SUPERVISED TERMINATION ORDER. (a) In
9 an involuntary or supervised voluntary termination, the court shall
10 enter an order terminating the cooperative after the costs and
11 expenses of the proceedings and all debts, obligations, and
12 liabilities of the cooperative have been paid or discharged and the
13 remaining property and assets have been distributed to its members
14 or, if its property and assets are not sufficient to satisfy and
15 discharge the costs, expenses, debts, obligations, and
16 liabilities, when all the property and assets have been applied to
17 their payment according to their priorities.

18 (b) When the court enters the order terminating the
19 cooperative or association, the cooperative or association is
20 terminated.

21 Sec. 53.514. FILING OF TERMINATION ORDER. After the court
22 enters an order terminating a cooperative, the court administrator
23 shall cause a certified copy of the termination order to be filed
24 with the secretary of state. The secretary of state may not charge
25 a fee for filing the termination order.

26 Sec. 53.515. BARRING OF CLAIMS. (a) Except as otherwise
27 provided by this section, a person, and all those claiming through

1 or under the person, are forever barred from suing on a claim or
2 otherwise realizing on or enforcing a claim if the person becomes a
3 creditor or claimant before, during, or after the conclusion of
4 termination proceedings, and the person:

5 (1) does not file a claim or pursue a remedy in a
6 legal, administrative, or arbitration proceeding during the
7 pendency of the termination proceeding; or

8 (2) does not initiate a legal, administrative, or
9 arbitration proceeding before the termination proceedings
10 commenced.

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

16 (1) against the cooperative to the extent of
17 undistributed assets; or

18 (2) if the undistributed assets are not sufficient to
19 satisfy the claim, against a member up to the amount distributed to
20 the member.

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

1 under the supervision or order of a court.

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

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

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