



# Ohio Legislative Service Commission

## 122nd House Bill Analysis

### H.B. 600

122nd General Assembly  
(As Introduced)

**Reps. Householder, Carey, Grendell, Reid, Ogg, Buchy, Garcia, Gardner, Padgett, Haines, Logan, Terwilleger, Harris, Metzger, Vesper, Weston**

- Revises the law governing agricultural cooperatives and makes it applicable to all types of cooperatives.
- Eliminates the law governing consumer's cooperatives and worker-owned cooperatives, bringing those cooperatives under the general cooperative law created by the bill.
- Eliminates law stating that, unless in conflict with the law governing agricultural cooperatives, the general corporation law and certain provisions of the law governing nonprofit corporations apply to cooperatives.
- Makes changes to definitions applicable to the law governing cooperatives and to certain definitions in the dairy law.
- Expands the purposes for which a cooperative may be organized and somewhat broadens the powers of a cooperative.
- Requires a cooperative to have and maintain a statutory agent.
- Makes changes regarding information that must be contained in a cooperative's articles of incorporation and the means by which the articles may be amended.
- Establishes procedures for reinstatement of canceled articles of incorporation of a cooperative.
- Makes changes regarding the adoption, amendment, and contents of the bylaws of a cooperative.
- Establishes provisions governing the duty of care a director of a cooperative owes to the cooperative in the performance of his duties as a director.
- Eliminates the requirement that, in certain circumstances, a cooperative's entire membership must decide, at the request of the board of directors, on matters of policy approved by the board.
- Makes changes to provisions governing the officers of a cooperative.
- Establishes that, under certain circumstances, contracts or transactions of a cooperative in which a director or officer of the cooperative is an interested party are not void or voidable.
- Increases the number of members of a cooperative needed to sign a petition to bring charges against an officer or director of the cooperative.
- Establishes voting procedures for members of a cooperative and makes changes to procedures governing meetings of such members.
- Establishes provisions regarding the means by which notice may be provided under the bill.
- Establishes that members, directors, and officers of a cooperative are not personally liable



for the cooperative's obligations and establishes provisions governing the joint and several liability of directors of a cooperative.

- Establishes provisions governing keeping and examination of a cooperative's records.
- Authorizes and establishes provisions governing the merger and consolidation of two or more cooperatives, division of a cooperative into two or more cooperatives, and conversion of a domestic corporation into a cooperative and vice versa.
- Establishes a time period within which an action to set aside a merger, consolidation, division, or conversion of a cooperative must be brought.
- Establishes provisions governing the determination and payment of the fair cash value of stock to a stockholder entitled to such payment under the bill, along with provisions governing the termination of a stockholder's right to receive the fair cash value of stock.
- Establishes provisions governing disposition of a cooperative's assets, dissolution of a cooperative, and winding up the affairs of a dissolved cooperative.
- Makes changes to provisions that govern marketing agreements made by a cooperative and prohibit certain unfair marketing practices, and increases the penalties for engaging in an unfair marketing practice.
- Broadens the scope of other organizations in which a cooperative may participate or have an interest.
- Specifies that membership stock and patronage stock of a cooperative are not securities.
- Applies the bill's provisions to all cooperatives, whether organized prior to the bill's effective date or after that date.

## **CONTENT AND OPERATION**

### **Overview**

Current law contains provisions governing agricultural cooperatives, which are referred to in this analysis as "the law governing agricultural cooperatives." It also contains separate provisions eliminated by the bill that govern consumer's cooperatives and worker-owned cooperatives. The bill revises the law governing agricultural cooperatives, creating a more general "Ohio Cooperative Law," which applies to all types of cooperatives.

Unlike current law, the Ohio Cooperative Law created by the bill consolidates the law governing cooperatives into one Revised Code Chapter. Under current law eliminated by the bill, the law governing agricultural cooperatives is supplemented by reference by the general corporation law and certain provisions of the law governing nonprofit corporations, except when those laws conflict with the law governing agricultural cooperatives. The bill creates and applies specifically to cooperatives many provisions that are similar to the general corporation law and certain provisions of the law governing nonprofit corporations. Examples of such provisions involve topics such as dissolution of a cooperative, reinstatement of a cooperative's canceled articles of incorporation, the duty of care and liability of a director of a cooperative, and the merger and consolidation of a cooperative. In addition, the bill establishes provisions, which are modeled after provisions in the law governing limited liability companies, governing the determination and payment of the fair cash value of stock to certain stockholders.

The bill retains and makes changes to many provisions of current law governing agricultural cooperatives. Because the bill repeals and reenacts these provisions, it is difficult to discern by reading the bill instances in which current law provisions have been retained or changed and instances in which the bill establishes new provisions. This analysis will attempt to clarify which language in the bill is truly new and which language has been carried over from existing law.

### **Definitions**

(new sec. 1729.01; secs. 1729.01 and 1729.191 (repealed))

The bill makes changes to several definitions in current law, as described below.

The bill defines "agricultural products" as aquacultural, horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products, and the produce or byproducts of any of such products. This is broader than current law, which does



not include aquaculture or byproducts in the definition.

Under the bill, "association" means any corporation organized under the Ohio Cooperative Law. This is broader than current law, which includes only agricultural cooperatives in the definition.

The bill defines "bargaining" as 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. This definition is substantively identical to current law.

The bill defines "cooperative" as an association or a foreign association. This differs significantly from current law, which applies to agricultural cooperatives and defines "cooperative" as any corporation organized under the law governing agricultural cooperatives, controlled by and operated for producers, and meeting the requirements of the federal "Cooperative Marketing Associations Act" which 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.

The bill defines "handler" as a person who acquires agricultural products under a sales contract for the purpose of processing or reselling the agricultural products. This is broader than current law, which defines "handler" as a person who acquires fruits or vegetables under a sales contract for the purpose of processing such fruits or vegetables.

The bill defines "member" as a person who has been qualified and accepted into membership in an association. This differs from current law, which defines "member" as actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

The bill defines "person" to include a natural person, partnership, corporation, cooperative, or other entity. This differs from current law, which defines "person" to include individuals, firms, partnerships, corporations, and associations.

Under the bill, "processing" means changing the physical or chemical characteristics of agricultural products. This is broader than current law, which defines "processing" as changing the physical or chemical characteristics of fruits or vegetables by operations such as cooking, freezing, or canning. Under current law, "processing" does not include cleaning, grading, or packaging.

The bill defines "sales contract" as 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. This is broader than current law, which defines "sales contract" as an agreement between a handler and a producer, negotiated by the producer or by a cooperative acting as agent for a producer, under which the producer agrees to grow or produce fruits or vegetables in this state for sale as raw agricultural products to the handler, and the handler agrees to buy such fruits or vegetables.

The bill also creates several new definitions, as described below.

"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 50% of the voting control of the cooperative.
- (3) The cooperative does at least 50% of its business with producers or agricultural cooperatives.

"Board" means the board of directors of an association.

"Corporation" means any corporation, domestic or foreign, that is not a cooperative.

"Entity," except as otherwise provided, means a foreign association, a corporation, or a foreign or domestic limited liability company.

"Foreign association" means a corporation organized under the cooperative laws of another state or the District of Columbia or a corporation organized under the law of another state or the District of Columbia and operating on a cooperative basis.

"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.



"Marketing cooperative" means any agricultural cooperative meeting the requirements of the federal "Co-operative Marketing Associations Act" 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.

"Membership stock" means any class of stock or other equity interest in an association, continuous ownership of which is required for membership in an association.

"Patronage stock" means any stock or other equity interest in an association that was originally issued by the association with respect to patronage transactions.

"Producer" means a person engaged in the production of agricultural products for the market, including a lessor of land who receives as rent part of the agricultural product of such land.

### **Elimination of current law applying general corporation law to agricultural cooperatives**

(sec. 1729.27 (repealed))

Law eliminated by the bill specifies that the general corporation law and certain provisions of the law governing nonprofit corporations, and all powers and rights under such law, apply to an association organized under the law governing agricultural cooperatives, except where the general corporation law and nonprofit corporation law are in conflict with the law governing agricultural cooperatives.

### **Elimination of current law governing consumers' cooperatives and worker-owned cooperatives**

(secs. 1729.28 and 1729.30 through 1729.37 (repealed))

The bill eliminates law governing consumers' cooperatives and worker-owned cooperatives, bringing those cooperatives under the Ohio Cooperative Law created by the bill.

### **Purposes of association**

(sec. 1792.02)

Under the bill, the purposes for which an association may be organized are much broader than under current law, which applies only to agricultural cooperatives. The bill authorizes an association to be organized under the Ohio Cooperative Law for any lawful purpose permitted to corporations by the laws of this state, except any such purpose that is inconsistent with the provisions of the Ohio Cooperative Law or any other chapters of Title XVII of the Revised Code, which governs corporations and partnerships. This provision does not authorize any professional services otherwise prohibited by law.

Law eliminated by the bill authorizes an association to be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping, or utilization of such products, or with the manufacturing or marketing of the by-products of such products; to engage in any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies of any kind; to engage in services in connection with activities authorized by the law governing agricultural cooperatives; or to engage in the financing of any of those activities. Such association may be organized to engage in any one or more of such activities, but is not authorized to engage in any professional services otherwise prohibited by law.

The bill adds a new provision requiring associations to be 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. In addition, the bill states that Revised Code Chapter 1729. shall be known as the "Ohio Cooperative Law."

