

(125th General Assembly)
(Amended House Bill Number 288)

AN ACT

To amend sections 1729.01, 1729.02, 1729.03, 1729.04, 1729.06, 1729.07, 1729.08, 1729.11, 1729.16, 1729.18, 1729.19, 1729.22, 1729.23, 1729.26, 1729.28, 1729.35, 1729.36, 1729.38, 1729.42, 1729.46, 1729.47, 1729.49, 1729.55, 1729.56, 1729.58, 1729.59, 1729.61, 1729.69, and 1729.85 and to enact section 1729.031 of the Revised Code to modify the Cooperative Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1729.01, 1729.02, 1729.03, 1729.04, 1729.06, 1729.07, 1729.08, 1729.11, 1729.16, 1729.18, 1729.19, 1729.22, 1729.23, 1729.26, 1729.28, 1729.35, 1729.36, 1729.38, 1729.42, 1729.46, 1729.47, 1729.49, 1729.55, 1729.56, 1729.58, 1729.59, 1729.61, 1729.69, and 1729.85 be amended and section 1729.031 of the Revised Code be enacted to read as follows:

Sec. 1729.01. As used in this chapter:

(A) "Agricultural cooperative" means a cooperative to which all of the following apply:

(1) The cooperative engages in any activity in connection with the propagation, raising, producing, harvesting, storing, drying, handling, processing, or marketing of agricultural products; procuring equipment and supplies or providing services for producers and others; bargaining; and any activity related to the foregoing.

(2) Producers or agricultural cooperatives exercise more than fifty per cent of the voting control of the cooperative.

(3) The cooperative does at least fifty per cent of its business with producers or agricultural cooperatives.

(B) "Agricultural products" includes aquacultural, horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products, and the produce or byproducts of any of such products.

(C) "Association" means any corporation organized under this chapter.

(D) "Bargaining" means the mutual obligation of a handler and a

eting cooperative to meet at reasonable times and confer and negotiate in good faith. Negotiations may include all terms relative to trading between handlers and producers. The obligation does not require either party to agree upon price, terms of sale, or any other marketing agreement, or to make a concession.

(E) "Board" means the board of directors of an association.

(F) "Cooperative" means an association or a foreign association.

(G) "~~Corporation~~" means any corporation, domestic or foreign, that is not a cooperative.

(H) "Entity," except as otherwise provided, means a foreign association, a foreign or domestic corporation other than a cooperative, or a foreign or domestic limited liability company.

(I) "Foreign association" means a corporation organized under the cooperative laws of another state or the District of Columbia or a foreign corporation organized under the law corporation laws of another state or the District of Columbia and operating, or the United States that operates on a cooperative basis.

(J) "Handler" means a person who acquires agricultural products under a sales contract for the purpose of processing or reselling the agricultural products.

(K) "Marketing agreement" means an agreement, contract, or other arrangement between a cooperative and a member in which the member agrees to market all or a part of the products or produce produced by the member, or agrees to purchase all or a part of the member's requirements for inputs, services, or supplies.

(L) "Marketing cooperative" means any agricultural cooperative meeting the requirements of the "Co-operative Marketing Associations Act," 42 Stat. 388 (1922), 7 U.S.C.A. 291, that negotiates sales contracts with handlers on behalf of its members and is not in direct competition with any handler with which it negotiates such contracts.

(M) "Member" means a person who has been qualified and accepted into membership in an association a cooperative.

(N) "Membership stock" means any class of stock or other equity interest in an association a cooperative, continuous ownership of which is required for membership in an association the cooperative.

(O) "Patron" means a person with which a cooperative has made an enforceable agreement to allocate and distribute a per unit retain, patronage dividend, or patronage refund with respect to business conducted by the cooperative with or for the person.

(P) "Patronage stock" means any stock or other equity interest in an

~~association a cooperative~~ that was originally issued by the ~~association cooperative~~ with respect to patronage transactions.

(P) "Person" includes a natural person, partnership, corporation, cooperative, or other entity.

(Q) "Processing" means changing the physical or chemical characteristics of agricultural products.

(R) "Producer" means a person engaged in the production of agricultural products for the market, including a lessor of ~~land who real or personal property used for production of agricultural products for the market that receives as rent part of the agricultural product of such land.~~

(S) "Sales contract" means a marketing agreement or other similar arrangement between a handler and a producer, negotiated by the producer or by an agricultural cooperative acting as agent for a producer, under which the producer agrees to grow or produce agricultural products for sale to the handler.

Sec. 1729.02. (A) An association may be organized under this chapter for any lawful purpose permitted to corporations by the laws of this state, except any such purpose that is inconsistent with the provisions of this chapter or other chapters of Title XVII of the Revised Code. This section does not authorize any professional services otherwise prohibited by law.

(B) Associations shall be corporations that are deemed nonprofit because they are not organized for the purpose of making a profit for themselves as such, or for the purpose of making a profit for their members as such, but for their members as patrons. This chapter and not Chapter 1702. of the Revised Code shall govern associations.

(C) A municipal power agency, as "municipal power agency" is defined in section 3734.058 of the Revised Code, is not an association for the purposes of this chapter.

(D) This chapter shall be known as the "Ohio Cooperative Law."

Sec. 1729.03. Each association incorporated under this chapter shall have the following powers:

(A) It may make contracts, incur liabilities, and borrow money; issue capital stock and ~~certificates representing other equity interests or indebtedness and issue certificates therefor;~~ acquire property; and dispose of, mortgage, pledge, lease, or otherwise use in any manner, any of its property, or any interest in its property, wherever situated.

(B) It may invest its funds, lend money for its purposes, and hold any property as security for repayment.

(C) It may act as the agent or representative of any members or other patrons in any activities authorized by this chapter.

(D) It may conduct its business and affairs, have offices, and exercise its power in the United States or in any foreign country.

(E) It may establish reserves and invest these funds.

(F) It may buy, hold, and exercise all privileges of ownership over such real or personal property as is necessary, convenient, or incidental to the conduct of any authorized business of the association.

(G) It may establish, secure, own, and develop patents, trademarks, and copyrights, service marks, and other intellectual property.

(H) Notwithstanding Chapter 169. of the Revised Code, it may effect effectuate the forfeiture of any unclaimed funds, including any unclaimed stocks stock or other equity interests, dividends, and patronage allocations, for which the owner cannot be found after a period of three years. Notice of the existence of these unclaimed funds stock or other equity interests and a request for written acknowledgment from the owner to the association shall be evidence of a bona fide attempt to deliver the unclaimed funds stock or other equity interests to the owner. If the notice is not acknowledged within thirty days after the notice is sent or within the period specified in the notice, if longer, all such unclaimed funds stock or other equity interests specified in the notice are thereafter forfeited and become the property of the association.

(I) It may make donations for charitable, scientific, educational, community development, or religious purposes, and may use all or part of the funds forfeited to the association under division (H) for these purposes.

(J) It may do everything necessary, suitable, or proper for the accomplishment of any of the purposes enumerated in this section. In addition it may exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other powers, rights, and privileges granted to corporations by the laws of this state, except such as are inconsistent with the express provisions of this chapter.

