

As Passed by the Senate

**125th General Assembly
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Am. H. B. No. 288

**Representatives Faber, McGregor, Seitz, Willamowski, Latta, Gibbs,
Aslanides, Carmichael, Distel, Domenick, Driehaus, C. Evans, Niehaus, Perry,
Reinhard, Schlichter, Seaver, Setzer, Walcher, Widener, Book, Barrett,
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Harwood, Hollister, Hoops, Hughes, Jolivette, Kearns, Olman, Raussen,
Schmidt, Schneider, G. Smith, J. Stewart, Williams, Yates
Senators Robert Gardner, Jordan**

A B I L L

To amend sections 1729.01, 1729.02, 1729.03, 1729.04, 1
1729.06, 1729.07, 1729.08, 1729.11, 1729.16, 2
1729.18, 1729.19, 1729.22, 1729.23, 1729.26, 3
1729.28, 1729.35, 1729.36, 1729.38, 1729.42, 4
1729.46, 1729.47, 1729.49, 1729.55, 1729.56, 5
1729.58, 1729.59, 1729.61, 1729.69, and 1729.85 6
and to enact section 1729.031 of the Revised Code 7
to modify the Cooperative Law. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1729.01, 1729.02, 1729.03, 1729.04, 9
1729.06, 1729.07, 1729.08, 1729.11, 1729.16, 1729.18, 1729.19, 10
1729.22, 1729.23, 1729.26, 1729.28, 1729.35, 1729.36, 1729.38, 11
1729.42, 1729.46, 1729.47, 1729.49, 1729.55, 1729.56, 1729.58, 12
1729.59, 1729.61, 1729.69, and 1729.85 be amended and section 13
1729.031 of the Revised Code be enacted to read as follows: 14

Sec. 1729.01. As used in this chapter:	15
(A) "Agricultural cooperative" means a cooperative to which all of the following apply:	16 17
(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.	18 19 20 21 22 23
(2) Producers or agricultural cooperatives exercise more than fifty per cent of the voting control of the cooperative.	24 25
(3) The cooperative does at least fifty per cent of its business with producers or agricultural cooperatives.	26 27
(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.	28 29 30 31
(C) "Association" means any corporation organized under this chapter.	32 33
(D) "Bargaining" means the mutual obligation of a handler and a marketing 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.	34 35 36 37 38 39
(E) "Board" means the board of directors of an association.	40
(F) "Cooperative" means an association or a foreign association.	41 42
(G) "Corporation" means any corporation, domestic or foreign,	43

~~that is not a cooperative.~~ 44

~~(H)~~ "Entity," except as otherwise provided, means a foreign 45
association, a foreign or domestic corporation other than a 46
cooperative, or a foreign or domestic limited liability company. 47

~~(I)~~(H) "Foreign association" means a corporation organized 48
under the cooperative laws of another state or the District of 49
Columbia or a foreign corporation organized under ~~the law~~ 50
corporation laws of another state ~~or~~, the District of Columbia ~~and~~ 51
operating, or the United States that operates on a cooperative 52
basis. 53

~~(J)~~(I) "Handler" means a person who acquires agricultural 54
products under a sales contract for the purpose of processing or 55
reselling ~~the~~ agricultural products. 56

~~(K)~~(J) "Marketing agreement" means an agreement, contract, or 57
other arrangement between a cooperative and a member in which the 58
member agrees to market all or a part of the products or produce 59
produced by the member, or agrees to purchase all or a part of the 60
member's requirements for inputs, services, or supplies. 61

~~(L)~~(K) "Marketing cooperative" means any agricultural 62
cooperative meeting the requirements of the "Co-operative 63
Marketing Associations Act," 42 Stat. 388 (1922), 7 U.S.C.A. 291, 64
that negotiates sales contracts with handlers on behalf of its 65
members and is not in direct competition with any handler with 66
which it negotiates such contracts. 67

~~(M)~~(L) "Member" means a person who has been qualified and 68
accepted into membership in ~~an association~~ a cooperative. 69

~~(N)~~(M) "Membership stock" means any class of stock or other 70
equity interest in ~~an association~~ a cooperative, continuous 71
ownership of which is required for membership in ~~an association~~ 72
the cooperative. 73

(N) "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. 74
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(O) "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. 78
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(P) "Person" includes a natural person, partnership, corporation, cooperative, or other entity. 82
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(Q) "Processing" means changing the physical or chemical characteristics of agricultural products. 84
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(R) "Producer" means a person engaged in the production of agricultural products for the market, including a lessor of ~~land~~ the 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~~. 86
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(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. 91
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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. 96
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(B) Associations shall be corporations that are deemed nonprofit because they are not organized for the purpose of making 102
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a profit for themselves as such, or for the purpose of making a 104
profit for their members as such, but for their members as 105
patrons. This chapter and not Chapter 1702. of the Revised Code 106
shall govern associations. 107

(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 108
Law." 109

Sec. 1729.03. Each association incorporated under this 110
chapter shall have the following powers: 111

(A) It may make contracts, incur liabilities, and borrow 112
money; issue capital stock and ~~certificates representing other~~ 113
equity interests or indebtedness and issue certificates therefor; 114
acquire property; and dispose of, mortgage, pledge, lease, or 115
otherwise use in any manner, any of its property, or any interest 116
in its property, wherever situated. 117

(B) It may invest its funds, lend money for its purposes, and 118
hold any property as security for repayment. 119

(C) It may act as the agent or representative of any members 120
or other patrons in any activities authorized by this chapter. 121

(D) It may conduct its business and affairs, have offices, 122
and exercise its power in the United States or in any foreign 123
country. 124

(E) It may establish reserves and invest these funds. 125

(F) It may buy, hold, and exercise all privileges of 126
ownership over such real or personal property as is necessary, 127
convenient, or incidental to the conduct of any authorized 128
business of the association. 129

(G) It may establish, secure, own, and develop patents, 130
trademarks, ~~and~~ copyrights, service marks, and other intellectual 131
property. 132

(H) Notwithstanding Chapter 169. of the Revised Code, it may 133
~~effect~~ effectuate the forfeiture of any unclaimed ~~funds, including~~ 134
~~any unclaimed stocks~~ stock or other equity interests, dividends, 135
and patronage allocations, for which the owner cannot be found 136
after a period of three years. Notice of the existence of ~~these~~ 137
unclaimed ~~funds~~ stock or other equity interests and a request for 138
written acknowledgment from the owner to the association shall be 139
evidence of a bona fide attempt to deliver the unclaimed ~~funds~~ 140
stock or other equity interests to the owner. If the notice is not 141
acknowledged within thirty days after the notice is sent or within 142
the period specified in the notice, if longer, all such unclaimed 143
~~funds~~ stock or other equity interests specified in the notice are 144
~~thereafter~~ forfeited and become the property of the association. 145

(I) It may make donations for charitable, scientific, 146
educational, community development, or religious purposes, and may 147
use all or part of the funds forfeited to the association under 148
division (H) for these purposes. 149

(J) It may do everything necessary, suitable, or proper for 150
the accomplishment of any of the purposes enumerated in this 151
section. In addition it may exercise and possess all powers, 152
rights, and privileges necessary or incidental to the purposes for 153
which the association is organized or to the activities in which 154
it is engaged, and any other powers, rights, and privileges 155
granted to corporations by the laws of this state, except ~~such~~ as 156
are inconsistent with the express provisions of this chapter. 157

Sec. 1729.031. (A)(1) Subject to divisions (A)(2) and (3) of 158
this section, an association may indemnify or agree to indemnify 159
any person that was or is a party, or is threatened to be made a 160

party, to any threatened, pending, or completed civil, criminal, 161
administrative, or investigative action, suit, or proceeding, 162
other than an action or suit by or in the right of the 163
association, because the person is or was a director, officer, 164
employee, agent, or volunteer of the association or is or was 165
serving at the request of the association as a trustee, director, 166
officer, employee, member, manager, agent, or volunteer of another 167
association, entity, partnership, joint venture, trust, or other 168
enterprise. The indemnification described in division (A)(1) of 169
this section shall be for expenses, including attorney's fees, 170
judgments, fines, and amounts paid in settlement actually and 171
reasonably incurred by the person in connection with the action, 172
suit, or proceeding described in division (A)(1) of this section. 173