### **Powers of association**

(sec. 1729.03; sec. 1729.21 (repealed))

The bill retains a few provisions, but eliminates the majority of provisions of current law governing powers of associations and replaces them with new, somewhat broader provisions.

The bill eliminates the following provisions stating that each association incorporated under the Ohio Cooperative Law has the following powers:

(1) It may engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any agricultural products produced or



delivered to it by its members or others, or with the manufacturing or marketing of the by-products of such products; any activities in connection with the purchase, sale, hiring, or use, by its members or others, of supplies, machinery, or equipment of any kind; may engage in services in connection with any activities authorized by the law governing agricultural cooperatives or may engage in the financing of such activities. Such association may engage in any one or more of the activities specified as being a power of an association, except for any professional services otherwise prohibited by law.

Any such association may limit its activities to the handling or the marketing of products of its own members, except for storage. If it handles the products of nonmembers, the total of such nonmembers' products handled by it in any fiscal year must not exceed the total of similar products handled by the association for its own members during the same period.

(2) It may borrow money without limitation as to amount of corporate indebtedness or liability except in the case of associations organized with capital stock, and may make advance payments and other advances to members or others.

(3) It may act as the agent or representative of any members in any of the activities mentioned in (1) and (2).

(4) It may purchase, otherwise acquire, hold, own, exercise all rights of ownership in, sell, transfer, pledge, guarantee the payment of dividends or interest on, or guarantee the retirement or redemption of shares of capital stock or bonds of any corporation or association engaged in any activity directly related to the association's own authorized activities or in the warehousing, handling, or marketing of any of the products handled by the association.

(5) It may establish reserves and invest the funds thereof in bonds or in such other property as is provided in the bylaws.

The bill retains current law provisions authorizing an association to do the following:

(1) 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; and

(2) Establish, secure, own, and develop patents, trademarks, and copyrights.

The bill creates new language stating that an association may do the following:

**(1) Make contracts, incur liabilities, and borrow money; issue capital stock and certificates representing equity interests or indebtedness; 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.**

(2) Invest its funds, lend money for its purposes, and hold any property as security for repayment.

(3) Act as the agent or representative of any members in any activities authorized by the Ohio Cooperative Law.

(4) Conduct its business and affairs, have offices, and exercise its power in the United States or in any foreign country.

(5) Establish reserves and invest these funds.

(6) Notwithstanding the law governing unclaimed funds, effect the forfeiture of any unclaimed funds, including any unclaimed stocks 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 and a request for written acknowledgment from the owner to the association are evidence of a bona fide attempt to deliver the unclaimed funds to the owner. If the notice is not acknowledged within 30 days after the notice is sent or within the period specified in the notice, if longer, all such unclaimed funds specified in the notice are thereafter forfeited and become the property of the association.

(7) Make donations for charitable, scientific, educational, community development, or religious purposes, and use all or part of the funds forfeited to the association under (6), directly above, for these purposes.

The bill retains current law authorizing an association to do everything necessary, suitable, or proper for the accomplishment of any of the purposes enumerated in provisions conferring authority on associations. The retained law also authorizes an association to 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 the Ohio Cooperative Law.

The bill eliminates law authorizing an association to pay for purchases in preferred stock. The repealed language states that if an association, organized with preferred capital stock, purchases the stock of, any property of, or any interest in any property of any person, it may discharge the obligations so incurred wholly or in part by exchanging, for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal the fair market value of such acquired interest, as such fair market value is determined by the board of directors. In addition, the eliminated language



states that the transfer to the association of the interest so purchased is equivalent to payment in cash for the shares of stock so issued.

### **Use of the word "co-operative"**

(new sec. 1729.04; sec. 1729.04 (repealed); sec. 1729.99(A))

The bill creates a requirement that any association organized under the Ohio Cooperative Law include the word or abbreviation "cooperative," "coop," "co-operative," "co-op," "association," "assn.," "company," "co.," "incorporated," "inc.," "corporation," or "corp."

Law eliminated by the bill prohibits any person, firm, corporation, or association organized or applying to do business in this state on or after July 17, 1923, as a farmer's marketing association for the sale of farm products from using the word "co-operative" as a part of its corporate or other business name or title, unless it has complied with the law governing agricultural cooperatives.

The bill contains a similar prohibition which is broader because it applies to all cooperatives and not just agricultural cooperatives, and narrower because it does not apply to a corporation, association, or other person organized and operating under the law governing nonprofit corporations in this state, or the cooperative law of another state or of the United States. The bill prohibits any corporation, association, or other person organized or applying to do business in this state from using 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 the Ohio Cooperative Law.
- (2) It is organized and operating on a cooperative basis under the law governing nonprofit corporations.
- (3) It is organized and operating in accordance with the cooperative laws of another state, the District of Columbia, or the United States.

The bill creates a penalty for violation of the above prohibition. A violator will be fined not less than \$500 nor more than \$2,500 for each offense.

### **Number of incorporators**

(sec. 1729.06; sec. 1729.05 (renumbered))

Current law authorizes five or more persons, a majority of whom are residents of this state and engaged in the production of agricultural products, to form a nonprofit co-operative association, with or without capital stock, under sections of the law governing agricultural cooperatives.

The bill reduces the number of persons needed to form an association from five to two, eliminates the requirement that a majority of them be residents of this state and engaged in the production of agricultural products, and eliminates the language concerning capital stock. The bill also requires the association to be formed under the Ohio Cooperative Law, rather than the law governing agricultural cooperatives.

### **Statutory agent**

(sec. 1729.06(B))

The bill requires every association to 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.

Whenever appointment or designation of a statutory agent is required by the Ohio Cooperative Law, the appointment or designation must be on a form prescribed by the Secretary of State and must conform with provisions in the law governing nonprofit corporations regarding statutory agents.

### **Articles of incorporation**

#### **Contents**

(new secs. 1729.07 and 1729.10(A); sec. 1729.06 (repealed))

The bill sets forth requirements regarding what must be contained in an association's articles of incorporation that differ in some respects from requirements in current law. Both current law and the bill require the articles of incorporation to contain the following:



(1) The name of the association;

(2) The association's purposes. In addition, the bill states that the purposes must be permitted by the Ohio Cooperative Law and that 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 the Ohio Cooperative Law.

(3) The association's principal place of business. The bill, unlike current law, requires the articles of incorporation to include the county and municipal corporation or township where the association's principal place of business will be located.

(4) The number of its directors. The bill, unlike current law, alternatively authorizes a statement that the number of directors will be specified in the association's bylaws. Current law, unlike the bill, requires the articles of incorporation to include the terms of office of the directors.

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

The bill adds that the articles of incorporation must include the names and addresses of the incorporators.

Both current law and the bill contain provisions regarding information on capital stock that must be included in the articles of incorporation, but these provisions differ slightly. The bill, unlike current law, explicitly requires the articles of incorporation to specify whether the association is organized with or without capital stock.

Under law eliminated by the bill, if the association is organized without capital stock, the association's articles of incorporation must state whether the property rights and interests of all members are to be equal or unequal. If unequal, the articles must set forth general rules applicable to all members by which property rights and interests of each member are to be determined. In addition, the articles must provide for the admission of new members entitled to share in the property of the association with the old members in accordance with the general rules, which provision must not be altered, amended, or repealed except by the written consent or vote of two thirds of the members.

The bill requires only that if the association is organized without capital stock, the articles must set forth the general rules by which the property rights and interests of each member are to be determined.

If the association is organized with capital stock, law eliminated by the bill requires the association's articles of incorporation to specify the amount of such stock, the number of shares into which it is divided, and the par value per share. Under the eliminated law, if the capital stock is divided into preferred and common stock, the articles of incorporation must state the number of shares to which preference is granted, the number of shares of stock to which no preference is granted, and the nature and definite extent of the preferences and privileges granted to each.

The bill states that 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, must be included in the articles of incorporation. If there is more than one class of stock, the articles must 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.

In addition, the bill authorizes the articles to include additional provisions, consistent with law, including provisions that are required or permitted to be set forth in the bylaws. The bill also requires the articles to be accompanied by the appointment of a statutory agent. The bill states that 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.

Both current law and the bill require the articles of incorporation to be signed by the incorporators and filed with the Secretary of State. In addition, current law eliminated by the bill requires the incorporators to acknowledge the articles before an officer authorized by law to take and certify acknowledgments of deeds and conveyances.

Current law specifies that when the articles of incorporation are filed, the articles or certified copies thereof must be received in all courts of this state as prima-facie evidence of the facts contained in them and of the due incorporation of such association. The bill instead states that a copy of the association's articles of incorporation or amended articles filed in the office of the Secretary of State, and certified by the Secretary of State, is conclusive evidence, except as against the state, that the association has been incorporated under the laws of this state.

### **Amendment of articles of incorporation**

(new sec. 1729.08; sec. 1729.07 (renumbered))

Current law and the bill authorize the articles of incorporation of an association to be altered or amended at any regular meeting of the association or at any special meeting called for that purpose. The bill adds the requirement that the text of the proposed change, or a general description of the change, be contained in the notice of the meeting.



Current law and the bill require an amendment to first be approved by two-thirds of the directors. Current law eliminated by the bill also requires an amendment to be adopted by a vote representing a majority of all the members of the association. Instead, the bill requires an amendment to be adopted by an affirmative vote of 60% 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.

Law eliminated by the bill requires amendments to the articles of incorporation, when so adopted, to be filed in accordance with the law governing corporations. The bill instead requires amendments to be filed in accordance with its provisions.