Sec. 1729.031. (A)(1) Subject to divisions (A)(2) and (3) of this section, an association may indemnify or agree to indemnify any person that was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, other than an action or suit by or in the right of the association, because the person is or was a director, officer, employee, agent, or volunteer of the association or is or was serving at the request of the association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise. The indemnification described in division (A)(1) of

this section shall be for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding described in division (A)(1) of this section.

(2) With respect to any noncriminal action or proceeding, the indemnification described in division (A)(1) of this section shall be made if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association as described in division (D) of section 1729.23 of the Revised Code.

(3) With respect to any criminal action or proceeding, the indemnification described in division (A)(1) of this section shall be made if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association as described in division (D) of section 1729.23 of the Revised Code, and the person had no reasonable cause to believe the conduct was unlawful.

(4) For purposes of divisions (A)(2) and (3) of this section, the termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or a plea of nolo contendere or its equivalent does not create, of itself, a presumption that the person did not act in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association or that the person had reasonable cause to believe that the conduct was unlawful.

(B)(1) Subject to division (B)(2) of this section and provided the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association, an association may indemnify or agree to indemnify any person that was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the association to procure a judgment in its favor, because the person is or was a director, officer, employee, agent, or volunteer of the association or is or was serving at the request of the association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise. The indemnification described in division (B)(1) of this section shall be for expenses, including attorney's fees, actually and reasonably incurred by the person in connection with the defense or settlement of an action or suit described in division (B)(1) of this section.

(2) If a person is adjudged to be liable for negligence or misconduct in the performance of a duty to the association, the indemnification described in division (B)(1) of this section shall be made for any claim, issue, or matter only to the extent that the court of common pleas or the court in

which the action or suit was brought determines, upon application, that despite the adjudication of liability and in view of all the circumstances of the case, the person fairly and reasonably is entitled to indemnity for expenses that the court of common pleas or court in which the action or suit was brought considers proper.

(C) Notwithstanding division (A) or (B) of this section, to the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding described in division (A) or (B) of this section, the person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred in connection with that action, suit, or proceeding.

(D) Unless ordered by a court or division (C) of this section applies, the association shall make any indemnification under division (A) or (B) of this section only as authorized in the specific case, upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in division (A) or (B) of this section. This determination shall be made in any of the following manners:

(1) By a majority vote of a quorum consisting of directors of the indemnifying association that were not and are not parties to or threatened with the action, suit, or proceeding described in division (A) or (B) of this section;

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

(3) By the members.

(E)(1) The association shall pay the expenses, including attorney's fees, incurred by the person in defending the action, suit, or proceeding described in division (A) or (B) of this section, unless either of the following applies:

(a) At the time of a person's act or omission that is the subject of an action, suit, or proceeding described in division (A) or (B) of this section, the articles or bylaws of the association state, by specific reference to divisions (A) and (B) of this section, that division (A) and (B) of this section do not apply to the association.

(b) The only liability asserted against a person in an action, suit, or proceeding described in division (A) or (B) of this section is pursuant to section 1729.25 of the Revised Code.

(2) Upon receipt of a request from a person, the association may pay expenses, including attorney's fees, incurred by a person in defending any action, suit, or proceeding described in division (A) or (B) of this section as the expenses are incurred in advance of the final disposition of the action, suit, or proceeding, if the board authorizes this payment in the specific case and upon receipt of an undertaking by or on behalf of the person to repay the amount if it ultimately is determined that the person is not entitled to be indemnified by the association.

(F) Both of the following apply to the indemnification authorized by this section:

(1) It is not exclusive of and is in addition to any other rights granted to a person seeking indemnification pursuant to the articles or bylaws of the association, any agreement, a vote of members or disinterested directors of the association, or otherwise, for action taken in the person's official capacity and action taken in another capacity while holding their office or position.

(2) It continues as to a person that has ceased to be a director, officer, employee, member, manager, agent, or volunteer and inures to the benefit of the heirs, executors, and administrators of that person.

(G) As used in this section, "association" includes all constituent associations and entities in a consolidation or merger and the new or surviving association or entity. Any person that is or was a director, officer, employee, agent, or volunteer of a constituent association or is or was serving at the request of a constituent association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise stands in the same position under this section with respect to the new or surviving association or entity as the person would if the person had served the new or surviving association or entity in the same capacity.

(H)(1) An association may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit, or self-insurance, for or on behalf of any person that is or was a director, officer, employee, agent, or volunteer of the association or is or was serving at the request of the association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise. The insurance or similar protection described in division (H)(1) of this section shall be against any liability asserted against the person and incurred by the person in any such capacity, whether or not the association would have the power to indemnify the person against that liability under this section.

(2) Insurance described in division (H)(1) of this section may be purchased from or maintained with a person in which the association has a financial interest.

Sec. 1729.04. (A) The name of any association organized under this chapter shall include the word or abbreviation "cooperative," "coop," "co-operative," "co-op," "association," "assn.," "company," "co.," "incorporated," "inc.," "corporation," or "corp."

(B) No corporation, ~~association~~, or other person organized or applying to do business in this state shall use the word or abbreviation "cooperative," "coop," "co-operative," or "co-op" as a part of its corporate or other business name or title, unless at least one of the following applies:

(1) It ~~has complied with~~ is organized under this chapter.

(2) It is organized and operating on a cooperative basis under Chapter 1702. of the Revised Code.

(3) It is organized and operating in accordance with the cooperative laws of another state, the District of Columbia, or the United States.

(4) It is a state or federally chartered credit union.

Sec. 1729.06. (A) Two or more individuals may form an association under this chapter.

(B)(1) Every association shall have and maintain a statutory agent upon whom any process, notice, or demand against the association may be served. The agent may be a natural person who is a resident of this state or a corporation that is authorized by its articles of incorporation to act as such agent and has a business address in this state.

(2) Whenever appointment or designation of a statutory agent is required by this chapter, the appointment or designation shall be on a form prescribed by the secretary of state for the administration of this chapter and shall conform with section 1702.06 of the Revised Code.

Sec. 1729.07. (A) The articles of incorporation of an association shall set forth all of the following:

(1) The name of the association;

(2) The association's purposes, as permitted by this chapter. It is sufficient to state in the articles that the association may engage in any activity within the purposes for which associations may be organized under this chapter.

(3) The county and municipal corporation or township where the association's principal place of business will be located which need not be within this state;

(4) The names and addresses of the incorporators;

(5) The number of its directors or a statement that the number of

directors shall be as specified in the bylaws;

(6) The names and addresses of those who are to serve as directors until the first annual meeting of members or until the election and qualification of their successors;

(7) Whether the association is organized with or without capital stock.

(a) If the association is organized without capital stock, the articles shall set forth the general rules by which the property rights and interests of each member are to be determined.

(b) If the association is organized with capital stock, the total amount of the stock, the number and par value of the shares, and dividend rights, if any. If there is more than one class of stock, the articles shall set forth a statement of the number of shares in each class and a statement of the designations, preferences, rights, and limitations of the shares in each class.

(B) The articles may include additional provisions, consistent with law, including provisions that are required or permitted to be set forth in the bylaws.

(C) The articles shall be signed by the incorporators and filed with the secretary of state in accordance with section 1729.12 of the Revised Code. The articles shall be accompanied by the appointment of a statutory agent in accordance with division (B) of section 1729.06 of the Revised Code. The legal existence of an association begins upon the filing of the articles and, unless the articles provide otherwise, its period of existence is perpetual.