(2) With respect to any noncriminal action or proceeding, the 174
indemnification described in division (A)(1) of this section shall 175
be made if the person acted in good faith and in a manner the 176
person reasonably believed to be in or not opposed to the best 177
interests of the association as described in division (D) of 178
section 1729.23 of the Revised Code. 179

(3) With respect to any criminal action or proceeding, the 180
indemnification described in division (A)(1) of this section shall 181
be made if the person acted in good faith and in a manner the 182
person reasonably believed to be in or not opposed to the best 183
interests of the association as described in division (D) of 184
section 1729.23 of the Revised Code, and the person had no 185
reasonable cause to believe the conduct was unlawful. 186

(4) For purposes of divisions (A)(2) and (3) of this section, 187
the termination of any action, suit, or proceeding by judgment, 188
order, settlement, or conviction or a plea of nolo contendere or 189
its equivalent does not create, of itself, a presumption that the 190
person did not act in good faith and in a manner the person 191

reasonably believed to be in or not opposed to the best interests 192
of the association or that the person had reasonable cause to 193
believe that the conduct was unlawful. 194

(B)(1) Subject to division (B)(2) of this section and 195
provided the person acted in good faith and in a manner the person 196
reasonably believed to be in or not opposed to the best interests 197
of the association, an association may indemnify or agree to 198
indemnify any person that was or is a party, or is threatened to 199
be made a party, to any threatened, pending, or completed action 200
or suit by or in the right of the association to procure a 201
judgment in its favor, because the person is or was a director, 202
officer, employee, agent, or volunteer of the association or is or 203
was serving at the request of the association as a trustee, 204
director, officer, employee, member, manager, agent, or volunteer 205
of another association, entity, partnership, joint venture, trust, 206
or other enterprise. The indemnification described in division 207
(B)(1) of this section shall be for expenses, including attorney's 208
fees, actually and reasonably incurred by the person in connection 209
with the defense or settlement of an action or suit described in 210
division (B)(1) of this section. 211

(2) If a person is adjudged to be liable for negligence or 212
misconduct in the performance of a duty to the association, the 213
indemnification described in division (B)(1) of this section shall 214
be made for any claim, issue, or matter only to the extent that 215
the court of common pleas or the court in which the action or suit 216
was brought determines, upon application, that despite the 217
adjudication of liability and in view of all the circumstances of 218
the case, the person fairly and reasonably is entitled to 219
indemnity for expenses that the court of common pleas or court in 220
which the action or suit was brought considers proper. 221

(C) Notwithstanding division (A) or (B) of this section, to 222
the extent that a person has been successful on the merits or 223

otherwise in defense of any action, suit, or proceeding described 224
in division (A) or (B) of this section, the person shall be 225
indemnified against expenses, including attorney's fees, actually 226
and reasonably incurred in connection with that action, suit, or 227
proceeding. 228

(D) Unless ordered by a court or division (C) of this section 229
applies, the association shall make any indemnification under 230
division (A) or (B) of this section only as authorized in the 231
specific case, upon a determination that indemnification of the 232
person is proper in the circumstances because the person has met 233
the applicable standard of conduct set forth in division (A) or 234
(B) of this section. This determination shall be made in any of 235
the following manners: 236

(1) By a majority vote of a quorum consisting of directors of 237
the indemnifying association that were not and are not parties to 238
or threatened with the action, suit, or proceeding described in 239
division (A) or (B) of this section; 240

(2) Whether or not a quorum as described in division (D)(1) 241
of this section is obtainable, and if a majority of a quorum of 242
disinterested directors so directs, in a written opinion by 243
independent legal counsel other than an attorney or a firm of 244
attorneys associated with that attorney, that within the past five 245
years has been retained by or has performed services for the 246
association or has performed services for any person to be 247
indemnified; 248

(3) By the members. 249

(E)(1) The association shall pay the expenses, including 250
attorney's fees, incurred by the person in defending the action, 251
suit, or proceeding described in division (A) or (B) of this 252
section, unless either of the following applies: 253

(a) At the time of a person's act or omission that is the 254

subject of an action, suit, or proceeding described in division 255
(A) or (B) of this section, the articles or bylaws of the 256
association state, by specific reference to divisions (A) and (B) 257
of this section, that division (A) and (B) of this section do not 258
apply to the association. 259

(b) The only liability asserted against a person in an 260
action, suit, or proceeding described in division (A) or (B) of 261
this section is pursuant to section 1729.25 of the Revised Code. 262

(2) Upon receipt of a request from a person, the association 263
may pay expenses, including attorney's fees, incurred by a person 264
in defending any action, suit, or proceeding described in division 265
(A) or (B) of this section as the expenses are incurred in advance 266
of the final disposition of the action, suit, or proceeding, if 267
the board authorizes this payment in the specific case and upon 268
receipt of an undertaking by or on behalf of the person to repay 269
the amount if it ultimately is determined that the person is not 270
entitled to be indemnified by the association. 271

(F) Both of the following apply to the indemnification 272
authorized by this section: 273

(1) It is not exclusive of and is in addition to any other 274
rights granted to a person seeking indemnification pursuant to the 275
articles or bylaws of the association, any agreement, a vote of 276
members or disinterested directors of the association, or 277
otherwise, for action taken in the person's official capacity and 278
action taken in another capacity while holding their office or 279
position. 280

(2) It continues as to a person that has ceased to be a 281
director, officer, employee, member, manager, agent, or volunteer 282
and inures to the benefit of the heirs, executors, and 283
administrators of that person. 284

(G) As used in this section, "association" includes all 285

constituent associations and entities in a consolidation or merger 286
and the new or surviving association or entity. Any person that is 287
or was a director, officer, employee, agent, or volunteer of a 288
constituent association or is or was serving at the request of a 289
constituent association as a trustee, director, officer, employee, 290
member, manager, agent, or volunteer of another association, 291
entity, partnership, joint venture, trust, or other enterprise 292
stands in the same position under this section with respect to the 293
new or surviving association or entity as the person would if the 294
person had served the new or surviving association or entity in 295
the same capacity. 296

(H)(1) An association may purchase and maintain insurance or 297
furnish similar protection, including, but not limited to, trust 298
funds, letters of credit, or self-insurance, for or on behalf of 299
any person that is or was a director, officer, employee, agent, or 300
volunteer of the association or is or was serving at the request 301
of the association as a trustee, director, officer, employee, 302
member, manager, agent, or volunteer of another association, 303
entity, partnership, joint venture, trust, or other enterprise. 304
The insurance or similar protection described in division (H)(1) 305
of this section shall be against any liability asserted against 306
the person and incurred by the person in any such capacity, 307
whether or not the association would have the power to indemnify 308
the person against that liability under this section. 309

(2) Insurance described in division (H)(1) of this section 310
may be purchased from or maintained with a person in which the 311
association has a financial interest. 312

Sec. 1729.04. (A) The name of any association organized under 313
this chapter shall include the word or abbreviation "cooperative," 314
"coop," "co-operative," "co-op," "association," "assn.," 315
"company," "co.," "incorporated," "inc.," "corporation," or 316

"corp."	317
(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:	318 319 320 321 322
(1) It has complied with <u>is organized under</u> this chapter.	323
(2) It is organized and operating on a cooperative basis under Chapter 1702. of the Revised Code.	324 325
(3) It is organized and operating in accordance with the cooperative laws of another state, the District of Columbia, or the United States.	326 327 328
<u>(4) It is a state or federally chartered credit union.</u>	329
Sec. 1729.06. (A) Two or more individuals may form an association under this chapter.	330 331
(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.	332 333 334 335 336 337
(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 <u>for the administration of this chapter</u> and shall conform with section 1702.06 of the Revised Code.	338 339 340 341 342
Sec. 1729.07. (A) The articles of incorporation of an association shall set forth all of the following:	343 344