The bill also creates several new provisions governing amendment of articles of incorporation. The bill authorizes the board of an association to adopt a restatement of the articles that incorporates amendments previously approved by the board and adopted by the members. Under the bill, 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 are required to state that they are restated, or restated and amended, if amendments are adopted with the restatement, and supersede the existing articles and amendments. Restated articles must meet the bill's requirements regarding information to be contained in articles of incorporation, except that the names and addresses of the incorporators and initial directors may be omitted. A restatement of the articles is required to be filed in the manner prescribed for an amendment of the articles.

The bill authorizes, except as provided in the articles of incorporation, the board to 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.

**Vote of stockholder affected by an amendment of articles of incorporation**

(new sec. 1729.09)

The bill establishes procedures by which an association's stockholder who will be affected by a proposed amendment to the association's articles of incorporation may vote on the proposed amendment. Under the bill, a holder of stock other than membership stock or patronage stock who is affected by a proposed amendment to the articles is entitled to cast one vote on the amendment regardless of the par or stated value of the stock, the number of shares, or the number of affected classes of stock held, unless the board instead provides that the stockholder is entitled to payment of fair cash value of the affected stock in accordance with the bill's provisions.

The bill authorizes a member holding stock affected by a proposed amendment to vote only as a member, and does not authorize the member to vote or demand fair cash value as an affected stockholder.

The bill states that a holder of stock is affected as to any class of stock owned by the holder only if an amendment would expressly do any of the following:

- (1) Decrease the dividends to which that class may be entitled or change the method by which the dividend rate on that class is fixed;
- (2) Further restrict rights to transfer that class;
- (3) Give 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;
- (4) Change 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;
- (5) Increase the number of authorized shares of any class having a higher preference as to dividends or upon dissolution;



(6) Require or permit 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.

Under the bill, if any proposed amendment will alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but will not so affect the entire class, then only the shares of the series so affected by the amendment are considered a separate class for the purposes of (1) through (6), above.

The bill provides that if stockholders are entitled to vote on an amendment, the amendment is adopted only if all of the following conditions are met:

- (1) Notice of the meeting, an exact copy of the proposed amendment, and a ballot on the amendment have been sent to each affected stockholder;
- (2) There has been approval by the members under the bill's provisions governing amendment of articles of incorporation;
- (3) There has been approval by a simple majority of the affected stockholders present and voting at a meeting of the stockholders.

The bill's provisions governing voting rights of stockholders affected by an amendment to articles of incorporation do not apply to stock issued prior to the bill's effective date, unless the association adopts an amendment to its articles of incorporation making the stock subject to those provisions. As to such stock, an amendment must first be approved by two-thirds of the directors and must then be adopted by a vote representing a majority of all the members of the association.

#### **Status of copies of articles of incorporation or other records**

(new sec. 1729.10)

The bill establishes provisions governing the status of copies of articles of incorporation or other records. Under the bill, a copy of the association's articles of incorporation or amended articles filed in the office of the Secretary of State, and certified by the Secretary of State, is conclusive evidence, except as against the state, that the association has been incorporated under the laws of this state. A copy certified by the Secretary of State of any certificate of amendment or other certificate is prima-facie evidence of such amendment or of the facts stated in the certificate, and of the observance and performance of all antecedent conditions necessary to the action that the certificate purports to evidence.

The bill requires a copy of amended articles filed in the office of the Secretary of State, and certified by the Secretary of State, to be accepted in this state and other jurisdictions in lieu of the original articles, amendments to the articles, and prior amended articles.

Under the bill, the original or a copy of the record of minutes of the proceedings of the incorporators of an association, or of the proceedings or meetings of the members or any class of stockholders, or of the directors, or of any committee thereof, including any written consent, waiver, release, or agreement entered in such record or minutes, or the original or a copy of a statement that no specified proceeding was had or that no specified consent, waiver, release, or agreement exists, must, when certified to be true by the secretary or an assistant secretary of an association, be received in the courts as prima-facie evidence of the facts stated therein. Every meeting referred to in the certified original or copy is deemed duly called and held, and all motions and resolutions adopted and proceedings had at the meeting are deemed duly adopted and had, and all elections of directors and all elections or appointments of officers chosen at the meeting are deemed valid, until the contrary is proved; and whenever a person who is not a member, patron, or stockholder of an association has acted in good faith in reliance upon any such certified original or copy, it is conclusive in that person's favor.

#### **Cancellation and reinstatement of articles of incorporation**

(new sec. 1729.11)

The bill establishes procedures by which an association whose articles of incorporation have been canceled may be reinstated. Under the bill, 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 or a judicial dissolution as provided in the bill, may be reinstated by filing, on a form prescribed by the Secretary of State, an application for reinstatement and the required appointment of a statutory agent, and by paying a filing fee of ten dollars.

Under the bill, 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 are continued in effect as if the articles had not been canceled or the dissolution had not occurred; and the association is again entitled to exercise the rights, privileges,



and franchises authorized by its articles.

### **Filing of articles of incorporation, certificates of merger, and other documents**

#### **Fees**

(new sec. 1729.12(A); sec. 1729.08 (repealed))

Law eliminated by the bill requires an agricultural cooperative to pay to the Secretary of State fees for filing articles of incorporation or amendments thereto, and with respect to the issuance of shares of stock. The amount of the fees must comply with current law governing the Secretary of State's filing fees for corporations organized for profit.

The bill's filing fee provision applies to all associations rather than just agricultural cooperatives and includes filing fees for additional documents. The bill states that for filing articles of incorporation or a certificate of amendment of articles or a certificate of merger, consolidation, division, or dissolution, and with respect to the issuance of shares of stock, an association organized under the Ohio Cooperative Law must pay to the Secretary of State fees in amounts imposed by current law governing the Secretary of State's filing fees for corporations organized for profit. In the case of a certificate of division, the filing fee is the same as for a certificate of merger or consolidation.

#### **Endorsement of Secretary of State**

(new sec. 1729.12(B))

The bill establishes that when the articles of incorporation, or a certificate of amendment of articles, or a certificate of merger, consolidation, conversion, division, or dissolution is filed with the Secretary of State, the Secretary of State is required, if the articles or certificate complies with this chapter, to endorse approval thereon, the date of filing, a file number, and make a legible copy thereof by any authorized method. The original or a copy of the articles or certificate, certified by the Secretary of State, must be returned to the person filing the articles or certificate.

#### **Obtainment of copies**

(new sec. 1729.12(C))

The bill provides all persons with the opportunity to acquire a copy of the articles and other certificates relating to an association and filed and recorded in the office of the Secretary of State, but states that no person dealing with the association will be charged with constructive notice of the contents of any such articles or certificates by reason of the filing or recording.

#### **Stock**

##### **Dividends**

(new sec. 1729.13(A); sec. 1729.10(F))

Under current law and the bill, an association is authorized to pay dividends annually on its capital stock. Current law provides that all of an association's other net income, less specified reserves which are required to be provided in the bylaws, must be distributed to its members and other eligible patrons only on the basis of patronage. The bill adds that the reserves may be provided for in written agreements other than the bylaws. In addition, the bill eliminates the language requiring that the net income be distributed to the association's members and other patrons only on the basis of patronage and replaces it with language requiring the net income to be distributed to those persons as provided in the bylaws or other written agreements.

Current law requires any receipts or dividends from subsidiary corporations, or from stock or other securities owned by the association, to be included in the ordinary receipts of the association, and to be distributed accordingly. The bill authorizes, rather than requires, the receipts or dividends to be included in the association's ordinary receipts and distributed accordingly.

##### **Association's purchase of its own stock**

(new sec. 1729.13(B); sec. 1729.10(J) (repealed))

Current law authorizes an association, at any time, as specified in the bylaws, except when the debts of the association exceed 50% of its assets, to purchase its own common stock at book value, as determined by the board of directors, and to pay for it in cash within one year thereafter. The bill eliminates the requirement that the purchase be in accordance with the bylaws, the prohibition against the purchase when the debts of the association exceed 50% of its assets, and the requirement that the association pay for the stock in cash within one year after the purchase. In addition, the bill states



that the stock may be purchased at par value as well as at book value.

### **Security interest**

(new sec. 1729.13(C); sec. 1729.10(B) (repealed))

Law eliminated by the bill prohibits an association from issuing stock to a member until the member has fully paid for it. The promissory notes of the members may be accepted by the association as full or partial payment for the stock. The association is required to hold the stock as security for the payment of the note, but such retention as security does not affect the member's right to vote.

The bill retains the provision that an association has a security interest in its stock and elaborates on it. Under the bill, an association has a continued perfected security interest in its membership stock and patronage stock to secure payment of any indebtedness or other obligation of the holder or owner to the association. Notwithstanding the law governing investment securities and secured transactions, the security interest has priority over all other perfected security interests. Unless otherwise provided in the association's articles of incorporation or bylaws, or by contract, a member or other patron has no right to compel an association to offset its membership stock or patronage stock against any indebtedness or obligation owed to the association.

### **Elimination of certain current law provisions governing stock**

(secs. 1729.10(A), (E), (H), and (I) and 1729.21 (repealed))

The bill eliminates law requiring a member of an association established without capital stock to receive a certificate of membership upon his payment in full of his membership fee.

The bill also eliminates a provision prohibiting a stockholder of an association from owning more than one-twentieth of its common stock and authorizing the association in its bylaws to limit the amount of common stock that one member may own to any amount less than one-twentieth.