Sec. 1729.08. (A) The articles of incorporation of an association may be altered or amended at any regular meeting of the association or at any special meeting called for that purpose, provided that the text of the proposed change, or a general description of the change, is contained in the notice of the meeting. An amendment shall first be approved by two thirds of the directors and shall then be adopted by an affirmative vote of sixty per cent of the member votes cast on the amendment or, if the articles provide or permit, by the affirmative vote of a greater majority or by the affirmative vote of a simple majority of all member votes eligible to be cast on the amendment.

(B) Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with section 1729.12 of the Revised Code.

(C) The board of an association may adopt a restatement of the articles ~~that without a member vote if the restatement merely~~ incorporates amendments previously approved by the board and adopted by the members. An association may, by action taken in the manner required for an amendment, adopt restated articles that contain amendments made at the time of the restatement. Restated articles shall state that they are restated, or

restated and amended, if amendments are adopted with the restatement, and shall supersede the existing articles and amendments. Restated articles shall meet the requirements of section 1729.07 of the Revised Code, except that the names and addresses of the incorporators and initial directors may be omitted. A restatement of the articles shall be filed in the manner prescribed for an amendment of the articles.

(D) Except as provided in the articles of incorporation, the board may adopt an amendment to the articles of incorporation without a member vote in any of the following cases:

- (1) To change the principal place of business of the association;
- (2) To designate and determine the rights and restrictions of a series within a class of capital stock, if permitted by the articles;
- (3) To reduce the authorized number of shares of any class or series of capital stock to any number down to and including the number of the shares issued and outstanding, and to assign the authorization for the number of shares so reduced to another class or classes of capital stock previously authorized;
- (4) After a merger, consolidation, conversion, division, or occurrence of any other contingent event referred to in the articles of incorporation, to eliminate from the articles any statement or provision pertaining exclusively to the merger, consolidation, conversion, division, or occurrence, and to make other changes required by such elimination, but only after the deleted item has been superseded in accordance with the articles of incorporation or otherwise is no longer in effect.

Sec. 1729.11. (A) An association whose articles of incorporation have been canceled or an association that has been dissolved in a manner other than for a voluntary dissolution as provided in section 1729.55 of the Revised Code, or a judicial dissolution as provided in section 1729.61 of the Revised Code, may be reinstated by filing, on a form prescribed by the secretary of state for the administration of this chapter, an application for reinstatement and the required appointment of a statutory agent, and by paying a filing fee of ten dollars.

(B) Upon reinstatement of an association's articles of incorporation, the rights, privileges, and franchises, including all real or personal property rights and credits and all contract and other rights, of the association existing at the time that its articles were canceled or the dissolution became effective shall ~~be continued~~ continue in effect as if the articles had not been canceled or the dissolution had not occurred; and the association shall again be entitled to exercise the rights, privileges, and franchises authorized by its articles.

Sec. 1729.16. (A) The initial bylaws may be adopted by the association's directors who are to serve until the first ~~annual member~~ meeting. After the initial bylaws are adopted, bylaws may be adopted and amended only by the members unless the ~~members adopt a bylaw that permits the board to make and amend specified bylaws articles or bylaws provide that the board, by a two-thirds vote of the entire board, may adopt or amend the bylaws or any specified bylaw.~~

(B) Any bylaw adopted or amended by the board shall be reported at the next ~~regular~~ member meeting. Any bylaw adopted or amended by the board shall not conflict with the association's articles of incorporation or with this chapter of the Revised Code. Any such bylaw is subject to amendment or repeal by the members at any time.

(C) Unless the bylaws provide otherwise, any bylaw may be adopted, amended, or repealed by a majority of the member votes cast on the adoption, amendment, or repeal.

Sec. 1729.18. (A) An association shall have two or more members. However, an association may have one member if that member is ~~an association a cooperative~~ that has two or more members.

(B) Each association shall hold an annual meeting of its members. The board may call a special meeting of the members at any time. Any meeting of the members may be held at one time or in a series of meetings at one or more locations.

(C) Twenty per cent of the members entitled to vote may file with the board a petition stating the specific business to be brought before the association and demanding a special meeting at any time for consideration of such business. Upon compliance with this division, the meeting shall be called by the board.

(D) Notice of every meeting, together with a statement of the purpose of the meeting, shall be sent to each member who is entitled to vote at the meeting and any affected stockholder at the member's or stockholder's current address, as shown in the records of the association, at least ten days prior to the meeting, in accordance with section 1729.20 of the Revised Code. The bylaws may provide that the notice be given by publication in a newspaper or newspapers of general circulation in the trade area of the association if notice to individual members and affected shareholders is impracticable.

Sec. 1729.19. (A) Unless prohibited in an association's articles of incorporation or bylaws, any action that may be authorized or taken at a meeting of the members, affected stockholders, the board, or any committee of the board, may be authorized or taken without a meeting, with the

affirmative vote or approval of, ~~and in writing or writings signed by the following:~~

(1) In the case of members or affected stockholders, sixty per cent of the votes of the members or affected stockholders who would be entitled to vote on the action at a meeting for such purpose;

(2) In the case of the board of directors or a committee of the board, all of the directors on the board or all of the committee members on the committee in a writing or writings signed by each of the directors or committee members.

(B) ~~Any such writing or writings A record of action described in division (A) of this section without a meeting~~ shall be included in the records of the association in the same manner as minutes of meetings of the association's members, affected stockholders, board, or committee of the board.

(C) Any certificate with respect to the authorization or taking of any action without a meeting that is required to be filed in the office of the secretary of state shall state that the authorization or taking of such action was ~~in writing or writings~~ approved and signed as provided in this section.

Sec. 1729.22. (A) Except where this chapter or an association's articles of incorporation or bylaws require that action be otherwise authorized or taken, all of the authority of an association shall be exercised by or under the direction of the board. The board shall consist of not less than five directors, elected by and from the members, unless the number of members is less than five, in which case, the number of directors may equal the number of members.

(B) The bylaws may provide that the membership of an association be divided into districts or other groupings and that the directors shall be elected according to such districts or groupings. In such that case, the bylaws shall specify the number of directors to be elected and the manner of reapportioning or redistricting the membership.

(C) The bylaws may provide that one or more directors may be appointed by the other directors. The appointed directors need not be members of the association, but shall have the same powers, rights, and responsibilities as other directors. The appointed directors shall not number more than one-fifth of the entire number of directors.

(D) The bylaws may provide for an executive committee and may allot to the executive committee any of the functions and powers of the board, subject to the general direction and control of the board.

(E) The association may provide a fair remuneration for the time actually spent by its officers and directors in its service, and for the services

of the members of its executive committee.

(F) When Unless the bylaws provide otherwise, when a vacancy on the board occurs other than by expiration of term, the remaining directors on the board, by a majority vote, shall elect a director to fill the vacancy. If the bylaws provide for an election of directors by the members in a district or other grouping, the board may call a special meeting of the members in that district or group to fill the vacancy.

Sec. 1729.23. (A) A director shall perform the duties of a director, including duties as a member of any committee of the directors upon which the director serves, in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the association, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In performing these duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by any of the following:

(1) One or more directors, officers, or employees of the association whom the director reasonably believes are reliable and competent in the matters prepared or presented;

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

(3) A committee of the directors upon which the director does not serve, established in accordance with the association's articles of incorporation or bylaws, as to matters within its designated authority, provided the director reasonably believes the committee merits confidence.