(1) The name of the association;	345
(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.	346 347 348 349
(3) The county and municipal corporation or township where the association's principal place of business will be located <u>which need not be within this state;</u>	350 351 352
(4) The names and addresses of the incorporators;	353
(5) The number of its directors or a statement that the number of directors shall be as specified in the bylaws;	354 355
(6) The names and addresses of those who are to serve as directors until the first annual meeting <u>of members</u> or until the election and qualification of their successors;	356 357 358
(7) Whether the association is organized with or without capital stock.	359 360
(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.	361 362 363
(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.	364 365 366 367 368 369
(B) The articles may include additional provisions, consistent with law, including provisions that are required or permitted to be set forth in the bylaws.	370 371 372
(C) The articles shall be signed by the incorporators and filed with the secretary of state in accordance with section	373 374

1729.12 of the Revised Code. The articles shall be accompanied by 375
the appointment of a statutory agent in accordance with division 376
(B) of section 1729.06 of the Revised Code. The legal existence of 377
an association begins upon the filing of the articles and, unless 378
the articles provide otherwise, its period of existence is 379
perpetual. 380

Sec. 1729.08. (A) The articles of incorporation of an 381
association may be altered or amended at any regular meeting of 382
the association or at any special meeting called for that purpose, 383
provided that the text of the proposed change, or a general 384
description of the change, is contained in the notice of the 385
meeting. An amendment shall first be approved by two thirds of the 386
directors and shall then be adopted by an affirmative vote of 387
sixty per cent of the member votes cast on the amendment or, if 388
the articles provide or permit, by the affirmative vote of a 389
greater majority or by the affirmative vote of a simple majority 390
of all member votes eligible to be cast on the amendment. 391

(B) Amendments to the articles of incorporation, when so 392
adopted, shall be filed in accordance with section 1729.12 of the 393
Revised Code. 394

(C) The board of an association may adopt a restatement of 395
the articles ~~that~~ without a member vote if the restatement merely 396
incorporates amendments previously approved by the board and 397
adopted by the members. An association may, by action taken in the 398
manner required for an amendment, adopt restated articles that 399
contain amendments made at the time of the restatement. Restated 400
articles shall state that they are restated, or restated and 401
amended, if amendments are adopted with the restatement, and shall 402
supersede the existing articles and amendments. Restated articles 403
shall meet the requirements of section 1729.07 of the Revised 404
Code, except that the names and addresses of the incorporators and 405

initial directors may be omitted. A restatement of the articles 406
shall be filed in the manner prescribed for an amendment of the 407
articles. 408

(D) Except as provided in the articles of incorporation, the 409
board may adopt an amendment to the articles of incorporation 410
without a member vote in any of the following cases: 411

(1) To change the principal place of business of the 412
association; 413

(2) To designate and determine the rights and restrictions of 414
a series within a class of capital stock, if permitted by the 415
articles; 416

(3) To reduce the authorized number of shares of any class or 417
series of capital stock to any number down to and including the 418
number of the shares issued and outstanding, and to assign the 419
authorization for the number of shares so reduced to another class 420
or classes of capital stock previously authorized; 421

(4) After a merger, consolidation, conversion, division, or 422
occurrence of any other contingent event referred to in the 423
articles of incorporation, to eliminate from the articles any 424
statement or provision pertaining exclusively to the merger, 425
consolidation, conversion, division, or occurrence, and to make 426
other changes required by such elimination, but only after the 427
deleted item has been superseded in accordance with the articles 428
of incorporation or otherwise is no longer in effect. 429

Sec. 1729.11. (A) An association whose articles of 430
incorporation have been canceled or an association that has been 431
dissolved in a manner other than for a voluntary dissolution as 432
provided in section 1729.55 of the Revised Code, or a judicial 433
dissolution as provided in section 1729.61 of the Revised Code, 434
may be reinstated by filing, on a form prescribed by the secretary 435

of state for the administration of this chapter, an application 436
for reinstatement and the required appointment of a statutory 437
agent, and by paying a filing fee of ten dollars. 438

(B) Upon reinstatement of an association's articles of 439
incorporation, the rights, privileges, and franchises, including 440
all real or personal property rights and credits and all contract 441
and other rights, of the association existing at the time that its 442
articles were canceled or the dissolution became effective shall 443
~~be continued~~ continue in effect as if the articles had not been 444
canceled or the dissolution had not occurred; and the association 445
shall again be entitled to exercise the rights, privileges, and 446
franchises authorized by its articles. 447

Sec. 1729.16. (A) The initial bylaws may be adopted by the 448
association's directors who are to serve until the first ~~annual~~ 449
member meeting. After the initial bylaws are adopted, bylaws may 450
be adopted and amended only by the members unless the ~~members~~ 451
~~adopt a bylaw that permits the board to make and amend specified~~ 452
~~bylaws~~ articles or bylaws provide that the board, by a two-thirds 453
vote of the entire board, may adopt or amend the bylaws or any 454
specified bylaw. 455

(B) Any bylaw adopted or amended by the board shall be 456
reported at the next ~~regular~~ member meeting. Any bylaw adopted or 457
amended by the board shall not conflict with the association's 458
articles of incorporation or with this chapter of the Revised 459
Code. Any such bylaw is subject to amendment or repeal by the 460
members at any time. 461

(C) Unless the bylaws provide otherwise, any bylaw may be 462
adopted, amended, or repealed by a majority of the member votes 463
cast on the adoption, amendment, or repeal. 464

Sec. 1729.18. (A) An association shall have two or more 465

members. However, an association may have one member if that 466
member is ~~an association~~ a cooperative that has two or more 467
members. 468

(B) Each association shall hold an annual meeting of its 469
members. The board may call a special meeting of the members at 470
any time. Any meeting of the members may be held at one time or in 471
a series of meetings at one or more locations. 472

(C) Twenty per cent of the members entitled to vote may file 473
with the board a petition stating the specific business to be 474
brought before the association and demanding a special meeting at 475
any time for consideration of such business. Upon compliance with 476
this division, the meeting shall be called by the board. 477

(D) Notice of every meeting, together with a statement of the 478
purpose of the meeting, shall be sent to each member who is 479
entitled to vote at the meeting and any affected stockholder at 480
the member's or stockholder's current address, as shown in the 481
records of the association, at least ten days prior to the 482
meeting, in accordance with section 1729.20 of the Revised Code. 483
The bylaws may provide that the notice be given by publication in 484
a newspaper or newspapers of general circulation in the trade area 485
of the association if notice to individual members and affected 486
shareholders is impracticable. 487

Sec. 1729.19. (A) Unless prohibited in an association's 488
articles of incorporation or bylaws, any action that may be 489
authorized or taken at a meeting of the members, affected 490
stockholders, the board, or any committee of the board, may be 491
authorized or taken without a meeting, with the affirmative vote 492
or approval of, ~~and in writing or writings signed by the~~ 493
following: 494

(1) In the case of members or affected stockholders, sixty 495

per cent of the votes of the members or affected stockholders who 496
would be entitled to vote on the action at a meeting for such 497
purpose; 498

(2) In the case of the board of directors or a committee of 499
the board, all of the directors on the board or all of the 500
committee members on the committee in a writing or writings signed 501
by each of the directors or committee members. 502

(B) ~~Any such writing or writings~~ A record of action described 503
in division (A) of this section without a meeting shall be 504
included in the records of the association in the same manner as 505
minutes of meetings of the association's members, affected 506
stockholders, board, or committee of the board. 507

(C) Any certificate with respect to the authorization or 508
taking of any action without a meeting that is required to be 509
filed in the office of the secretary of state shall state that the 510
authorization or taking of such action was ~~in writing or writings~~ 511
approved and signed as provided in this section. 512

Sec. 1729.22. (A) Except where this chapter or an 513
association's articles of incorporation or bylaws require that 514
action be otherwise authorized or taken, all of the authority of 515
an association shall be exercised by or under the direction of the 516
board. The board shall consist of not less than five directors, 517
elected by and from the members, unless the number of members is 518
less than five, in which case, the number of directors may equal 519
the number of members. 520