In addition, the bill eliminates law authorizing any association organized with stock to issue preferred stock that does not have the right to vote and authorizing such stock be sold to any person and to be redeemable or retirable by the association on such terms as are provided for by the articles of incorporation and printed on the face of the certificate.

Law also eliminated by the bill requires the bylaws to prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products for market and requiring such restrictions to be printed upon every certificate of stock subject to them.

Repealed by the bill is a current provision that if an association organized with preferred capital stock purchases the stock of, any property of, or any interest in the property of any person, it may wholly or partially discharge the obligations so incurred by exchanging shares of its preferred capital stock for the acquired interest. The shares must be in an amount that, at par value, equals the fair market value of the acquired interest, as the fair market value is determined by the association's board of directors. The transfer to the association of the interest so acquired is equivalent to payment in case for the shares of stock so issued.

### **Bylaws**

#### **Content**

(new secs. 1729.14 and 1729.16; sec. 1729.11 (repealed))

The bill retains the majority of current provisions governing an association's bylaws, but makes several changes to them. Current law requires each association, within 30 days after its incorporation, to adopt for its government and management a code of bylaws not inconsistent with the powers granted by the law governing agricultural cooperatives. The vote or written assent of a majority of the members is necessary to adopt such bylaws. The bylaws are required to provide that they may be amended and to specify the voting power by which amendments may be made.

The bill instead requires each association to adopt for its governance and management bylaws that are consistent with the powers granted by the Ohio Cooperative Law and the articles of incorporation of the association. The bill eliminates the requirement that the bylaws be adopted within 30 days after the association's incorporation. Rather than requiring the vote or written assent of a majority of the association's members for the adoption of bylaws, as in current law, the bill authorizes the bylaws to be adopted by the association's directors who are to serve until the first annual meeting. In addition, the bill requires any bylaw adopted or amended by the board to be reported at the next regular member meeting and states that any such bylaw is subject to amendment or repeal by the members at any time. After the initial bylaws are adopted, the bill authorizes bylaws to be adopted and amended only by the members unless the members adopt a bylaw



that permits the board to make and amend specified bylaws. Instead of requiring the bylaws to specify the voting power by which they may be amended, as in current law, the bill provides that 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.

Both current law and the bill authorize the bylaws to provide for any of the following:

- (1) The time, place, and manner of calling and conducting the association's meetings;
- (2) The number of members constituting a quorum. In addition, the bill provides that if voting by any method other than personal appearance is used, members represented by a ballot or by proxy may be counted in computing a quorum only on those matters for which the ballots or proxies were submitted.
- (3) The right of members to vote by proxy or by mail, or both, and the conditions, manner, form, and effect of such votes. The bill also authorizes the bylaws to specify the right of members to vote by ballot delivered in person, by electronic or telephonic transmittal, or any combination of these.
- (4) The number of directors constituting a quorum;
- (5) The qualifications, compensation, duties, and terms of office of directors and officers, and the time of their election and the manner of giving notice of the election. The bylaws also may provide for the number of directors and officers.
- (6) Penalties for violation of the bylaws;
- (7) The amounts of entrance, organization, and membership fees, if any; the manner of collecting them; and the purposes for which they may be used;
- (8) Any amount that each member is required to pay annually or from time to time to carry on the business of the association; any charge to be paid by each member for services rendered by the association, and the time of payment and the manner of collection of the charge; and any marketing contract between the association and its members that every member may be required to sign;
- (9) The number and qualifications of members of the association and the conditions of membership or for ownership of stock in the association. Current law refers to the stock as "common stock," while the bill refers to it as "membership stock."
- (10) The time and manner of permitting members to withdraw or the holders of membership stock to transfer their stock; and the manner of assignment and transfer of membership stock;
- (11) The conditions upon which, and the time when, the membership of any member ceases; and the suspension of the rights of a member who ceases to be eligible for membership in the association;
- (12) The manner and effect of the expulsion of a member;
- (13) In the event of the death or withdrawal of a member or upon the expulsion of a member or the forfeiture of membership, any of the following:
  - (a) The manner of determining the value of a member's interest;
  - (b) Provision for the purchase of a member's interest by the association;
  - (c) At the option of the association, provision for such purchase at a price fixed by appraisal by the board of directors of the association.
- (14) Any other provision for any matter relative to the control, regulation, operation, management, or government of the association.

The bill eliminates law that requires, in case of the withdrawal or expulsion of a member, the appraisal of the member's property interests in the association and the fixing of the amount thereof in money to be done equitably by the board and the payment of the amount to the member within one year after the expulsion or withdrawal.

In addition, the bill adds that the bylaws may specify, subject to the bill's provisions governing voting procedures, a method of voting by members or delegates, and any limitations on voting rights of any group or class of members or delegates.

### **Board of directors**

### **Number**



(new sec. 1729.22(A); sec. 1729.13 (repealed))

Both current law and the bill require the board of directors of an association to consist of not less than five directors, elected by the members from their own number. The bill adds an exception stating that if the number of members is less than five, the number of directors may equal the number of members.

### **Authority**

(new sec. 1729.22(A); sec. 1729.13 (repealed))

Current law requires the affairs of an association to be managed by its board of directors. The bill elaborates on this by requiring, except where the Ohio Cooperative Law or an association's articles of incorporation or bylaws require that action be otherwise authorized or taken, all of the authority of an association to be exercised by or under the direction of the board.

### **Performance of duties**

(new sec. 1729.23)

The bill establishes provisions governing the performance of duties by an association's board of directors. The bill requires a director to 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:

- (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.

A director cannot be found to have failed to perform the duties in accordance with the above provisions, 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:

- (1) A change or potential change in control of the association;
- (2) A termination or potential termination of the director's service to the association as a director;
- (3) Service in any other position or relationship with the association.

The bill prohibits a director from being considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause to be unwarranted any reliance on information, opinions, reports, or statements that are prepared or presented by persons on whose information the director is entitled to rely under the bill.

The above provisions do not limit relief available under the bill's provisions governing transactions in which directors or officers have a personal or financial interest.

Under the bill, subject to the exceptions described below, 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. These provisions do not affect the liability of a director under "***Liability***," below. Subject to the liability of a director under "***Liability***," below, these provisions also do 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, that these provisions do not apply to the association.

The bill requires a director, for purposes of this section, in determining what is reasonably believed to be in or not opposed to the best interests of the association, to consider the purposes of the association and authorizes the director to



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.

The above provisions, other than the provisions requiring a director to act in good faith in the best interests of the association and to use ordinary care and authorizing a director to rely on information provided by certain persons, do not affect the duties of a director who acts in any capacity other than as a director.

### **Districts**

(new sec. 1729.22(B); sec. 1729.13 (repealed))

Current law authorizes an association's bylaws to require that territory in which the association has members be divided into districts and that the directors be elected according to such districts, either directly or by district delegates elected by the members in each district. The bill contains a similar provision, except that it also authorizes the membership of an association to be divided into groupings other than districts instead of being divided into districts. In addition, the bill eliminates current law authorizing the election according to districts to be done either directly or by district delegates elected by the members in each district.

Current law and the bill, in a situation involving an election of directors by districts, require the bylaws to specify the number of directors to be elected by each district and the manner of reapportioning the directors and of redistricting the territory covered by the association. Law eliminated by the bill authorizes the bylaws to require that primary elections be held in each district to elect the directors apportioned to the districts and to provide that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association.

### **Appointment by other directors**

(new sec. 1729.22(C); sec. 1729.13 (repealed))

Current law authorizes the bylaws to provide that one or more directors be appointed by any public official or commission or by other directors selected by the members or their delegates. The bill eliminates language authorizing directors to be appointed by any public official or commission, but retains language authorizing directors to be appointed by other directors. Law eliminated by the bill states that appointed directors represent primarily the interest of the general public in such associations. Current law and the bill provide that such directors have the same powers and rights as other directors; the bill adds that appointed directors also have the same responsibilities as other directors. Both current law and the bill prohibit the appointed directors from numbering more than one-fifth of the entire number of directors.

### **Executive committee**

(new sec. 1729.22(D); sec. 1729.13 (repealed))

Current law authorizes bylaws to provide for an executive committee and to allot to the committee all the functions and powers of the board, subject to the board's general direction and control. The bill contains a provision that is identical, except that it authorizes the bylaws to allot to the executive committee any, rather than all, of the board's functions and powers.

### **Remuneration**

(new sec. 1729.22(E); sec. 1729.13 (repealed))

Current law and the bill authorize an association to 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 the executive committee.

The bill eliminates law authorizing the bylaws to prohibit a director from occupying any officer's position in the association, except that of president and secretary or either, on regular salary or substantially full-time pay.

### **Vacancy**

(new sec. 1729.22(F); sec. 1729.13 (repealed))



Current law and the bill require that when a vacancy on the board occurs other than by expiration of term, the remaining directors, by a majority vote, elect a director to fill the vacancy. If the bylaws provide for an election of directors by district or other grouping, the board may call a special meeting of the members in that district or group to fill the vacancy.

**Elimination of review of directors' policy by members at the directors' request**

(sec. 1729.17 (repealed))

The bill eliminates law providing that, upon demand of one-third of the entire board of directors of an association, made and recorded immediately at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed upon by the board must be referred to the entire membership of the association for decision at the association's next special or regular meeting. Current law eliminated by the bill authorizes a special meeting to be called for this purpose.