(B) For purposes of division (A) of this section:

(1) A director shall not be found to have failed to perform the duties in accordance with division (A) of this section, unless it is proved, by clear and convincing evidence, in an action brought against the director that the director has not acted in good faith, in a manner reasonably believed to be in or not opposed to the best interests of the association, or with the care that an ordinarily prudent person in a like position would use under similar circumstances. Such an action includes, but is not limited to, an action that involves or affects any of the following:

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

(b) A termination or potential termination of the director's service to the association as a director;

(c) Service in any other position or relationship with the association.

(2) A director shall not be considered to be acting in good faith if the

director has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by the persons described in divisions (A)(1) to (3) of this section to be unwarranted.

(3) ~~The provisions of division~~ Division (B) of this section ~~do~~ does not limit relief available under section 1729.24 of the Revised Code.

(C)(1) Subject to divisions (C)(2) and (3) of this section, a director is liable in damages for any act that the director takes or fails to take as director only if it is proved, by clear and convincing evidence, in an action brought against the director that the act or omission of the director was ~~one~~ undertaken with a deliberate intent to cause injury to the association or was ~~one~~ undertaken with a reckless disregard for the best interests of the association.

(2) Division (C)(1) of this section does not affect the liability of a director under section 1729.25 of the Revised Code.

(3) Subject to division (C)(2) of this section, division (C)(1) of this section does not apply if, and only to the extent that, at the time of an act or omission of the director, the association's articles of incorporation or bylaws state, by specific reference to division (C)(1) of this section, that its provisions do not apply to the association.

(D) For purposes of this section and section 1729.031 of the Revised Code, in determining what is reasonably believed to be in or not opposed to the best interests of the association, a director shall consider the purposes of the association and may consider any of the following:

(1) The interests of the employees, suppliers, creditors, and customers of the association;

(2) The economy of this state and of the United States;

(3) Community and societal matters;

(4) The long-term and short-term best interests of the association, including, but not limited to, the possibility that those interests may be best served by the continued independence of the association;

(5) The interests of the members as patrons of the association.

(E) Divisions (B) and (C) of this section do not affect the duties of a director who acts in any capacity other than as a director.

Sec. 1729.26. (A) The officers of an association shall consist of a president, a secretary, a treasurer, and, if desired, a chairperson and one or more vice chairpersons of the board, one or more vice-presidents, and such other officers and assistant officers as necessary. The officers shall be elected by the board. The chairperson and any vice chairperson of the board shall be a director. Unless the association's articles of incorporation or

bylaws provide otherwise, none of the other officers need be a director. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if the instrument is required by law or by the articles or bylaws to be executed, acknowledged, or verified by two or more officers. Unless the articles or the bylaws provide otherwise, all officers shall be elected annually.

(B) All officers ~~shall~~ have the authority to perform, and shall perform, the duties as the bylaws provide, or as the board may determine in accordance with the bylaws.

Sec. 1729.28. (A) Any member of an association may bring charges against an officer or director of the association by filing them in writing with the secretary of the association, together with a petition, signed by twenty per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the members of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges are brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the persons bringing the charges against the director or officer shall have the same opportunity.

(B) ~~In-ease If~~ If the bylaws provide for election of directors by ~~districts the~~ members in a district or other grouping, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district or belonging to the group from which the director was elected. The board shall then call a special meeting of the members residing in that district or belonging to the group to consider and vote upon the removal of the director; and at such meeting, by a vote of the majority of the members of that district or belonging to the group, the director in question shall be removed from office.

Sec. 1729.35. (A) An association may merge or consolidate with one or more associations under this chapter. Before an association may merge or consolidate with any other association, a written agreement of merger or consolidation shall be approved by the board of each constituent association and by the members of each constituent association. The agreement shall set forth the terms of the merger or consolidation, including any provisions for amendment or abandonment of the agreement. In the case of a consolidation, the agreement also shall contain the articles of incorporation of the new association.

(B)(1) If the agreement of merger or consolidation provides that a

holder of stock other than membership stock or patronage stock in a constituent association will be affected, all of the following apply:

(a) Unless the board of the constituent association provides that division (B)(1)(b) of this section applies, the affected stockholder shall be entitled to cast one vote on the agreement regardless of the par or stated value, the number of shares, or the number of affected classes of the stock held.

(b) The board of a constituent association may provide that a stockholder otherwise entitled to vote under division (B)(1)(a) of this section shall instead be entitled to payment of fair cash value of the affected stock held by the stockholder in accordance with section 1729.46 of the Revised Code.

(c) A member holding stock affected by a proposed agreement of merger or consolidation may vote only as a member and shall not be entitled to vote or demand fair cash value as an affected stockholder.

(2) For purposes of this section, a holder of stock is affected as to any class of stock owned by the holder only if the agreement of merger or consolidation does any of the following:

(a) Decreases the dividends to which that class may be entitled or changes the method by which the dividend rate on that class is fixed;

(b) Provides for additional restriction of rights to transfer shares of that class;

(c) Gives to another existing or any new class of stock or equity interest not previously entitled thereto any preference, as to dividends or upon dissolution, that is higher than preferences of that class;

(d) Changes the par value of shares of that class or of any other class having the same or higher preferences as to dividends or upon dissolution;

(e) Increases the number of authorized shares of any other class having the same or higher preferences as to dividends or upon dissolution beyond the aggregate authorizations for such classes in the constituent associations;

(f) Requires or permits an exchange of shares of any class with lower preferences as to dividends or upon dissolution for shares of any other class with higher preferences.

(C) The agreement is approved if both of the following conditions are met with respect to each constituent association:

(1) Notice of the meeting to vote on the agreement, the agreement, and a description of the method of voting have been sent to all members, and to all affected stockholders entitled either to vote on the agreement or to receive payment of fair cash value under division (B) of this section;

(2) Sixty per cent of the member votes cast approve the agreement, and a simple majority of the votes cast by the affected stockholders entitled to

vote under division (B) of this section approve the agreement.

(D) Notwithstanding division (C) of this section, no vote of the members or stockholders of a constituent association shall be necessary to approve a merger of a wholly owned subsidiary association with and into its parent ~~association cooperative~~ or a merger or a consolidation of two or more subsidiary associations that are wholly owned by ~~an association a~~ cooperative.

(E) After approval of an agreement under this section, but before the merger or consolidation is effective, the agreement may be amended in accordance with any provision for amendment set forth in the agreement, provided that an amendment made subsequent to adoption of the agreement by the members of any constituent association shall not do any of the following:

(1) Change the membership rights, or the amount or kind of stock, securities, cash, property, or other rights to be received, exchanged, or converted in the merger or consolidation;

(2) Change the articles of incorporation or bylaws of the surviving or new association as provided for in the agreement;

(3) Change any provision of the agreement with respect to the rights of members or the manner of voting in the surviving or new association.

(F) After approval of an agreement under this section, but before the merger or consolidation is effective, the merger or consolidation may be abandoned in accordance with any provision for abandonment set forth in the agreement.

(G) The merger or consolidation shall take effect in accordance with sections 1729.37 and 1729.38 of the Revised Code.