(B) The bylaws may provide that the membership of an 521
association be divided into districts or other groupings and that 522
the directors shall be elected according to such districts or 523
groupings. In ~~such~~ that case, the bylaws shall specify the number 524
of directors to be elected and the manner of reapportioning or 525

redistricting the membership. 526

(C) The bylaws may provide that one or more directors may be 527
appointed by the other directors. The appointed directors need not 528
be members of the association, but shall have the same powers, 529
rights, and responsibilities as other directors. The appointed 530
directors shall not number more than one-fifth of the entire 531
number of directors. 532

(D) The bylaws may provide for an executive committee and may 533
allot to the executive committee any of the functions and powers 534
of the board, subject to the general direction and control of the 535
board. 536

(E) The association may provide a fair remuneration for the 537
time actually spent by its officers and directors in its service, 538
and for the services of the members of its executive committee. 539

(F) ~~When~~ Unless the bylaws provide otherwise, when a vacancy 540
on the board occurs other than by expiration of term, the 541
remaining directors on the board, by a majority vote, shall elect 542
a director to fill the vacancy. If the bylaws provide for an 543
election of directors by the members in a district or other 544
grouping, the board may call a special meeting of the members in 545
that district or group to fill the vacancy. 546

Sec. 1729.23. (A) A director shall perform the duties of a 547
director, including duties as a member of any committee of the 548
directors upon which the director serves, in good faith, in a 549
manner the director reasonably believes to be in or not opposed to 550
the best interests of the association, and with the care that an 551
ordinarily prudent person in a like position would use under 552
similar circumstances. In performing these duties, a director is 553
entitled to rely on information, opinions, reports, or statements, 554
including financial statements and other financial data, that are 555
prepared or presented by any of the following: 556

(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, 587
reports, or statements that are prepared or presented by the 588
persons described in divisions (A)(1) to (3) of this section to be 589
unwarranted. 590

(3) ~~The provisions of division~~ Division (B) of this section 591
~~de~~ does not limit relief available under section 1729.24 of the 592
Revised Code. 593

(C)(1) Subject to divisions (C)(2) and (3) of this section, a 594
director is liable in damages for any act that the director takes 595
or fails to take as director only if it is proved, by clear and 596
convincing evidence, in an action brought against the director 597
that the act or omission of the director was ~~one~~ undertaken with a 598
deliberate intent to cause injury to the association or was ~~one~~ 599
undertaken with a reckless disregard for the best interests of the 600
association. 601

(2) Division (C)(1) of this section does not affect the 602
liability of a director under section 1729.25 of the Revised Code. 603

(3) Subject to division (C)(2) of this section, division 604
(C)(1) of this section does not apply if, and only to the extent 605
that, at the time of an act or omission of the director, the 606
association's articles of incorporation or bylaws state, by 607
specific reference to division (C)(1) of this section, that its 608
provisions do not apply to the association. 609

(D) For purposes of this section and section 1729.031 of the 610
Revised Code, in determining what is reasonably believed to be in 611
or not opposed to the best interests of the association, a 612
director shall consider the purposes of the association and may 613
consider any of the following: 614

(1) The interests of the employees, suppliers, creditors, and 615
customers of the association; 616

(2) The economy of this state and of the United States; 617

(3) Community and societal matters; 618

(4) The long-term and short-term best interests of the 619
association, including, but not limited to, the possibility that 620
those interests may be best served by the continued independence 621
of the association; 622

(5) The interests of the members as patrons of the 623
association. 624

(E) Divisions (B) and (C) of this section do not affect the 625
duties of a director who acts in any capacity other than as a 626
director. 627

Sec. 1729.26. (A) The officers of an association shall 628
consist of a president, a secretary, a treasurer, and, if desired, 629
a chairperson and one or more vice chairpersons of the board, one 630
or more vice-presidents, and ~~such~~ other officers and assistant 631
officers as necessary. The officers shall be elected by the board. 632
The chairperson and any vice chairperson of the board shall be a 633
director. Unless the association's articles of incorporation or 634
bylaws provide otherwise, none of the other officers need be a 635
director. Any two or more offices may be held by the same person, 636
but no officer shall execute, acknowledge, or verify any 637
instrument in more than one capacity if the instrument is required 638
by law or by the articles or bylaws to be executed, acknowledged, 639
or verified by two or more officers. Unless the articles or the 640
bylaws provide otherwise, all officers shall be elected annually. 641

(B) All officers ~~shall~~ have the authority to perform, and 642
shall perform, the duties as the bylaws provide, or as the board 643
may determine in accordance with the bylaws. 644

Sec. 1729.28. (A) Any member of an association may bring 645
charges against an officer or director of the association by 646
filing them in writing with the secretary of the association, 647

together with a petition, signed by twenty per cent of the 648
members, requesting the removal of the officer or director in 649
question. The removal shall be voted upon at the next regular or 650
special meeting of the members of the association and, by a vote 651
of a majority of the members, the association may remove the 652
officer or director and fill the vacancy. The director or officer 653
against whom such charges are brought shall be informed in writing 654
of the charges previous to the meeting and shall have an 655
opportunity at the meeting to be heard in person or by counsel and 656
to present witnesses, and the persons bringing the charges against 657
the director or officer shall have the same opportunity. 658

(B) ~~In case~~ If the bylaws provide for election of directors 659
by ~~districts~~ the members in a district or other grouping, then the 660
petition for removal of a director must be signed by twenty per 661
cent of the members residing in the district or belonging to the 662
group from which the director was elected. The board shall then 663
call a special meeting of the members residing in that district or 664
belonging to the group to consider and vote upon the removal of 665
the director; and at such meeting, by a vote of the majority of 666
the members of that district or belonging to the group, the 667
director in question shall be removed from office. 668

Sec. 1729.35. (A) An association may merge or consolidate 669
with one or more associations under this chapter. Before an 670
association may merge or consolidate with any other association, a 671
written agreement of merger or consolidation shall be approved by 672
the board of each constituent association and by the members of 673
each constituent association. The agreement shall set forth the 674
terms of the merger or consolidation, including any provisions for 675
amendment or abandonment of the agreement. In the case of a 676
consolidation, the agreement also shall contain the articles of 677
incorporation of the new association. 678

(B)(1) If the agreement of merger or consolidation provides 679
that a holder of stock other than membership stock or patronage 680
stock in a constituent association will be affected, all of the 681
following apply: 682

(a) Unless the board of the constituent association provides 683
that division (B)(1)(b) of this section applies, the affected 684
stockholder shall be entitled to cast one vote on the agreement 685
regardless of the par or stated value, the number of shares, or 686
the number of affected classes of the stock held. 687

(b) The board of a constituent association may provide that a 688
stockholder otherwise entitled to vote under division (B)(1)(a) of 689
this section shall instead be entitled to payment of fair cash 690
value of the affected stock held by the stockholder in accordance 691
with section 1729.46 of the Revised Code. 692

(c) A member holding stock affected by a proposed agreement 693
of merger or consolidation may vote only as a member and shall not 694
be entitled to vote or demand fair cash value as an affected 695
stockholder. 696

(2) For purposes of this section, a holder of stock is 697
affected as to any class of stock owned by the holder only if the 698
agreement of merger or consolidation does any of the following: 699

(a) Decreases the dividends to which that class may be 700
entitled or changes the method by which the dividend rate on that 701
class is fixed; 702

(b) Provides for additional restriction of rights to transfer 703
shares of that class; 704

(c) Gives to another existing or any new class of stock or 705
equity interest not previously entitled thereto any preference, as 706
to dividends or upon dissolution, that is higher than preferences 707
of that class; 708

(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 739
to adoption of the agreement by the members of any constituent 740
association shall not do any of the following: 741

(1) Change the membership rights, or the amount or kind of 742
stock, securities, cash, property, or other rights to be received, 743
exchanged, or converted in the merger or consolidation; 744

(2) Change the articles of incorporation or bylaws of the 745
surviving or new association as provided for in the agreement; 746

(3) Change any provision of the agreement with respect to the 747
rights of members or the manner of voting in the surviving or new 748
association. 749

(F) After approval of an agreement under this section, but 750
before the merger or consolidation is effective, the merger or 751
consolidation may be abandoned in accordance with any provision 752
for abandonment set forth in the agreement. 753

(G) The merger or consolidation shall take effect in 754
accordance with sections 1729.37 and 1729.38 of the Revised Code. 755