**Officers**

(new sec. 1729.26; secs. 1729.13 and 1729.14 (repealed))

Current law and the bill require the board to elect the officers of an association, consisting of a president, secretary, treasurer, and one or more vice-presidents. The bill adds that officers must be elected annually, unless the articles or the bylaws provide otherwise and that, if desired, a chairperson of the board may be elected as an officer, along with such other officers and assistant officers as are necessary. The bill requires the chairperson of the board to be a director. Current law states that the secretary and treasurer need not be directors or members of the association; the bill instead provides that unless the association's articles of incorporation or bylaws provide otherwise, none of the officers other than the chairperson of the board need be a director.

Law eliminated by the bill authorizes combination of the offices of secretary and treasurer and designation of the combined office as that of secretary-treasurer, or the uniting of both functions and titles in one person. The bill instead authorizes any two or more offices to be held by the same person, but prohibits any officer from executing, acknowledging, or verifying 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.

The bill eliminates law authorizing the treasurer to be a bank or any depository, and prohibiting the bank or depository from being considered to be an officer. Under the eliminated law, such a bank or depository instead would be considered a function of the board of directors. In such a situation, the secretary is required to perform the usual accounting duties of the treasurer, but the funds of the association are required to be deposited only as and where authorized by the board.

The bill establishes that all officers have the authority to perform, and are required to perform, the duties as the bylaws provide, or as the board may determine in accordance with the bylaws.

**Transactions in which directors or officers have a personal or financial interest**

(new sec. 1729.24; sec. 1729.13 (repealed))

The bill eliminates law prohibiting a director of an association, during the term of his office, from being a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district.

The bill establishes that, unless otherwise provided in an association's articles of incorporation or bylaws:

(1) No contract or transaction between an association and one or more of its directors or officers, or between the association and any other person in which one or more of the association's directors or officers, are directors or officers, or have a financial or personal interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee that authorizes the contract or transaction, or solely because the director's or officer's votes are counted for such purpose, if any of the following applies:

(a) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board or the committee, and the board or committee, in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors constitute less than a quorum of the board or the committee;

(b) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote on the contract or transaction, and the contract or transaction is specifically approved at a meeting of the members;

(c) The contract or transaction is fair as to the association at the time it is authorized or approved by the board, or a



committee of the board, or the members.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board, or of a committee that authorizes the contract or transaction.

The above provisions do not limit or otherwise affect the liability of directors under "*Liability*," below.

For purposes of the above provisions, a director is not an interested director solely because the subject of a contract or transaction may involve or effect a change in control of the association or continuation in office as a director of the association.

### **Removal of officers or directors**

(sec. 1729.28; sec. 1729.16 (renumbered))

Under current law, 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 five per cent of the members, requesting the removal of the officer or director in question. The bill increases the number of members who must sign the petition to 20% of the members.

Current law provides that, in case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 20% of the members residing in the district from which he was elected. The bill eliminates the provisions concerning primary elections and adds that directors may be elected by groupings other than districts. Current law requires the board to then call a special meeting of the members residing in that district to consider the removal of the director; and at such meeting, by a vote of the majority of the members of that district, the director in question must be removed from office. The bill adds that the members must vote upon, in addition to considering, removal of the director.

### **Association membership**

#### **Number of members**

(new sec. 1729.18(A))

The bill requires an association to have two or more members. However, an association may have one member if that member is an association that has two or more members. Current law does not provide for the number of members of an association.

#### **Voting by members**

(new sec. 1729.17; sec. 1729.10(G) (repealed))

The bill establishes procedures for voting by members of an association. Under the bill, each member entitled to vote has one vote, except that the articles or bylaws of the association may permit the following:

- (1) Voting by members in accordance with the amount of business done with or through the association.
- (2) Voting by delegates, including a voting system that provides any one or a combination of the following:
  - (a) That a delegate may cast only one vote;
  - (b) That a delegate may cast one vote for each member represented by the delegate;
  - (c) That another form of delegate voting may be used.
- (3) Voting by delegates or certain members on matters that are to be submitted to a member vote.
- (4) Voting by any combination of the methods set forth in (1), (2), or (3), above, or any other method of voting set forth in the bylaws, provided the association is controlled by the members.

If the articles or bylaws provide that only delegates or certain members are entitled to vote on matters to be submitted to a member vote, "member" or "members," as used in the Ohio Cooperative Law with respect to the right of a member to vote, voting procedure, the required proportion of member votes, actions that are required or permitted to be taken by members, and the number of members required for a quorum, means the delegates or other members entitled to vote. Where voting is based on the amount of business done, provisions of the Ohio Cooperative Law requiring a vote of the members are met if the required membership vote is satisfied based on the voting power of the members.



The only current law provision governing member voting, which was eliminated by the bill, prohibits a member in an association organized without capital stock from being entitled to vote more than one vote.

### **Member meetings**

(new secs. 1729.18(B) and 1729.19; sec. 1729.12 (repealed))

Current law requires each association, in its bylaws, to provide for one or more regular meetings annually. The bill requires each association to hold an annual meeting of its members, but does not require that this be specified in the bylaws. Both current law and the bill authorize the board to call a special meeting of the members at any time. The bill adds that any meeting of the members may be held at one time or in a series of meetings at one or more locations.

Under current law, 10% of the members or stockholders may file a petition stating the specific business to be brought before the association, and demand a special meeting for such business, at any time. The meeting must thereupon be called by the board. The bill authorizes members entitled to vote, rather than members or stockholders, to file a petition for a special meeting, and increases the number of members required to file such a petition to 20%.

Law eliminated by the bill requires notice of every meeting, together with a statement of the purpose thereof, to be mailed to each member at least 10 days prior to the meeting, unless the bylaws require that notice be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

Unlike current law, which requires notice of the meeting to be mailed to each member, the bill requires notice to 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, in accordance with the bill's provisions governing methods of notice. The bill also authorizes the bylaws to provide that notice may be given by publication in a newspaper or newspapers of general circulation in the trade area of the association. However, unlike current law, the bill authorizes such notice only if notice to individual members and affected shareholders is impracticable.

The bill specifies when actions may be taken by written vote instead of at a meeting. Under the bill, 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:

- (1) In the case of members or affected stockholders, 60% of the votes of the members or 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.

The bill requires any such writing or writings to 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.

The bill also requires any certificate with respect to the authorization or taking of any action that is required to be filed in the office of the Secretary of State to state that the authorization or taking of such action was in writing or writings approved and signed as provided in the bill.

### **Elimination of limitation of membership**

(sec. 1729.09 (repealed))

Law eliminated by the bill authorizes an association, under the terms prescribed in its bylaws, to admit as members, or issue common stock to, only cooperative marketing associations or persons engaged in the production of agricultural products for the market, including the lessees and tenants of land used for the production of such products and any lessors and landlords of such land who receive as rent any of the crop raised on the leased premises.

Under the eliminated law, if a member of a nonstock association is not a natural person, that member may be represented by any individual, associate, officer, manager, or member, if such representation is authorized in writing.

Current law eliminated by the bill authorizes any association organized under the law governing agricultural cooperatives to become a member or stockholder of any other association organized under that law.

### **Notice**

(new sec. 1729.20)

The bill establishes new provisions regarding means by which notice may be provided. Under the bill, whenever notice is



required by the Ohio Cooperative Law to be given to any person, the notice may be given personally, by mail, or by electronic or telephonic transmittal. If mailed, the notice is given when it is deposited in the United States mail, with postage prepaid, addressed to the person at the person's address as it appears on the records of the association. If notice is sent by electronic or telephonic transmittal, notice is given when an electronic or telephonic confirmation of delivery is received by the association.

Under the bill, a signed waiver is equivalent to personal notice to the person signing. The waiver may be signed at any time.

### ***Liability***

(new sec. 1729.25; 1729.10(C) and (D) (repealed))

Law eliminated by the bill states that no member of an association is liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or on his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment of such membership fee or subscription. In addition, current law eliminated by the bill states that the directors of an association are liable only as members of the association.

The bill establishes that the members, the directors, and the officers of an association are not personally liable for any obligation of the association.

Under the bill, directors who vote for or assent to any of the following are jointly and severally liable to the association in accordance with provisions described below:

- (1) A distribution of assets to members, stockholders, or patrons contrary to law, the association's articles of incorporation, or bylaws. In such cases, directors are jointly and severally liable to the association up to the amount of the distribution in excess of the amount that could have been distributed without violation of law, the articles of incorporation, or bylaws, but not in excess of the amount that would inure to the benefit of the creditors of the association if it was insolvent at the time of the distribution or there was reasonable ground to believe that by such vote or assent it would be rendered insolvent, or to the benefit of the members or stockholders other than members or stockholders of the class in respect of which the distribution was made.
- (2) A distribution of assets to persons other than creditors during the winding up of the affairs of the association, on dissolution or otherwise, without the payment of all known obligations of the association, or without making adequate provision for the payment of the obligations. In such cases, directors are jointly and severally liable to the association to the extent that the obligations, not otherwise barred by statute, are not paid, or for the payment of which adequate provision has not been made.
- (3) The making of loans, other than in the usual conduct of the association's affairs or in accordance with the association's articles or bylaws, to an officer, director, or member of the association. In such cases, directors are jointly and severally liable to the association for the amount of the loan with interest thereon at the rate of six per cent per year until the amount has been paid.

Under the bill, a director is not liable under (1) or (2) above, if in determining the amount available for any such distribution, the director in good faith relied on a financial statement of the association prepared by an officer or employee of the association in charge of its accounts or by a certified public accountant or firm of certified public accountants, or in good faith considered the assets to be of their book value, or followed what the director believed to be sound accounting and business practice.