Sec. 1729.36. (A) An association may merge or consolidate with one or more entities, if such merger or consolidation is permitted by the laws under which each constituent entity exists and the association complies with this section.

(B) Each constituent association shall comply with section 1729.35 of the Revised Code with respect to form and approval of an agreement of merger or consolidation, and each constituent entity shall comply with the applicable provisions of the laws under which it exists, except that the agreement of merger or consolidation, by whatever name designated, shall comply with divisions (C) and (D) of this section.

(C) The agreement of merger or consolidation shall set forth all of the following:

(1) The names of the states and the laws under which each constituent entity exists;

(2) All statements and matters required to be set forth in agreements of merger or consolidation by the laws under which any constituent entity exists;

(3) A statement that the surviving or new entity is to be an association, a foreign association, a corporation other than a cooperative, or a limited liability company;

(4) If the surviving or new entity is to be a foreign entity:

(a) The place where the principal office of the surviving or new entity is to be located in the state in which the surviving or new entity is to exist;

(b) The consent by the surviving or new entity that it may be sued and served with process in this state in any proceeding for the enforcement of any obligation of any constituent association or domestic entity;

(c) The consent by the surviving or new entity that it shall be subject to the applicable provisions of Chapter 1703. of the Revised Code, if it is a foreign corporation or foreign association, or to sections 1705.53 to 1705.58 of the Revised Code, if it is a foreign limited liability company;

(d) If it is desired that the surviving or new entity exercise its corporate privileges in this state as a foreign entity.

(D) The agreement also may also set forth other provisions permitted by the laws of any state in which any constituent entity exists.

(E) If the surviving or new entity is an association, the merger or consolidation shall take effect in accordance with sections 1729.37 and 1729.38 of the Revised Code.

(F) If the surviving or new entity is an entity other than an association, the merger or consolidation shall take effect in accordance with the applicable provisions of the laws under which it exists.

Sec. 1729.38. (A)(1) Upon adoption of an agreement of merger or consolidation under section 1729.35 or 1729.36 of the Revised Code, a certificate, signed by any authorized officer or representative of each constituent association or entity, shall be filed with the secretary of state on a form prescribed by the secretary of state that sets forth the following:

(a) The name and form of each constituent association or entity and the state law under which each constituent entity exists;

(b) A statement that each constituent association or entity has adopted the agreement of merger or consolidation, the manner of adoption, and that the agreement was adopted in compliance with the laws applicable to each constituent association or entity;

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

(d) In the case of a merger, a statement that one or more specified

constituent associations or entities will be merged into a specified surviving association or entity; or, in the case of a consolidation, a statement that the constituent associations or entities will be consolidated into a new association or entity;

(e) The name and address of the statutory agent upon whom any process, notice, or demand against any constituent association or entity, or the surviving or new association or entity, may be served.

(2) In the case of a merger into an association or domestic entity, any amendments to the articles of incorporation or the articles or organization of the surviving association or entity shall be filed with the certificate.

(3) In the case of a consolidation to form a new domestic association or entity, the articles of incorporation or the articles of organization of the new association or entity shall be filed with the certificate.

(4) If the surviving or new entity is a foreign entity that desires to transact business in this state as a foreign entity, the certificate shall be accompanied by the information required for qualification of a foreign entity in this state by Chapter 1703. of the Revised Code, in the case of a foreign corporation or foreign cooperative, or by sections 1705.53 and 1705.54 of the Revised Code, in the case of a foreign limited liability company.

(B) A copy of the certificate of merger or consolidation, certified by the secretary of state, may be filed for record in the office of the county recorder of any county in this state. For such recording the county recorder shall charge and collect the same fee as in the case of deeds. The certified copy of the certificate of merger or consolidation shall be recorded in the records of deeds.

(C) For purposes of this section, "domestic entity" means a corporation other than an association or a limited liability company organized under the laws of this state.

Sec. 1729.42. (A) A domestic corporation that is not an association may convert itself into an association by adopting an amendment to its articles of incorporation in which it elects to become subject to this chapter, together with any changes in its articles of incorporation and bylaws required by this chapter, and any other desirable changes permitted by this chapter. The amendment shall be adopted, filed, and recorded in the manner provided by the law under which the corporation exists.

(B) An association may convert itself to a domestic corporation that is not an association by adopting an amendment to its articles of incorporation in which it elects to become subject to any other chapter of Title XVII of the Revised Code, if so permitted by such chapter, together with any changes in its articles of incorporation and bylaws required by such chapter and any

other desirable changes permitted by such chapter. The amendment shall be adopted, filed, and recorded under this chapter in the same manner as an amendment of the articles of incorporation under sections 1729.08 and 1729.09 of the Revised Code.

Sec. 1729.46. (A) In order to obtain payment of the fair cash value, a stockholder entitled to payment of the fair cash value of stock under section 1729.09, 1729.35, 1729.36, or 1729.40 of the Revised Code shall deliver a written demand for payment of the fair cash value of the stock to the association no later than fifteen days after notice is sent to members and stockholders in accordance with section 1729.09, 1729.35, 1729.36, or 1729.40 of the Revised Code, as the case may be. The written demand shall state the name and address of the stockholder, the number and class of the stock for which fair cash value is demanded, and the amount claimed by the stockholder to be the fair cash value of the stock. Delivery of written demand for payment of fair cash value of stock in accordance with this section is sufficient if delivered to the association or to the surviving or new association or entity resulting from the merger, consolidation, division, or conversion, whether the demand is delivered before, on, or after the effective date of the action. If written demand is not timely delivered in conformity with this section, the stockholder's right to payment of fair cash value with respect to the amendment to the articles of incorporation, agreement of merger or consolidation, plan of division, or conversion shall be barred.

(B) If a timely demand is delivered in accordance with this section, fair cash value of the stock shall be determined and paid to the stockholder in accordance with the following procedures:

(1) The association or the surviving, new, or resulting association or entity shall send a written acknowledgment of receipt of the demand for fair cash value to the address specified in the demand no later than fifteen days after receipt of the demand. If the board of the association or the surviving, new, or resulting association or entity believes that the demand has failed to comply with the requirements of this section, the acknowledgment shall state any such defects. The acknowledgment also shall state what the board believes to be the fair cash value of the stock that is the subject of the demand. If the articles of incorporation of the constituent or original association provide a value for the stock upon redemption, the fair cash value of the stock presumptively shall be the lesser of the redemption value or the fair market value of ~~such~~ the stock immediately prior to the merger, consolidation, division, or conversion.

(2) The stockholder shall not transfer, encumber, pledge, or otherwise

dispose of the stock that is the subject of the demand for fair cash value, or any certificate representing ~~such the~~ stock, until the demand is finally resolved by agreement, withdrawal, or final judicial determination as provided in this section 1729.47 of the Revised Code.