Sec. 1729.36. (A) An association may merge or consolidate 756
with one or more entities, if such merger or consolidation is 757
permitted by the laws under which each constituent entity exists 758
and the association complies with this section. 759

(B) Each constituent association shall comply with section 760
1729.35 of the Revised Code with respect to form and approval of 761
an agreement of merger or consolidation, and each constituent 762
entity shall comply with the applicable provisions of the laws 763
under which it exists, except that the agreement of merger or 764
consolidation, by whatever name designated, shall comply with 765
divisions (C) and (D) of this section. 766

(C) The agreement of merger or consolidation shall set forth 767
all of the following: 768

(1) The names of the states and the laws under which each constituent entity exists;	769 770
(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;	771 772 773
(3) A statement that the surviving or new entity is to be an association, <u>a foreign association</u> , a corporation <u>other than a cooperative</u> , or <u>a</u> limited liability company;	774 775 776
(4) If the surviving or new entity is to be a foreign entity:	777
(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;	778 779 780
(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;	781 782 783 784
(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;	785 786 787 788 789
(d) If it is desired that the surviving or new entity exercise its corporate privileges in this state as a foreign entity.	790 791 792
(D) The agreement <u>also</u> may also set forth other provisions permitted by the laws of any state in which any constituent entity exists.	793 794 795
(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.	796 797 798

(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 829
shall be filed with the certificate. 830

(3) In the case of a consolidation to form a new domestic 831
association or entity, the articles of incorporation or the 832
articles of organization of the new association or entity shall be 833
filed with the certificate. 834

(4) If the surviving or new entity is a foreign entity that 835
desires to transact business in this state as a foreign entity, 836
the certificate shall be accompanied by the information required 837
for qualification of a foreign entity in this state by Chapter 838
1703. of the Revised Code, in the case of a foreign corporation or 839
foreign cooperative, or by sections 1705.53 and 1705.54 of the 840
Revised Code, in the case of a foreign limited liability company. 841

(B) A copy of the certificate of merger or consolidation, 842
certified by the secretary of state, may be filed for record in 843
the office of the county recorder of any county in this state. For 844
such recording the county recorder shall charge and collect the 845
same fee as in the case of deeds. The certified copy of the 846
certificate of merger or consolidation shall be recorded in the 847
records of deeds. 848

(C) For purposes of this section, "domestic entity" means a 849
corporation other than an association or a limited liability 850
company organized under the laws of this state. 851

Sec. 1729.42. (A) A domestic corporation that is not an 852
association may convert itself into an association by adopting an 853
amendment to its articles of incorporation in which it elects to 854
become subject to this chapter, together with any changes in its 855
articles of incorporation and bylaws required by this chapter, and 856
any other desirable changes permitted by this chapter. The 857
amendment shall be adopted, filed, and recorded in the manner 858
provided by the law under which the corporation exists. 859

(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. 892

(B) If a timely demand is delivered in accordance with this 893
section, fair cash value of the stock shall be determined and paid 894
to the stockholder in accordance with the following procedures: 895

(1) The association or the surviving, new, or resulting 896
association or entity shall send a written acknowledgment of 897
receipt of the demand for fair cash value to the address specified 898
in the demand no later than fifteen days after receipt of the 899
demand. If the board of the association or the surviving, new, or 900
resulting association or entity believes that the demand has 901
failed to comply with the requirements of this section, the 902
acknowledgment shall state any such defects. The acknowledgment 903
also shall state what the board believes to be the fair cash value 904
of the stock that is the subject of the demand. If the articles of 905
incorporation of the constituent or original association provide a 906
value for the stock upon redemption, the fair cash value of the 907
stock presumptively shall be the lesser of the redemption value or 908
the fair market value of ~~such~~ the stock immediately prior to the 909
merger, consolidation, division, or conversion. 910

(2) The stockholder shall not transfer, encumber, pledge, or 911
otherwise dispose of the stock that is the subject of the demand 912
for fair cash value, or any certificate representing ~~such~~ the 913
stock, until the demand is finally resolved by agreement, 914
withdrawal, or final judicial determination as provided in ~~this~~ 915
section 1729.47 of the Revised Code. 916

(3) If the association's articles of incorporation or bylaws 917
provide a reasonable basis for determining and paying the fair 918
cash value of the stock that is the subject of the demand for fair 919
cash value, or if the association or the surviving, new, or 920
resulting association or entity and the demanding stockholder 921
reach an agreement on the fair cash value of the stock within 922

three months after delivery of the demand for fair cash value, the 923
fair cash value of the stock shall be determined in accordance 924
with the constituent or original association's articles of 925
incorporation or bylaws, or as agreed upon, as the case may be. 926
The association shall thereupon tender payment of the fair cash 927
value so determined, ~~to be paid~~ to the stockholder within thirty 928
days of delivery of any certificates representing the stock or the 929
stockholder's written waiver and release of claim to all rights to 930
the stock to the association or the surviving, new, or resulting 931
association or entity. Without precluding other possible 932
reasonable bases for determining fair cash value of stock under 933
this section, a provision in the constituent or original 934
association's articles of incorporation or bylaws that fair cash 935
value shall be determined by final and binding arbitration, or 936
that fair cash value shall be the lesser of par value, book value, 937
or fair market value, shall be considered a reasonable basis for 938
determining and paying the fair cash value of stock. 939

(C) The right of a demanding stockholder to receive the fair 940
cash value of stock as to which the stockholder seeks relief and 941
the obligation of the association or the surviving, new, or 942
resulting association or entity to furnish the fair cash value for 943
those interests terminate if any of the following applies: 944

(1) The demanding stockholder fails to comply with this 945
section. 946

(2) The association abandons the amendment of articles, 947
merger, consolidation, division, or conversion or is finally 948
enjoined or prevented from taking such action. 949

(3) The demanding stockholder withdraws the demand for fair 950
cash value with consent of the association. 951

(4) The demanding stockholder attempts to sell, transfer, or 952
encumber the stock which is the subject of the demand prior to 953

final determination of its fair cash value under this section or 954
~~under~~ section 1729.47 of the Revised Code. 955

(5) All of the following apply: 956

(a) The articles of incorporation or bylaws of the 957
association do not provide a reasonable basis for determining and 958
paying fair cash value to an affected stockholder; 959

(b) The association and the affected stockholder have not 960
agreed upon the fair cash value of the stock which is the subject 961
of the demand; 962

(c) The affected stockholder does not file a timely complaint 963
under section 1729.47 of the Revised Code. 964

(D) The fair cash value that is agreed upon by the affected 965
stockholder and the association, or determined using a reasonable 966
basis for determining and paying fair cash value in the 967
association's articles of incorporation or bylaws, or fixed by a 968
court in a proceeding under section 1729.47 of the Revised Code, 969
shall be paid within thirty days as follows: 970

(1) Immediately to the holder of uncertificated stock; 971

(2) Upon and simultaneously with the surrender of 972
certificates representing certificated stock. 973

Sec. 1729.47. (A) If the association's articles of 974
incorporation or bylaws do not provide a reasonable basis for 975
determining and paying fair cash value of the stock that is the 976
subject of the demand for payment of fair cash value, and the 977
affected stockholder has not agreed upon a fair cash value of the 978
stock that is the subject of the demand within three months after 979
delivery of the demand for payment of fair cash value, the 980
affected stockholder, within thirty days thereafter, may file a 981
complaint for recovery of fair cash value of the stock from the 982
association or the surviving, new, or resulting association or 983

entity in the court of common pleas of the county in which the 984
principal ~~office~~ place of business of the association that issued 985
the stock is or was located. However, if the principal place of 986
business of an association is not within this state, then the 987
complaint described in this division shall be filed in the court 988
of common pleas of the county in which the association's statutory 989
agent resides. Other affected stockholders who have made timely 990
demand for payment of fair cash value may join as plaintiffs in 991
the proceeding, and any two or more proceedings commenced by 992
affected stockholders may be consolidated. The complaint shall 993
contain a brief statement of the relevant facts, including the 994
vote by members of the association, the facts entitling the 995
stockholder to relief under this section, and a demand for that 996
relief. Notwithstanding the Rules of Civil Procedure, no answer to 997
a complaint filed under this section is required. 998