The bill provides that a director who is present at a meeting of the board or a committee of the board at which action on any matter is authorized or taken and who has not voted for or against such action is presumed to have voted for the action unless the director dissents from the action during the meeting and the dissent is noted in the minutes of the proceedings of the meeting, or a written dissent is filed either during the meeting or within a reasonable time after the adjournment of the meeting.

Under the bill, a member, stockholder, or patron who receives any distribution made contrary to law or the association's articles of incorporation or bylaws is liable to the association for the amount received that is in excess of the amount that could have been distributed.

The bill provides that a director against whom a claim is asserted under or pursuant to the above provisions under "***Liability***," and who is held liable on the claim is entitled to contribution, on equitable principles, from other directors who also are liable. In addition, any director against whom a claim is asserted under or pursuant to the above provisions under "***Liability***," or who is held liable, has a right of contribution from the member, stockholder, or patron who received any distribution made contrary to law, the articles of incorporation, or bylaws, and such persons as among themselves also are entitled to contribution in proportion to the amounts received by them respectively.



The bill prohibits any action from being brought by or on behalf of an association, upon any cause of action arising under division (1) or (2), above, at any time after two years from the day on which the violation occurs. However, no such action is barred if it is commenced prior to the bill's effective date.

### **Bonds of officials**

(sec. 1729.27; sec. 1729.16 (renumbered))

Current law requires every officer, employee, and agent handling funds, negotiable instruments, or other property of or for an association to execute and deliver adequate bonds for the faithful performance of his duties and obligations. The bill imposes this requirement only if it is required by the association's bylaws.

### **Keeping and examination of records**

(sec. 1729.29)

The bill establishes provisions governing keeping and examination of the association's records. Under the bill, an association is required to keep correct and complete books and records of account, and also to keep minutes of the proceedings of meetings of its members, board, and delegates. The association is required to keep at its principal office records of the names and addresses of all members and stockholders with the amount of ownership interests and stock held by each.

The bill provides that, at any reasonable time, any member, upon written notice that states a proper purpose for an examination of books and records and that is delivered or sent to the association at least one week in advance, may examine those books and records pertinent to the purpose stated in the notice. The bill authorizes the board to deny a request of a member to examine the books and records if the purpose is not proper because it is not directly related to the person's interest as a member and is contrary to the best interests of the association.

### **Report requirement eliminated**

(sec. 1729.24 (repealed))

Law eliminated by the bill requires each association to prepare and file with the Director of Agriculture, on forms to be furnished by him, an annual report containing the name of the association; its principal place of business; a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders, if it is a stock association, or the number of members and amount of membership fees received, if it is a nonstock association; the total expenses of such operations; the amount of its indebtedness or liabilities; and its balance sheets for such fiscal year.

### **Merger and consolidation**

#### **Vote by members**

(new sec. 1729.35)

The bill establishes provisions governing the merger or consolidation of two or more associations. The bill authorizes an association to merge or consolidate with one or more associations in accordance with the bill's provisions. Before an association may merge or consolidate with any other association, a written agreement of merger or consolidation must be approved by the board and members of each constituent association. The bill requires the agreement to 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 must contain the articles of incorporation of the new association.

Under the bill, 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:

- (1) Unless the board of the constituent association provides that (2), below, applies, the affected stockholder must 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.
- (2) The board of a constituent association may provide that a stockholder otherwise entitled to vote under (1) instead is entitled to payment of fair cash value of the affected stock held by him in accordance with the bill's provisions governing payment of fair cash value.
- (3) A member holding stock affected by a proposed agreement of merger or consolidation may vote only as a member and is not entitled to vote or demand fair cash value as an affected stockholder.



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:

- (1) Decreases the dividends to which that class may be entitled or changes the method by which the dividend rate on that class is fixed;
- (2) Provides for additional restriction of rights to transfer shares of that class;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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.

The bill specifies that the agreement is approved if all 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.
- (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 approve the agreement.

Notwithstanding the above provisions, the bill states that no vote of the members or stockholders of a constituent association is necessary to approve a merger of a wholly owned subsidiary association with and into its parent association or a merger or consolidation of two or more subsidiary associations that are wholly owned by an association.

After approval of an agreement, but before the merger or consolidation is effective, the bill authorizes the agreement to 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 may 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.

After approval of an agreement, but before the merger or consolidation is effective, the bill also authorizes the merger or consolidation to be abandoned in accordance with any provision for abandonment set forth in the agreement.

The merger or consolidation takes effect in accordance with filing procedures set forth in the bill.

### **Compliance with laws**

(new sec. 1729.36(A) and (B))

The bill authorizes an association to merge or consolidate with one or more entities, if the merger or consolidation is permitted by the laws under which each constituent entity exists and the association complies with the provisions described under "**Compliance with laws**" and "**Contents of agreement**."

The bill requires each constituent association to comply with the provisions under "**Vote by members**," above, with respect to the form and approval of an agreement of merger or consolidation, and each constituent entity must comply with the applicable provisions of the laws under which it exists, except that the agreement of merger or consolidation, by whatever name designated, must comply with the requirements under "**Contents of agreement**," below.

### **Contents of agreement**

(new sec. 1729.36(C) and (D))



The bill requires an agreement of merger or consolidation to 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, corporation, or limited liability company;
- (4) If the surviving or new entity is to be a foreign entity, each of the following:
  - (a) The place where the principal office of the entity is to be located in the state in which the surviving or new entity is to exist;
  - (b) The consent by the 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 entity that it will be subject to the applicable provisions of the law governing foreign corporations, if it is a foreign corporation or foreign association, or to the law governing limited liability companies, if it is a foreign limited liability company;
  - (d) If it is desired that the entity exercise its corporate privileges in this state as a foreign entity.

The bill also authorizes the agreement to set forth other provisions permitted by the laws of any state in which any constituent entity exists.

Under the bill, if the surviving or new entity is an association, the merger or consolidation must take effect in accordance with the bill's provisions governing filing procedures. If the surviving or new entity is an entity other than an association, the merger or consolidation is to take effect in accordance with the applicable provisions of the laws under which it exists.

#### **Filing procedures**

(new secs. 1729.37(A) and 1729.38)

Under the bill, unless a later date is specified in the agreement, the merger or consolidation of an association is effective when the certificate of merger or consolidation is filed in accordance with the following paragraphs under this heading. If, after filing the certificate, but before the merger or consolidation is effective, the merger or consolidation is amended or abandoned, an authorized officer of each constituent association must sign a certificate of amendment or abandonment stating that the agreement of merger or consolidation has been amended or abandoned and the date of such action, and must file the certificate in the same manner as the certificate of merger or consolidation. The bill requires any certificate of amendment or abandonment to be filed prior to the date the merger or consolidation would otherwise be effective.

Upon adoption of an agreement of merger or consolidation of an association, a certificate, signed by any authorized officer of each constituent association or entity, is required to be filed with the Secretary of State on a form prescribed by the Secretary of State that sets forth the following:

- (1) The name and form of each constituent association or entity and the state law under which each constituent entity exists;
- (2) 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;
- (3) The effective date of the merger or consolidation, which date may be on or after the date of filing of the certificate;
- (4) 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;
- (5) 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.

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

In the case of a consolidation to form a new domestic association or entity, the bill requires the articles of incorporation or the articles of organization of the new association or entity to be filed with the certificate.



If the surviving or new entity is a foreign entity that desires to transact business in this state as a foreign entity, the bill requires the certificate to be accompanied by the information required for qualification of a foreign entity in this state by the law governing foreign corporations, in the case of a foreign corporation or foreign cooperative, or by certain provisions governing limited liability companies, in the case of a foreign limited liability company.

The bill authorizes a copy of the certificate of merger or consolidation, certified by the Secretary of State, to be filed for record in the office of the county recorder of any county in this state. For such recording the county recorder must charge and collect the same fee as in the case of deeds. The bill requires the certified copy of the certificate of merger or consolidation to be recorded in the records of deeds.

For purposes of the above provisions under "***Filing procedures***," "domestic entity" means a corporation or limited liability company organized under the laws of this state.

### ***Determination of surviving entity***

(new sec. 1729.37(B), (C), and (D))

The bill provides that, in the case of a merger, the surviving association or entity is the one designated in the agreement. In the case of a consolidation, the new association or entity also is the one designated in the agreement. The separate existence of all constituent associations or entities in the agreement, except the surviving or new association or entity, ceases upon the effective date of the merger or consolidation.

Under the bill, the surviving or new association or entity possesses all the rights and all the property of each constituent association or entity, and is responsible for all their obligations. Title to any property is vested in the surviving or new association or entity with no reversion or impairment of the property caused by the merger or consolidation. A merger or consolidation is not to be considered an assignment. No right of any creditor is impaired by the merger or consolidation without the creditor's consent.

Under the bill, if the surviving organization is an association, the articles of incorporation are amended to the extent provided in the agreement of merger.

### ***Division***

(sec. 1729.40)

The bill establishes procedures for division of an association. Under the bill, an association is authorized to divide itself into two or more associations. In such an event, the bill requires a written plan of division to be approved by the association's board. The plan must set forth all the terms of the division and its proposed effect on all members and stockholders of the association. The plan also must contain the articles of incorporation and bylaws of each association resulting from the division, which articles and bylaws are required to conform to the requirements for associations organized under the Ohio Cooperative Law.