(3) If the association's articles of incorporation or bylaws provide a reasonable basis for determining and paying the fair cash value of the stock that is the subject of the demand for fair cash value, or if the association or the surviving, new, or resulting association or entity and the demanding stockholder reach an agreement on the fair cash value of the stock within three months after delivery of the demand for fair cash value, the fair cash value of the stock shall be determined in accordance with the constituent or original association's articles of incorporation or bylaws; or as agreed upon, as the case may be. The association shall thereupon tender payment of the fair cash value so determined, ~~to be paid~~ to the stockholder within thirty days of delivery of any certificates representing the stock or the stockholder's written waiver and release of claim to all rights to the stock to the association or the surviving, new, or resulting association or entity. Without precluding other possible reasonable bases for determining fair cash value of stock under this section, a provision in the constituent or original association's articles of incorporation or bylaws that fair cash value shall be determined by final and binding arbitration; or that fair cash value shall be the lesser of par value, book value, or fair market value, shall be considered a reasonable basis for determining and paying the fair cash value of stock.

(C) The right of a demanding stockholder to receive the fair cash value of stock as to which the stockholder seeks relief and the obligation of the association or the surviving, new, or resulting association or entity to furnish the fair cash value for those interests terminate if any of the following applies:

(1) The demanding stockholder fails to comply with this section.

(2) The association abandons the amendment of articles, merger, consolidation, division, or conversion or is finally enjoined or prevented from taking such action.

(3) The demanding stockholder withdraws the demand for fair cash value with consent of the association.

(4) The demanding stockholder attempts to sell, transfer, or encumber the stock which is the subject of the demand prior to final determination of its fair cash value under this section or ~~under~~ section 1729.47 of the Revised Code.

(5) All of the following apply:

(a) The articles of incorporation or bylaws of the association do not

provide a reasonable basis for determining and paying fair cash value to an affected stockholder;

(b) The association and the affected stockholder have not agreed upon the fair cash value of the stock which is the subject of the demand;

(c) The affected stockholder does not file a timely complaint under section 1729.47 of the Revised Code.

(D) The fair cash value that is agreed upon by the affected stockholder and the association, or determined using a reasonable basis for determining and paying fair cash value in the association's articles of incorporation or bylaws, or fixed by a court in a proceeding under section 1729.47 of the Revised Code, shall be paid within thirty days as follows:

(1) Immediately to the holder of uncertificated stock;

(2) Upon and simultaneously with the surrender of certificates representing certificated stock.

Sec. 1729.47. (A) If the association's articles of incorporation or bylaws do not provide a reasonable basis for determining and paying fair cash value of the stock that is the subject of the demand for payment of fair cash value, and the affected stockholder has not agreed upon a fair cash value of the stock that is the subject of the demand within three months after delivery of the demand for payment of fair cash value, the affected stockholder, within thirty days thereafter, may file a complaint for recovery of fair cash value of the stock from the association or the surviving, new, or resulting association or entity in the court of common pleas of the county in which the principal ~~officer~~ place of business of the association that issued the stock is or was located. However, if the principal place of business of an association is not within this state, then the complaint described in this division shall be filed in the court of common pleas of the county in which the association's statutory agent resides. Other affected stockholders who have made timely demand for payment of fair cash value may join as plaintiffs in the proceeding, and any two or more proceedings commenced by affected stockholders may be consolidated. The complaint shall contain a brief statement of the relevant facts, including the vote by members of the association, the facts entitling the stockholder to relief under this section, and a demand for that relief. Notwithstanding the Rules of Civil Procedure, no answer to a complaint filed under this section is required.

(B) Upon filing the complaint and upon motion of the complainant, the court shall fix a date for hearing on the complaint and require service of a notice of the complaint and the date for hearing on the defendant in the manner prescribed in the Rules of Civil Procedure for service of process.

(C) On the date fixed for the hearing or any adjournment thereof, the

court shall determine from the complaint and any evidence submitted at the hearing by the parties, whether the affected stockholder is entitled to the fair cash value of stock that is the subject of the demand and, if the stockholder is to be so paid, the number and class of stock for which payment is to be made.

(D) If the court finds that the affected stockholder is to be paid, it may appoint one or more persons as appraisers to receive evidence as to the fair cash value. The appraisers shall have the power and authority that the court specifies in the order of appointment, and the court shall fix reasonable compensation for the appraisers. After receiving the recommendation of any appointed appraiser, or if appraisers are not appointed, the court shall make findings as to the fair cash value and render judgment for the payment of that fair cash value and interest at the rate and from the date the court considers equitable. The costs of the proceeding, including compensation of the appointed appraisers as fixed by the court, shall be assessed as the court considers equitable.

(E) The proceeding on the complaint for fair cash value is a special proceeding, and final orders in it may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Sec. 1729.49. (A) As used in this section, "substantially all" means more than two-thirds of the association's assets, measured, in the board's discretion, either by value as recorded in the books and records of the association or by fair market value.

(B) Unless the articles of incorporation or the bylaws of an association otherwise provide, a lease, sale, exchange, transfer, or other disposition of any assets of an association may be made upon terms and for consideration, which may consist, in whole or in part, of money or other property, including shares or other securities or promissory obligations of any association or entity, as may be authorized by the board. If a lease, sale, exchange, transfer, or other disposition, or a series of such transactions, would dispose of all or substantially all of the assets of the association, then the disposition may be made only upon a written plan of disposition prepared by the board or by a committee selected by the board for that purpose, and adopted in the same manner as provided for the adoption of a resolution of dissolution in section 1729.55 of the Revised Code. A plan of disposition shall set forth a general description or summary of the assets subject to disposition; the method of disposition; the intended transferee of the assets, if known to the board ~~of directors~~; and a general description of any material effect the board believes the disposition will have on the

interests of the members and stockholders. Notice of a meeting of the members at which a plan of disposition will be voted on shall be given to all members, whether or not entitled to vote at the meeting. ~~Such~~ The notice shall be accompanied by a copy or summary of the plan of disposition and a ballot for those members entitled to vote on the plan.

(C) The association, by its board, may abandon a plan of disposition, subject to the contract rights of other persons, if the power of abandonment is conferred upon the board either by the terms of the transaction or in the plan of disposition.

(D) An action to set aside a disposition of assets by an association, on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of all or substantially all the assets of ~~such~~ the association has not been complied with, shall be brought within ninety days after such transaction, or ~~such~~ the action ~~shall be is~~ forever barred.

Sec. 1729.55. (A) An association may be dissolved voluntarily in the manner provided in this section.

(B) A resolution of dissolution for an association shall state both of the following:

(1) That the association elects to be dissolved;

(2) Any additional provision considered necessary with respect to the proposed dissolution and winding up.

(C) Before subscriptions for membership and any stock or other ownership interest have been received, the incorporators or a majority of the incorporators may adopt, by a writing signed by them, a resolution of dissolution.

(D) The directors may adopt a resolution of dissolution in the following cases:

(1) When the association has been adjudged bankrupt or has made a general assignment for the benefit of creditors;

(2) By leave of the court, when a receiver has been appointed in a general creditors' suit or in any suit in which the affairs of the association are to be wound up;

(3) When substantially all of the assets have been sold at judicial sale or otherwise;

(4) When the articles of incorporation have been canceled for failure to file annual franchise or excise tax returns or for failure to pay franchise or excise taxes and the association has not been reinstated or does not desire to be reinstated;

(5) When the period of existence of the association specified in its

articles has expired.

(E) At a meeting held for such purpose, the members may adopt a resolution of dissolution by the affirmative vote of sixty per cent of the member votes cast on ~~such~~ the proposal or, if the articles provide or permit, by the affirmative vote of a greater or lesser proportion, though not less than a majority, of ~~such~~ the voting power, of any particular class as is required by the articles of incorporation. Notice of the meeting of the members shall be given to all members and stockholders whether or not entitled to vote.