(B) Upon filing the complaint and upon motion of the 999
complainant, the court shall fix a date for hearing on the 1000
complaint and require service of a notice of the complaint and the 1001
date for hearing on the defendant in the manner prescribed in the 1002
Rules of Civil Procedure for service of process. 1003

(C) On the date fixed for the hearing or any adjournment 1004
thereof, the court shall determine from the complaint and any 1005
evidence submitted at the hearing by the parties, whether the 1006
affected stockholder is entitled to the fair cash value of stock 1007
that is the subject of the demand and, if the stockholder is to be 1008
so paid, the number and class of stock for which payment is to be 1009
made. 1010

(D) If the court finds that the affected stockholder is to be 1011
paid, it may appoint one or more persons as appraisers to receive 1012
evidence as to the fair cash value. The appraisers shall have the 1013
power and authority that the court specifies in the order of 1014

appointment, and the court shall fix reasonable compensation for 1015
the appraisers. After receiving the recommendation of any 1016
appointed appraiser, or if appraisers are not appointed, the court 1017
shall make findings as to the fair cash value and render judgment 1018
for the payment of that fair cash value and interest at the rate 1019
and from the date the court considers equitable. The costs of the 1020
proceeding, including compensation of the appointed appraisers as 1021
fixed by the court, shall be assessed as the court considers 1022
equitable. 1023

(E) The proceeding on the complaint for fair cash value is a 1024
special proceeding, and final orders in it may be vacated, 1025
modified, or reversed on appeal pursuant to the Rules of Appellate 1026
Procedure and, to the extent not in conflict with those rules, 1027
Chapter 2505. of the Revised Code. 1028

Sec. 1729.49. (A) As used in this section, "substantially 1029
all" means more than two-thirds of the association's assets, 1030
measured, in the board's discretion, either by value as recorded 1031
in the books and records of the association or by fair market 1032
value. 1033

(B) Unless the articles of incorporation or the bylaws of an 1034
association otherwise provide, a lease, sale, exchange, transfer, 1035
or other disposition of any assets of an association may be made 1036
upon terms and for consideration, which may consist, in whole or 1037
in part, of money or other property, including shares or other 1038
securities or promissory obligations of any association or entity, 1039
as may be authorized by the board. If a lease, sale, exchange, 1040
transfer, or other disposition, or a series of such transactions, 1041
would dispose of all or substantially all of the assets of the 1042
association, then the disposition may be made only upon a written 1043
plan of disposition prepared by the board or by a committee 1044
selected by the board for that purpose, and adopted in the same 1045

manner as provided for the adoption of a resolution of dissolution 1046
in section 1729.55 of the Revised Code. A plan of disposition 1047
shall set forth a general description or summary of the assets 1048
subject to disposition,i the method of disposition,i the intended 1049
transferee of the assets, if known to the board ~~of directors,~~i and 1050
a general description of any material effect the board believes 1051
the disposition will have on the interests of the members and 1052
stockholders. Notice of a meeting of the members at which a plan 1053
of disposition will be voted on shall be given to all members, 1054
whether or not entitled to vote at the meeting. ~~Such~~ The notice 1055
shall be accompanied by a copy or summary of the plan of 1056
disposition and a ballot for those members entitled to vote on the 1057
plan. 1058

(C) The association, by its board, may abandon a plan of 1059
disposition, subject to the contract rights of other persons, if 1060
the power of abandonment is conferred upon the board either by the 1061
terms of the transaction or in the plan of disposition. 1062

(D) An action to set aside a disposition of assets by an 1063
association, on the ground that any section of the Revised Code 1064
applicable to the lease, sale, exchange, transfer, or other 1065
disposition of all or substantially all the assets of ~~such~~ the 1066
association has not been complied with, shall be brought within 1067
ninety days after such transaction, or ~~such~~ the action ~~shall be~~ is 1068
forever barred. 1069

Sec. 1729.55. (A) An association may be dissolved voluntarily 1070
in the manner provided in this section. 1071

(B) A resolution of dissolution for an association shall 1072
state both of the following: 1073

(1) That the association elects to be dissolved; 1074

(2) Any additional provision considered necessary with 1075

respect to the proposed dissolution and winding up. 1076

(C) Before subscriptions for membership and any stock or 1077
other ownership interest have been received, the incorporators or 1078
a majority of the incorporators may adopt, by a writing signed by 1079
them, a resolution of dissolution. 1080

(D) The directors may adopt a resolution of dissolution in 1081
the following cases: 1082

(1) When the association has been adjudged bankrupt or has 1083
made a general assignment for the benefit of creditors; 1084

(2) By leave of the court, when a receiver has been appointed 1085
in a general creditors' suit or in any suit in which the affairs 1086
of the association are to be wound up; 1087

(3) When substantially all of the assets have been sold at 1088
judicial sale or otherwise; 1089

(4) When the articles of incorporation have been canceled for 1090
failure to file annual franchise or excise tax returns or for 1091
failure to pay franchise or excise taxes and the association has 1092
not been reinstated or does not desire to be reinstated; 1093

(5) When the period of existence of the association specified 1094
in its articles has expired. 1095

(E) At a meeting held for such purpose, the members may adopt 1096
a resolution of dissolution by the affirmative vote of sixty per 1097
cent of the member votes cast on ~~such~~ the proposal or, if the 1098
articles provide or permit, by the affirmative vote of a greater 1099
or lesser proportion, though not less than a majority, of ~~such~~ the 1100
voting power, of any particular class as is required by the 1101
articles of incorporation. Notice of the meeting of the members 1102
shall be given to all members and stockholders whether or not 1103
entitled to vote. 1104

(F) Upon the adoption of a resolution of dissolution, a 1105

certificate shall be filed with the secretary of state, on a form 1106
prescribed by the secretary of state, stating all of the 1107
following: 1108

(1) The name of the association; 1109

(2) A statement that a resolution of dissolution has been 1110
adopted, its manner of adoption, and, in the case of its adoption 1111
by the incorporators or directors, a statement of the basis for 1112
such adoption; 1113

(3) The place ~~in this state~~ where the association's principal 1114
~~office~~ place of business is located; 1115

(4) The names and addresses of the association's directors 1116
and officers, or if the resolution of dissolution is adopted by 1117
the incorporators, the names and addresses of the incorporators; 1118

(5) The name and address of the association's statutory 1119
agent. 1120

(G) ~~Such~~ The certificate described in division (F) of this 1121
section shall be signed as follows: 1122

(1) When the resolution of dissolution is adopted by the 1123
incorporators, the certificate shall be signed by not less than a 1124
majority of the incorporators; 1125

(2) When the resolution is adopted by the directors or by the 1126
members, the certificate shall be signed by any authorized 1127
officer. However, if no authorized officer executes and files ~~such~~ 1128
the certificate within thirty days after the adoption of the 1129
resolution or upon any date specified in the resolution as the 1130
date upon which ~~such~~ the certificate is to be filed or upon the 1131
expiration of any period specified in the resolution as the period 1132
within which ~~such~~ the certificate is to be filed, whichever is 1133
latest, the certificate of dissolution may be signed by any three 1134
members, or if there are less than three members, ~~then~~ by all of 1135

the members, and shall set forth a statement that the persons 1136
signing the certificate are members and are filing the certificate 1137
because of the failure of an authorized officer to do so. 1138

(H) A certificate of dissolution, filed with the secretary of 1139
state, shall be accompanied by all of the following: 1140

(1) An affidavit of one or more of the persons executing the 1141
certificate of dissolution or of any authorized officer of the 1142
association containing a statement of the counties, if any, in 1143
this state in which the association has personal property or a 1144
statement that the association is of a type required to pay 1145
personal property taxes to state authorities only; 1146

(2) A receipt, certificate, or other evidence showing the 1147
payment of all franchise, sales, use, and highway use taxes 1148
accruing up to the date of ~~such the~~ filing, or that ~~such~~ payment 1149
adequately has been ~~adequately~~ guaranteed; 1150