Under the bill, if the plan of division provides that a holder of stock other than membership stock or patronage stock will be affected, the following apply:

- (1) Unless the board provides that (2), below, applies, the affected stockholder is entitled to cast one vote on the plan of division regardless of the par or stated value, the number of shares, or the number of affected classes of the stock held.
- (2) The board may provide that a stockholder otherwise entitled to vote under division (1), above, instead is entitled to payment of fair cash value of the affected stock held by him in accordance with the bill's provisions governing payment of fair cash value.
- (3) A member holding stock affected by a proposed plan of division may vote only as a member and is not entitled to vote or demand fair cash value as an affected stockholder.

For purposes of the provisions under "***Division***," a holder of stock is affected as to any class of stock owned by him only if the plan of division does any of the following:

- (1) Decreases the dividends to which that class may be entitled or changes the method by which the dividend rate on that class is fixed;
- (2) Provides any additional restriction on rights to transfer shares of that class;
- (3) 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 in a resulting association;



(4) 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;

(5) Increases the aggregate number of authorized shares of any other class having the same or higher preferences as to dividends or upon dissolution in the resulting associations beyond the authorization for such classes in the original association;

(6) Requires or permits an exchange of shares of any class with lower preferences as to dividends or upon dissolution in the original association for shares of any other class with higher preferences in a resulting association.

The bill provides that the plan of division is approved if both of the following conditions are met:

(1) Notice of the meeting to vote on the plan, the plan of division, 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 plan or to receive payment of fair cash value under the above provisions under "***Division***."

(2) Sixty per cent of the member votes cast approve the plan, and a simple majority of the votes cast by the affected stockholders entitled to vote under the above provisions under "***Division***" approve the plan.

After approval of a plan of division, but before the division is effective, the bill authorizes the plan to be amended or abandoned in accordance with a provision for amendment or abandonment set forth in the plan, provided that an amendment made subsequent to approval of the plan by the members is prohibited from doing any of the following:

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

(2) Changing the articles of incorporation or bylaws of the resulting associations as provided for in the plan;

(3) Changing any provision of the plan with respect to the rights of members or the manner of voting in the resulting associations.

The bill requires, upon approval of a plan of division, a certificate, signed by any authorized officer of the original association, to be filed with the Secretary of State on a form prescribed by the Secretary of State setting forth the following:

(1) The name of the original association and the name of each resulting association;

(2) A statement that the original association has adopted the plan of division, the manner of adoption, and that the plan was adopted in compliance with the provisions under "***Division***";

(3) The effective date of the division, which may be on or after the date of filing of the certificate;

(4) A statement that the original association will be divided into specified resulting associations;

(5) The name and address of the statutory agent upon whom any process, notice, or demand against the original association may be served, and the name and address of a statutory agent for each resulting association upon whom process, notice, or demand against that resulting association may be served.

The bill requires the articles of incorporation of each of the resulting associations to be filed with the certificate.

### **Conversion of domestic corporation into association and vice versa**

(sec. 1729.42)

The bill authorizes a domestic corporation to convert itself into an association by adopting an amendment to its articles of incorporation in which it elects to become subject to the Ohio Cooperative Law, together with any changes in its articles of incorporation and bylaws required by that law, and any other desirable changes permitted by that law. The bill requires the amendment to be adopted, filed, and recorded in the manner provided by the law under which the corporation exists.

The bill authorizes an association to convert itself to a domestic corporation by adopting an amendment to its articles of incorporation in which it elects to become subject to any other law governing corporations or partnerships, if so permitted by that law, together with any required changes in its articles of incorporation and bylaws and any other desirable changes permitted by that law. The bill requires the amendment to be adopted, filed, and recorded under the Ohio Cooperative Law in the same manner as an amendment of the articles of incorporation under that law.

### **Action to set aside merger, consolidation, division, or conversion**



(sec. 1729.44)

The bill requires an action to set aside a merger, consolidation, division, or conversion of an association, on the ground that any section of the Revised Code has not been complied with, to be brought within ninety days after the effective date of the merger, consolidation, division, or conversion, or that action is forever barred.

### **Payment of fair cash value to stockholder**

#### **Demand**

(sec. 1729.46(A))

In order to obtain payment of the fair cash value of stock, the bill requires a stockholder entitled to such payment to deliver a written demand for payment to the association no later than 15 days after notice is sent to members and stockholders in accordance with the bill's provisions. The bill requires the written demand to 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 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, 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 is barred.

#### **Determination of fair cash value of stock if articles of incorporation or bylaws provide basis for determining value**

(sec. 1729.46(B))

If a timely demand is delivered in accordance with the bill, the bill requires fair cash value of the stock to 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 must send a written acknowledgment of receipt of the demand for fair cash value to the address specified in the demand no later than 15 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 described here and below, the acknowledgment must state any such defects. The acknowledgment also must 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 is the lesser of the redemption value or the fair market value of such stock immediately prior to the merger, consolidation, division, or conversion.

(2) The stockholder is prohibited from transferring, encumbering, pledging, or otherwise disposing of the stock that is the subject of the demand for fair cash value, or any certificate representing such stock, until the demand is finally resolved by agreement, withdrawal, or final judicial determination as provided in the bill.

(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 must 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 thereupon must tender payment of the fair cash value so determined, to be paid to the stockholder within 30 days of the 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 the bill, a provision in the constituent or original association's articles of incorporation or bylaws that fair cash value must be determined by final and binding arbitration, or that fair cash value must be the lesser of par value, book value, or fair market value, must be considered a reasonable basis for determining and paying the fair cash value of stock.

#### **Court determination of fair cash value of stock**

(sec. 1729.47)

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 a demand for payment of fair cash value and the affected stockholder has not agreed upon a fair cash value of the stock within three months after delivery of the demand for payment of fair cash value, the bill authorizes the affected stockholder, within 30 days thereafter, to 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 office of the association that issued the stock is or was located. The bill authorizes other affected stockholders who have made timely demand for payment of fair cash value to join as plaintiffs in the proceeding and authorizes any two or more proceedings commenced by affected stockholders to be consolidated. The bill requires the complaint to 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 provision is required.

Upon filing the complaint and upon motion of the complainant, the bill requires the court to fix a date for hearing on the complaint and to 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.

On the date fixed for the hearing or any adjournment thereof, the bill requires the court to 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.

If the court finds that the affected stockholder is to be paid, the bill authorizes the court to appoint one or more persons as appraisers to receive evidence as to the fair cash value. The appraisers have the power and authority that the court specifies in the order of appointment, and the court must fix reasonable compensation for the appraisers. After receiving the recommendation of any appointed appraiser, or if appraisers are not appointed, the bill requires the court to make findings as to the fair cash value and render judgment for its payment 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, are assessed as the court considers equitable.

The bill provides that 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.

#### **Termination of right to receive fair cash value**

(sec. 1729.46(C))

Under the bill, 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 the bill's provisions governing payment of fair cash value when the articles of incorporation or bylaws provide a basis for determining that value.
- (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.
- (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 the provisions described in "**Court determination of fair cash value.**"

#### **Deadline for payment**

(sec. 1729.46(D))

The bill requires 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, to be paid within 30 days as follows:

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



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

### **Disposition of an association's assets**

(sec. 1729.49)

Unless the articles of incorporation or the bylaws of an association otherwise provide, the bill authorizes a lease, sale, exchange, transfer, or other disposition of any assets of an association to 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 The bill provides that, for the purposes of provisions described under "**Disposition of an association's assets**," "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. of the assets of the association, then the bill authorizes the disposition to 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 in the bill for the adoption of a resolution of dissolution. The bill requires a plan of disposition to 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, and a general description of any material effect the board believes the disposition will have on the interests of the members and stockholders. The bill requires notice of a meeting of the members at which a plan of disposition will be voted on to be given to all members, whether or not entitled to vote at the meeting. The notice must be accompanied by a copy or summary of the plan of disposition and a ballot for those members entitled to vote on the plan.

The bill authorizes an association, by its board, to 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.

The bill requires 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 the association has not been complied with, to be brought within 90 days after such transaction, or the action is forever barred.

### **Voluntary dissolution of an association**

#### **Contents of resolution for dissolution**

(sec. 1729.55(A), (B), and (C))

The bill authorizes an association to be dissolved voluntarily in the manner provided under "**Voluntary dissolution of an association**." The bill requires a resolution of dissolution for an association to 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.

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

#### **When resolution for dissolution may be adopted**

(sec. 1729.55(D))

The bill authorizes the directors of an association to 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.



### **Procedures for adoption of resolution**

(sec. 1729.55(E))

The bill authorizes, at a meeting held for such purpose, the members to adopt a resolution of dissolution by the affirmative vote of 60% of the member votes cast on 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 voting power, of any particular class as is required by the articles of incorporation. The bill requires notice of the meeting of the members to be given to all members and stockholders whether or not they are entitled to vote.

### **Certificate of dissolution**

(sec. 1729.55(F), (G), and (H))

Upon the adoption of a resolution of dissolution, the bill requires a certificate to 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 the adoption;
- (3) The place in this state where the association's principal office 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.

The bill requires the certificate to be signed as follows:

- (1) When the resolution of dissolution is adopted by the incorporators, the certificate must 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 must be signed by any authorized officer. However, if no authorized officer executes and files the certificate within 30 days after the adoption of the resolution or upon any date specified in the resolution as the date upon which the certificate is to be filed or upon the expiration of any period specified in the resolution as the period within which 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 must 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.