(F) Upon the adoption of a resolution of dissolution, a certificate shall be filed with the secretary of state, on a form prescribed by the secretary of state, stating all of the following:

(1) The name of the association;

(2) A statement that a resolution of dissolution has been adopted, its manner of adoption, and, in the case of its adoption by the incorporators or directors, a statement of the basis for such adoption;

(3) The place ~~in this state~~ where the association's principal officer place of business is located;

(4) The names and addresses of the association's directors and officers, or if the resolution of dissolution is adopted by the incorporators, the names and addresses of the incorporators;

(5) The name and address of the association's statutory agent.

(G) ~~Such~~ The certificate described in division (F) of this section shall be signed as follows:

(1) When the resolution of dissolution is adopted by the incorporators, the certificate shall be signed by not less than a majority of the incorporators;

(2) When the resolution is adopted by the directors or by the members, the certificate shall be signed by any authorized officer. However, if no authorized officer executes and files ~~such~~ the certificate within thirty days after the adoption of the resolution or upon any date specified in the resolution as the date upon which ~~such~~ the certificate is to be filed or upon the expiration of any period specified in the resolution as the period within which ~~such~~ the certificate is to be filed, whichever is latest, the certificate of dissolution may be signed by any three members, or if there are less than three members, ~~then~~ by all of the members, and shall set forth a statement that the persons signing the certificate are members and are filing the certificate because of the failure of an authorized officer to do so.

(H) A certificate of dissolution, filed with the secretary of state, shall be accompanied by all of the following:

(1) An affidavit of one or more of the persons executing the certificate

of dissolution or of any authorized officer of the association containing a statement of the counties, if any, in this state in which the association has personal property or a statement that the association is of a type required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such the filing; or that such payment adequately has been adequately guaranteed;

(3) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such the filing;

(4) A receipt, certificate, or other evidence from the director of job and family services showing that all contributions due from the association as an employer have been paid, or that such payment adequately has been adequately guaranteed, or that the association is not subject to such contributions;

(5) A receipt, certificate, or other evidence from the bureau of workers' compensation showing that all premiums due from the association as an employer have been paid, or that such payment adequately has been adequately guaranteed, or that the association is not subject to such premium payments;

(6) In lieu of the receipt, certificate, or other evidence described in division (H)(2), (3), (4), or (5) of this section, an affidavit of one or more persons executing the certificate of dissolution or of any authorized officer of the association containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled date of filing of the certificate of dissolution and was advised in writing of the acknowledgment by the association of the applicability of section 1729.25 of the Revised Code.

(I) Upon the filing of a certificate of dissolution and the accompanying documents required by division (H) of this section, the association shall be dissolved.

Sec. 1729.56. Following the filing of the certificate of dissolution, the directors, members, or the incorporators who filed the certificate, as the case may be, shall cause a notice of voluntary dissolution to be published once a week on the same day of each week for two successive weeks, in a newspaper published and of general circulation in the county in which the principal office place of business of the association was to be or is located; and shall cause written notice of dissolution to be given to all known creditors of, and to all known claimants against, the dissolved association.

Sec. 1729.58. (A) When an association is dissolved voluntarily, when the articles of incorporation of an association have been canceled, when a

final order of a court of common pleas is made dissolving an association under section 1729.59 of the Revised Code, or when the period of existence of the association specified in its articles of incorporation has expired, the association shall cease to carry on business and shall do only such acts as are required to wind up its affairs; or to obtain reinstatement of the articles in accordance with section 1729.11 of the Revised Code.

(B) Any claim existing or action or proceeding pending by or against the association or which would have accrued against it may be prosecuted to judgment, with right of appeal as in other cases, but any proceeding, execution, or process, or the satisfaction or performance of any order, judgment, or decree, may be stayed as provided in section 1729.59 of the Revised Code.

(C) Any process, notice, or demand against the association may be served by delivering a copy to an officer, director, liquidator, or person having charge of its assets or, if no such person can be found, to the statutory agent.

(D) The directors of the association or their successors shall act as ~~a~~ the board of directors in accordance with the articles of incorporation and bylaws until the affairs of the association are completely wound up. Subject to the orders of courts of this state having jurisdiction over the association, the directors shall proceed as speedily as is practicable to a complete winding up of the affairs of the association and, to the extent necessary or expedient to that end, shall exercise all the authority of the association. Without limiting the generality of such authority, the directors may fill vacancies; elect officers; carry out contracts of the association; make new contracts; borrow money; mortgage or pledge the property of the association as security; sell its assets at public or private sale; make conveyances in the association's name; lease real estate for any term, including ninety-nine years renewable forever; settle or compromise claims in favor of or against the association; ~~appoint~~ or employ one or more persons as liquidators to wind up the affairs of the association with ~~such~~ authority as the directors see fit to grant; cause the title to any of the assets of the association to be conveyed to such liquidators for that purpose; apply assets to the payment of obligations; and, after paying or adequately providing for the payment of all known obligations of the association, distribute the remainder of the assets either in cash or in kind among the members, patrons, and stockholders according to their respective rights and interests. In addition, the directors may perform all other acts necessary or expedient to the winding up of the affairs of the association.

(E) The directors, or any liquidator to whom the directors grant such

authority, in the course of winding up the association's affairs, shall apply the assets of the association in the following order:

- (1) To expenses incidental to winding up the association's affairs;
- (2) To all legally enforceable liabilities and obligations of the association due claimants and creditors;
- (3) To the stockholders, members, and patrons of the association as provided in the association's articles of incorporation or bylaws.

(F) Without limiting the authority of the directors, any action within the purview of this section that is authorized or approved at a meeting of the members by sixty per cent of the member votes cast thereon shall be conclusive for all purposes upon all members, patrons, and stockholders of the association.

(F)(G) All deeds and other instruments of the association shall be in the name of the association and shall be executed, acknowledged, and delivered by the officers appointed by the directors.

(G)(H) At any time during the winding up of its affairs, the association by its directors may make application to the court of common pleas of the county in this state in which the principal ~~officer~~ place of business of the association is located to have the winding up continued under supervision of the court, as provided in section 1729.59 of the Revised Code. However, if the association has no principal place of business in this state, the application described in this division may be made to a court of common pleas in the county in this state where the statutory agent resides.