(3) A receipt, certificate, or other evidence showing the 1151
payment of all personal property taxes accruing up to the date of 1152
~~such the~~ filing; 1153

(4) A receipt, certificate, or other evidence from the 1154
director of job and family services showing that all contributions 1155
due from the association as an employer have been paid, ~~or~~ that 1156
~~such~~ payment adequately has been ~~adequately~~ guaranteed, or that 1157
the association is not subject to such contributions; 1158

(5) A receipt, certificate, or other evidence from the bureau 1159
of workers' compensation showing that all premiums due from the 1160
association as an employer have been paid, ~~or~~ that ~~such~~ payment 1161
adequately has been ~~adequately~~ guaranteed, or that the association 1162
is not subject to such premium payments; 1163

(6) In lieu of the receipt, certificate, or other evidence 1164
described in division (H)(2), (3), (4), or (5) of this section, an 1165
affidavit of one or more persons executing the certificate of 1166

dissolution or of any authorized officer of the association 1167
containing a statement of the date upon which the particular 1168
department, agency, or authority was advised in writing of the 1169
scheduled date of filing of the certificate of dissolution and was 1170
advised in writing of the acknowledgment by the association of the 1171
applicability of section 1729.25 of the Revised Code. 1172

(I) Upon the filing of a certificate of dissolution and the 1173
accompanying documents required by division (H) of this section, 1174
the association shall be dissolved. 1175

Sec. 1729.56. Following the filing of the certificate of 1176
dissolution, the directors, members, or ~~the~~ incorporators who 1177
filed the certificate, as the case may be, shall cause a notice of 1178
voluntary dissolution to be published once a week on the same day 1179
of each week for two successive weeks, in a newspaper published 1180
and of general circulation in the county in which the principal 1181
~~office~~ place of business of the association was to be or is 1182
located, and shall cause written notice of dissolution to be given 1183
to all known creditors of, and to all known claimants against, the 1184
dissolved association. 1185

Sec. 1729.58. (A) When an association is dissolved 1186
voluntarily, when the articles of incorporation of an association 1187
have been canceled, when a final order of a court of common pleas 1188
is made dissolving an association under section 1729.59 of the 1189
Revised Code, or when the period of existence of the association 1190
specified in its articles of incorporation has expired, the 1191
association shall cease to carry on business and shall do only 1192
such acts as are required to wind up its affairs, or to obtain 1193
reinstatement of the articles in accordance with section 1729.11 1194
of the Revised Code. 1195

(B) Any claim existing or action or proceeding pending by or 1196

against the association or which would have accrued against it may 1197
be prosecuted to judgment, with right of appeal as in other cases, 1198
but any proceeding, execution, or process, or the satisfaction or 1199
performance of any order, judgment, or decree, may be stayed as 1200
provided in section 1729.59 of the Revised Code. 1201

(C) Any process, notice, or demand against the association 1202
may be served by delivering a copy to an officer, director, 1203
liquidator, or person having charge of its assets or, if no such 1204
person can be found, to the statutory agent. 1205

(D) The directors of the association or their successors 1206
shall act as a the board of directors in accordance with the 1207
articles of incorporation and bylaws until the affairs of the 1208
association are completely wound up. Subject to the orders of 1209
courts of this state having jurisdiction over the association, the 1210
directors shall proceed as speedily as is practicable to a 1211
complete winding up of the affairs of the association and, to the 1212
extent necessary or expedient to that end, shall exercise all the 1213
authority of the association. Without limiting the generality of 1214
such authority, the directors may fill vacancies_{7i} elect 1215
officers_{7i} carry out contracts of the association_{7i} make new 1216
contracts_{7i} borrow money_{7i} mortgage or pledge the property of the 1217
association as security_{7i} sell its assets at public or private 1218
sale_{7i} make conveyances in the association's name_{7i} lease real 1219
estate for any term, including ninety-nine years renewable 1220
forever_{7i} settle or compromise claims in favor of or against the 1221
association_{7i} appoint or employ one or more persons as liquidators 1222
to wind up the affairs of the association with ~~such~~ authority as 1223
the directors see fit to grant_{7i} cause the title to any of the 1224
assets of the association to be conveyed to such liquidators for 1225
that purpose_{7i} apply assets to the payment of obligations_{7i} and, 1226
after paying or adequately providing for the payment of all known 1227
obligations of the association, distribute the remainder of the 1228

assets either in cash or in kind among the members, patrons, and 1229
stockholders according to their respective rights and interests. 1230
In addition, the directors may perform all other acts necessary or 1231
expedient to the winding up of the affairs of the association. 1232

(E) The directors, or any liquidator to whom the directors 1233
grant such authority, in the course of winding up the 1234
association's affairs, shall apply the assets of the association 1235
in the following order: 1236

(1) To expenses incidental to winding up the association's 1237
affairs; 1238

(2) To all legally enforceable liabilities and obligations of 1239
the association due claimants and creditors; 1240

(3) To the stockholders, members, and patrons of the 1241
association as provided in the association's articles of 1242
incorporation or bylaws. 1243

(F) Without limiting the authority of the directors, any 1244
action within the purview of this section that is authorized or 1245
approved at a meeting of the members by sixty per cent of the 1246
member votes cast thereon shall be conclusive for all purposes 1247
upon all members, patrons, and stockholders of the association. 1248

~~(F)~~(G) All deeds and other instruments of the association 1249
shall be in the name of the association and shall be executed, 1250
acknowledged, and delivered by the officers appointed by the 1251
directors. 1252

~~(G)~~(H) At any time during the winding up of its affairs, the 1253
association by its directors may make application to the court of 1254
common pleas of the county in this state in which the principal 1255
~~office~~ place of business of the association is located to have the 1256
winding up continued under supervision of the court, as provided 1257
in section 1729.59 of the Revised Code. However, if the 1258
association has no principal place of business in this state, the 1259

application described in this division may be made to a court of 1260
common pleas in the county in this state where the statutory agent 1261
resides. 1262

Sec. 1729.59. (A) Without limiting the generality of its 1263
authority and subject to division (B) of this section, the court 1264
of common pleas of the county in this state in which is located 1265
the principal ~~office~~ place of business of a voluntarily dissolved 1266
association or of an association whose articles have been canceled 1267
or whose period of existence has expired, upon the complaint of 1268
the association, or a majority of the directors, or ten per cent 1269
of the members or twenty members, whichever is less, and upon such 1270
notice to all the directors and ~~such~~ other persons interested as 1271
the court considers proper, at any time may order and adjudge any 1272
of the following matters: 1273

(1) The presentation and proof of all claims and demands 1274
against the association and of all rights, interests, or liens in 1275
or on any of its property; the fixing of the time and the manner 1276
in which such proof shall be made and the person to whom ~~such~~ 1277
presentation shall be made; and the barring from participation in 1278
any distribution of assets of all persons failing to make and 1279
present proofs as required by the order of the court; 1280

(2) The stay of the prosecution of any proceeding against the 1281
association or involving any of its property, ~~and~~; the requirement 1282
that the parties to the proceeding present and prove their claims, 1283
demands, rights, interests, or liens at the time and in the manner 1284
required of creditors or others; or the grant of leave to bring or 1285
maintain an independent proceeding to enforce liens; 1286

(3) The settlement or determination of all claims of every 1287
nature against the association or any of its property; the 1288
determination of the assets required to be retained to pay or 1289
provide for the payment of such claims or any claim; the 1290

determination of the assets available for distribution among and 1291
rights of members, patrons, and stockholders; and the making of 1292
new parties to the proceeding so far as the court considers proper 1293
for the determination of all matters; 1294

(4) The presentation and filing of intermediate and final 1295
accounts of the directors or of the liquidators and hearings on 1296
them; the allowance, disallowance, or settlement of the accounts; 1297
and the discharge of the directors, the liquidators, or any of 1298
them from their duties and liabilities; 1299

(5) The appointment of a special master commissioner to hear 1300
and determine any ~~such~~ matters with ~~such~~ authority as the court 1301
considers proper; 1302

(6) The filling of any vacancies in the number of directors 1303
or liquidators when the directors are unable to act on the 1304
vacancies for want of a quorum or for any other reason; 1305

(7) The appointment of a receiver, in accordance with the 1306
usage of a court in equitable matters, to wind up the affairs of 1307
the association, to take custody of any of its property, or for 1308
any other purpose; 1309

(8) The issuance or entry of any injunction or any other 1310
order that the court considers proper in the administration of the 1311
trust involved in the winding up of the affairs of the association 1312
and the giving of notice of the entry of injunction or order; 1313

(9) The allowance and payment of compensation to the 1314
directors or any of them, to liquidators, to a receiver, to the 1315
attorney for the complainant, or to any person properly rendering 1316
services beneficial to the association or to those interested in 1317
it; 1318

(10) The entry of a judgment or decree that, if it so 1319
provides, may operate as the deed or other instrument ordered to 1320
be executed, or the appointment of a master to execute such deed 1321

or instrument in the name of the association with the same effect 1322
as if executed by an authorized officer pursuant to authority 1323
conferred by the directors or the members, patrons, and 1324
stockholders of the association, whenever there is no officer or 1325
agent competent to execute such deed or instrument, whenever the 1326
association or its officers do not perform or comply with a 1327
judgment or decree of court, or whenever the court considers it 1328
proper. 1329

(B) If the association has no principal place of business in 1330
this state, without limiting the generality of its authority, the 1331
court of common pleas in the county in this state where the 1332
statutory agent resides may order and adjudge the matters 1333
described in division (A) of this section. 1334

(C) A judicial proceeding under this section concerning the 1335
winding up of the affairs of an association is a special 1336
proceeding, and final orders in the proceeding may be vacated, 1337
modified, or reversed on appeal pursuant to the Rules of Appellate 1338
Procedure and, to the extent not in conflict with those rules, 1339
Chapter 2505. of the Revised Code. 1340

Sec. 1729.61. (A) An association may be dissolved judicially 1341
and its affairs wound up by an order of the court of common pleas 1342
of the county in this state in which the association has its 1343
principal ~~office~~ place of business, in an action brought by the 1344
members having sixty per cent of the voting power of the 1345
association on such proposal, or the holders of ~~such a~~ lesser 1346
proportion as are entitled by the articles of incorporation to 1347
dissolve the association voluntarily, when it is established that 1348
it is beneficial to the members, patrons, and stockholders that 1349
the association be judicially dissolved. However, if the 1350
association has no principal place of business in this state, the 1351
court of common pleas in the county in this state where the 1352

statutory agent resides may dissolve and wind up the affairs of an 1353
association in accordance with this division. 1354

(B) A complaint for judicial dissolution shall be verified by 1355
any of the complainants and shall set forth facts showing that the 1356
case is as specified in this section. Unless the complainants set 1357
forth in the complaint that they are unable to annex a list of 1358
members, patrons, or stockholders, a schedule shall be annexed to 1359
the complaint setting forth the name and address of each member, 1360
patron, and stockholder, if it is known, or the fact that it is 1361
not known. 1362

(C) Upon the filing of a complaint for judicial dissolution, 1363
the court with which it is filed shall have power to issue 1364
injunctions⁷ⁱ to appoint a receiver with such authority and duties 1365
as the court from time to time may direct⁷ⁱ to take ~~such~~ other 1366
proceedings as may be necessary to protect the property or the 1367
rights of the members, patrons, and stockholders⁷ⁱ and to carry on 1368
the business of the association until a full hearing can be 1369
conducted. Upon or after the filing of a complaint for judicial 1370
dissolution, the court, by injunction or order, may stay the 1371
prosecution of any proceeding against the association or involving 1372
any of its property and require the parties to the proceeding to 1373
present and prove their claims, demands, rights, interests, or 1374
liens, at the time and in the manner required of creditors or 1375
others. The court may refer the complaint to a special master 1376
commissioner. 1377

(D) After a hearing upon such notice as the court ~~may direct~~ 1378
directs to be given to all parties to the proceeding and to any 1379
other parties in interest designated by the court, a final order 1380
based either upon the evidence, or upon the report of the special 1381
master commissioner if one has been appointed, shall be made 1382
dissolving the association or dismissing the complaint. An order 1383

or judgment for the judicial dissolution of an association shall 1384
contain a concise statement of the proceedings leading up to the 1385
order or judgment, the name of the association, the place ~~in this~~ 1386
~~state~~ where its principal ~~office~~ place of business is located, the 1387
names and addresses of its directors and officers, the name and 1388
address of a statutory agent, and, if desired, ~~such~~ other 1389
provisions with respect to the judicial dissolution and winding up 1390
as are considered necessary or desirable. A certified copy of ~~such~~ 1391
the order shall be filed in the office of the secretary of state, 1392
whereupon the association shall be dissolved. To the extent 1393
consistent with orders entered in such proceeding, the effect of 1394
~~such~~ judicial dissolution shall be the same as in the case of 1395
voluntary dissolution, and the provisions of sections 1729.58, 1396
1729.59, and 1729.60 of the Revised Code relating to the authority 1397
and duties of directors during the winding up of the affairs of an 1398
association dissolved voluntarily, with respect to the 1399
jurisdiction of courts over the winding up of the affairs of an 1400
association, and with respect to receivers for winding up the 1401
affairs of an association, shall be applicable to associations 1402
judicially dissolved. 1403

(E) A proceeding under this section for judicial dissolution 1404
of an association is a special proceeding, and final orders in it 1405
may be vacated, modified, or reversed on appeal pursuant to the 1406
Rules of Appellate Procedure and, to the extent not in conflict 1407
with those rules, Chapter 2505. of the Revised Code. 1408

Sec. 1729.69. (A) No handler shall commit an unfair marketing 1409
practice, as defined in division (B) of this section, whenever a 1410
marketing cooperative has been authorized by its members to 1411
bargain on behalf of its members for sales contracts with the 1412
handler and any of the following conditions exist: 1413

(1) Members of the marketing cooperative are obligated to 1414

produce and deliver agricultural products or produce under sales 1415
contracts negotiated by the marketing ~~association~~ cooperative. 1416

(2) Members of the marketing cooperative represent, on the 1417
yearly average calculated over the immediate two preceding 1418
calendar years, at least fifty-one per cent of the producers who 1419
delivered ~~such~~ agricultural products or produce to the specified 1420
facility of the handler under sales contracts. 1421

(3) Members of the marketing cooperative delivered, under 1422
sales contracts, on the yearly average calculated over the 1423
immediate two preceding calendar years, at least fifty per cent of 1424
the total amount of ~~such~~ agricultural products delivered to ~~such~~ 1425
the specified facility of the handler under sales contracts. 1426

(4) The marketing cooperative, if requested by the handler, 1427
presents to the handler copies of the agreements with its members 1428
authorizing the marketing cooperative to bargain on behalf of its 1429
members for sales contracts for the agricultural products that are 1430
the subject of the sales contract under negotiation. 1431

(B) For purposes of this section, it is an unfair marketing 1432
practice if either of the following applies: 1433

(1) If the handler or the marketing cooperative that is 1434
bargaining fails to bargain in good faith in negotiating sales 1435
contracts for agricultural products to be delivered to a facility 1436
of the handler; 1437

(2) If a handler enters into a sales contract directly with a 1438
producer, pertaining to agricultural products to be delivered to 1439
the same facility, with the intent to cause the marketing 1440
cooperative to fail to meet the conditions set forth in divisions 1441
(A)(2) and (3) of this section. 1442

Sec. 1729.85. Membership stock and patronage stock of ~~an~~ 1443
~~association~~ a cooperative are not to be considered securities 1444

under Chapter 1707. of the Revised Code. 1445

Section 2. That existing sections 1729.01, 1729.02, 1729.03, 1446
1729.04, 1729.06, 1729.07, 1729.08, 1729.11, 1729.16, 1729.18, 1447
1729.19, 1729.22, 1729.23, 1729.26, 1729.28, 1729.35, 1729.36, 1448
1729.38, 1729.42, 1729.46, 1729.47, 1729.49, 1729.55, 1729.56, 1449
1729.58, 1729.59, 1729.61, 1729.69, and 1729.85 of the Revised 1450
Code are hereby repealed. 1451