Sec. 1729.59. (A) Without limiting the generality of its authority and subject to division (B) of this section, the court of common pleas of the county in this state in which is located the principal ~~officer~~ place of business of a voluntarily dissolved association or of an association whose articles have been canceled or whose period of existence has expired, upon the complaint of the association, or a majority of the directors, or ten per cent of the members or twenty members, whichever is less, and upon such notice to all the directors and ~~such~~ other persons interested as the court considers proper, at any time may order and adjudge any of the following matters:

(1) The presentation and proof of all claims and demands against the association and of all rights, interests, or liens in or on any of its property; the fixing of the time and the manner in which such proof shall be made and the person to whom ~~such~~ presentation shall be made; and the barring from participation in any distribution of assets of all persons failing to make and present proofs as required by the order of the court;

(2) The stay of the prosecution of any proceeding against the association or involving any of its property, ~~and~~; the requirement that the parties to the

proceeding present and prove their claims, demands, rights, interests, or liens at the time and in the manner required of creditors or others; or the grant of leave to bring or maintain an independent proceeding to enforce liens;

(3) The settlement or determination of all claims of every nature against the association or any of its property; the determination of the assets required to be retained to pay or provide for the payment of such claims or any claim; the determination of the assets available for distribution among and rights of members, patrons, and stockholders; and the making of new parties to the proceeding so far as the court considers proper for the determination of all matters;

(4) The presentation and filing of intermediate and final accounts of the directors or of the liquidators and hearings on them; the allowance, disallowance, or settlement of the accounts; and the discharge of the directors, the liquidators, or any of them from their duties and liabilities;

(5) The appointment of a special master commissioner to hear and determine any ~~such~~ matters with ~~such~~ authority as the court considers proper;

(6) The filling of any vacancies in the number of directors or liquidators when the directors are unable to act on the vacancies for want of a quorum or for any other reason;

(7) The appointment of a receiver, in accordance with the usage of a court in equitable matters, to wind up the affairs of the association, to take custody of any of its property, or for any other purpose;

(8) The issuance or entry of any injunction or any other order that the court considers proper in the administration of the trust involved in the winding up of the affairs of the association and the giving of notice of the entry of injunction or order;

(9) The allowance and payment of compensation to the directors or any of them, to liquidators, to a receiver, to the attorney for the complainant, or to any person properly rendering services beneficial to the association or to those interested in it;

(10) The entry of a judgment or decree that, if it so provides, may operate as the deed or other instrument ordered to be executed, or the appointment of a master to execute such deed or instrument in the name of the association with the same effect as if executed by an authorized officer pursuant to authority conferred by the directors or the members, patrons, and stockholders of the association, whenever there is no officer or agent competent to execute such deed or instrument, whenever the association or its officers do not perform or comply with a judgment or decree of court, or

whenever the court considers it proper.

(B) If the association has no principal place of business in this state, without limiting the generality of its authority, the court of common pleas in the county in this state where the statutory agent resides may order and adjudge the matters described in division (A) of this section.

(C) A judicial proceeding under this section concerning the winding up of the affairs of an association is a special proceeding, and final orders in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Sec. 1729.61. (A) An association may be dissolved judicially and its affairs wound up by an order of the court of common pleas of the county in this state in which the association has its principal office place of business, in an action brought by the members having sixty per cent of the voting power of the association on such proposal, or the holders of such a lesser proportion as are entitled by the articles of incorporation to dissolve the association voluntarily, when it is established that it is beneficial to the members, patrons, and stockholders that the association be judicially dissolved. However, if the association has no principal place of business in this state, the court of common pleas in the county in this state where the statutory agent resides may dissolve and wind up the affairs of an association in accordance with this division.

(B) A complaint for judicial dissolution shall be verified by any of the complainants and shall set forth facts showing that the case is as specified in this section. Unless the complainants set forth in the complaint that they are unable to annex a list of members, patrons, or stockholders, a schedule shall be annexed to the complaint setting forth the name and address of each member, patron, and stockholder, if it is known, or the fact that it is not known.

(C) Upon the filing of a complaint for judicial dissolution, the court with which it is filed shall have power to issue injunctions; to appoint a receiver with such authority and duties as the court from time to time may direct; to take such other proceedings as may be necessary to protect the property or the rights of the members, patrons, and stockholders; and to carry on the business of the association until a full hearing can be conducted. Upon or after the filing of a complaint for judicial dissolution, the court, by injunction or order, may stay the prosecution of any proceeding against the association or involving any of its property and require the parties to the proceeding to present and prove their claims, demands, rights, interests, or liens, at the time and in the manner required of creditors or others. The court

may refer the complaint to a special master commissioner.

(D) After a hearing upon such notice as the court ~~may direct~~ directs to be given to all parties to the proceeding and to any other parties in interest designated by the court, a final order based either upon the evidence, or upon the report of the special master commissioner if one has been appointed, shall be made dissolving the association or dismissing the complaint. An order or judgment for the judicial dissolution of an association shall contain a concise statement of the proceedings leading up to the order or judgment, the name of the association, the place ~~in this state~~ where its principal ~~office~~ place of business is located, the names and addresses of its directors and officers, the name and address of a statutory agent, and, if desired, ~~such~~ other provisions with respect to the judicial dissolution and winding up as are considered necessary or desirable. A certified copy of ~~such~~ the order shall be filed in the office of the secretary of state, whereupon the association shall be dissolved. To the extent consistent with orders entered in such proceeding, the effect of ~~such~~ judicial dissolution shall be the same as in the case of voluntary dissolution, and the provisions of sections 1729.58, 1729.59, and 1729.60 of the Revised Code relating to the authority and duties of directors during the winding up of the affairs of an association dissolved voluntarily, with respect to the jurisdiction of courts over the winding up of the affairs of an association, and with respect to receivers for winding up the affairs of an association, shall be applicable to associations judicially dissolved.

(E) A proceeding under this section for judicial dissolution of an association is a special proceeding, and final orders in it may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Sec. 1729.69. (A) No handler shall commit an unfair marketing practice, as defined in division (B) of this section, whenever a marketing cooperative has been authorized by its members to bargain on behalf of its members for sales contracts with the handler and any of the following conditions exist:

(1) Members of the marketing cooperative are obligated to produce and deliver agricultural products or produce under sales contracts negotiated by the marketing ~~association~~ cooperative.

(2) Members of the marketing cooperative represent, on the yearly average calculated over the immediate two preceding calendar years, at least fifty-one per cent of the producers who delivered ~~such~~ agricultural products or produce to the specified facility of the handler under sales contracts.

(3) Members of the marketing cooperative delivered, under sales

contracts, on the yearly average calculated over the immediate two preceding calendar years, at least fifty per cent of the total amount of such agricultural products delivered to such the specified facility of the handler under sales contracts.

(4) The marketing cooperative, if requested by the handler, presents to the handler copies of the agreements with its members authorizing the marketing cooperative to bargain on behalf of its members for sales contracts for the agricultural products that are the subject of the sales contract under negotiation.

(B) For purposes of this section, it is an unfair marketing practice if either of the following applies:

(1) If the handler or the marketing cooperative that is bargaining fails to bargain in good faith in negotiating sales contracts for agricultural products to be delivered to a facility of the handler;

(2) If a handler enters into a sales contract directly with a producer, pertaining to agricultural products to be delivered to the same facility, with the intent to cause the marketing cooperative to fail to meet the conditions set forth in divisions (A)(2) and (3) of this section.

Sec. 1729.85. Membership stock and patronage stock of an association a cooperative are not to be considered securities under Chapter 1707. of the Revised Code.

SECTION 2. That existing sections 1729.01, 1729.02, 1729.03, 1729.04, 1729.06, 1729.07, 1729.08, 1729.11, 1729.16, 1729.18, 1729.19, 1729.22, 1729.23, 1729.26, 1729.28, 1729.35, 1729.36, 1729.38, 1729.42, 1729.46, 1729.47, 1729.49, 1729.55, 1729.56, 1729.58, 1729.59, 1729.61, 1729.69, and 1729.85 of the Revised Code are hereby repealed.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the _____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____