The bill requires a certificate of dissolution filed with the Secretary of State to 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 filing, or that payment 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 filing;
- (4) A receipt, certificate, or other evidence from the bureau of employment services showing that all contributions due from the association as an employer have been paid, or that payment 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 payment 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 (2), (3), (4), or (5), directly above, 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 the bill's provisions regarding liability.



Upon the filing of a certificate of dissolution and the accompanying documents required by the bill, the association is dissolved.

### **Publication of notice of dissolution**

(sec. 1729.56)

Following the filing of the certificate of dissolution, the bill requires the directors or the incorporators who filed the certificate, as the case may be, to 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 of the association was to be or is located, and to cause written notice of dissolution to be given to all known creditors of, and to all known claimants against, the dissolved association.

### **Winding up**

(sec. 1729.58)

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, or when the period of existence of the association specified in its articles of incorporation has expired, the bill requires the association to cease to carry on business and to do only those acts that are required to wind up its affairs, or to obtain reinstatement of the articles in accordance with the bill.

The bill authorizes any claim existing or action or proceeding pending by or against the association or which would have accrued against it to 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 "**Court adjudication**," below.

The bill authorizes any process, notice, or demand against the association to 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.

Under the bill, the directors of the association or their successors must act as a 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 bill requires the directors to 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, to exercise all the authority of the association. Without limiting the generality of this 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 99 years renewable forever, settle or compromise claims in favor of or against the association, 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 bill authorizes the directors to perform all other acts necessary or expedient to the winding up of the affairs of the association.

Without limiting the authority of the directors, any action within the purview of provisions described under "**Winding up**" that is authorized or approved at a meeting of the members by 60% of the member votes cast thereon is conclusive for all purposes upon all members, patrons, and stockholders of the association.

The bill requires all deeds and other instruments of the association to be in the name of the association and to be executed, acknowledged, and delivered by the officers appointed by the directors.

Under the bill, at any time during the winding up of an association's 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 office of the association is located to have the winding up continued under supervision of the court, as described below under "**Court adjudication**."

### **Court adjudication**

(sec. 1729.59)

The bill provides that, without limiting the generality of its authority, the court of common pleas of the county in this state in which is located the principal office 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



10% of the members or 20 members, whichever is less, and upon 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 proof shall be made and the person to whom 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.

A judicial proceeding 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, the Revised Code chapter governing procedure on appeal.

### **Receiver appointed to wind up**

(sec. 1729.60)

Whenever, after an association is dissolved voluntarily, the articles of an association have been canceled, or the period of existence of an association has expired, a receiver is appointed to wind up the affairs of the association, the bill requires all the claims, demands, rights, interests, or liens of creditors, claimants, members, patrons, and stockholders to be determined as of the day on which the receiver was appointed. Unless it is otherwise ordered, the appointment vests in the receiver and successors of the receiver the right to the immediate possession of all the property of the association, which must, if so ordered, execute and deliver conveyances of such property to the receiver.

The bill authorizes any officer, director, member, or other person, whether a resident of the state or a nonresident and however interested, to be appointed as receiver. The bill vests in the receiver all the authority vested in the directors and officers of the association, and requires the receiver to exercise that authority subject to any orders made by the court, and states that the receiver may be required to qualify by giving bond to the state in an amount fixed by the court, with surety to the satisfaction of the clerk of the court, conditioned for the faithful discharge of duties and for a due accounting



for all money or property received.

### **Judicial dissolution of association**

(sec. 1729.61)

The bill authorizes an association to 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, in an action brought by the members having 60% of the voting power of the association on such proposal, or the holders of any 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.

The bill requires a complaint for judicial dissolution to be verified by any of the complainants and to 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 must 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.

Upon the filing of a complaint for judicial dissolution, the bill states that the court with which the complaint is filed has power to issue injunctions, to appoint a receiver with such authority and duties as the court from time to time may direct, to take any other proceedings that 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 bill authorizes the court to refer the complaint to a special master commissioner.

After a hearing upon such notice as the court may direct 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, is required by the bill to be made dissolving the association or dismissing the complaint. The bill requires an order or judgment for the judicial dissolution of an association to 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 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. Under the bill, a certified copy of the order must be filed in the office of the Secretary of State, whereupon the association is dissolved. To the extent consistent with orders entered in such proceeding, the effect of such judicial dissolution is the same as in the case of voluntary dissolution, and the bill's provisions 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, are applicable to associations judicially dissolved.

A proceeding 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, statutes governing procedure on appeal.

### **Marketing agreements**

(sec. 1729.67; sec. 1729.18 (repealed))

Current law and the bill authorize an association and its members to make marketing contracts, the terms of which are prohibited from exceeding ten years.

Current law eliminated by the bill states that the marketing contracts may require the members to sell all or any part of their agricultural products or specified commodities exclusively to or through the association or to or through facilities to be created by the association. The eliminated law authorizes the contract to provide, among other things, that the association may sell or resell the products delivered to it by its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs, such as interest or dividends on stock not exceeding eight per cent per annum, reserves for retiring the stock, any other proper reserves, and any other deductions.

The bill authorizes a cooperative and any member to make marketing agreements, whether written separately or contained in the bylaws, in which the member agrees to do any of the following:

(1) Sell, market, or deliver all or any specified part of products produced or to be produced either by the member or under the member's control, to or through the cooperative or any facilities furnished by it;



(2) Authorize the cooperative or any facilities furnished by it to act for the member in any manner with respect to all or any specified part of products produced or to be produced either by the member or under the member's control and any services to be furnished by the member;

(3) Buy or procure all or a specified part of goods or services from or through the cooperative or any facilities furnished by it;

(4) Authorize the cooperative or any facilities furnished by it to act for the member in any manner in the procurement of goods or services for the member.

Both current law and the bill authorize a marketing agreement to require that liquidated damages be paid by the member in the event of a breach of the marketing agreement. Current law and the bill specify that liquidated damages must be specific, reasonable sums, and that any provisions for liquidated damages are enforceable in the courts of this state and must not be regarded as penalties.

Law eliminated by the bill authorizes an association's bylaws to establish liquidated damages. The bill also eliminates law stating that the breach for which liquidated damages may be fixed must be in regard to the sale, delivery, or withholding of products, and authorizing the bylaws or marketing contract to further require the breaching member to pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association.

Under the bill, if a member breaches or threatens to breach a marketing agreement, the cooperative is entitled to an injunction to prevent the breach or any further breach, and to a decree of specific performance. Upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the cooperative is entitled to a temporary restraining order against the member.

Under the bill, if any marketing agreement authorized by (1) or (2), above, contains an assignment to the cooperative of any part or all of the funds due or to become due the member during the life of the marketing agreement for any product produced or to be produced by the member or for any services performed or to be performed in producing any product, any person who accepts or receives the product from the member is bound by the assignment after receiving written notice from the cooperative or the member of the amount and duration of the assignment. However, as to any seasonal crop, if no funds are paid or become payable by any person under such an assignment for a period of two consecutive years during the life of the marketing agreement, thereafter the assignment is not binding upon any person who receives or accepts the product from the member until the assignment is reaffirmed by the member in writing and written notice is given by the cooperative or the member. Under the bill, any such reaffirmation continues to be effective during the life of the marketing agreement until another such lapse of two consecutive years occurs.

### **Prohibitions against unfair marketing practices**

(sec. 1729.68; sec. 1729.181 (repealed))

Current law prohibits a processor, handler, distributor, or dealer, or agent thereof, who purchases or contracts to purchase milk, fruits, vegetables, sweet corn, or other canning crops from producers from engaging in certain unfair marketing practices. The bill retains this prohibition, but eliminates the language regarding agricultural products. Instead, the bill prohibits a processor, handler, distributor, or dealer, or any agent thereof, who purchases or contracts to purchase any product from a person who produced the product, or procures for, sells, or otherwise furnishes inputs, services, or supplies to a person, from engaging in certain unfair marketing practices.

With respect to unfair marketing practices, current law includes in the prohibited acts using duress against, coercing, or boycotting producers of raw agricultural products in the exercise of their rights to join and belong to cooperative agricultural marketing associations. The bill instead prohibits using duress against, coercing, or boycotting the person who produced the product in the exercise of the person's right to join and belong to a cooperative.

Current law also includes in the prohibited acts discriminating against producers of raw agricultural products with respect to price, quantity, or quality, or other terms of purchase of raw agricultural products, solely by reason of the producer's membership in or marketing contract with cooperative agricultural marketing associations. The bill instead prohibits discrimination against the person who produced the product with respect to price, quantity, or quality, or other terms of purchase or sale of products or produce, services, or supplies, solely by reason of the person's membership in or marketing agreement with a cooperative.

Law eliminated by the bill authorizes the Director of Agriculture to receive sworn complaints from affected producers of raw agricultural products or the cooperative agricultural marketing association of which the producers are members, or with whom they have a marketing contract, with respect to violations or threatened violations of the prohibitions described above. Under current law, the Director may make all necessary investigations, examinations, or inspections of any violation or threatened violation specified in the sworn complaint.



Law also eliminated by the bill authorizes the Director, after receiving a sworn complaint regarding violation of a prohibition against unfair marketing practices, and after the holding of an informal hearing on the charges made in the complaint, to bring an action to enjoin the violation as set forth in the complaint in the court of common pleas of the county in which the violation occurred. Under the eliminated language, a summons in such action against any defendant must be issued to the sheriff of any county within this state in which the defendant resides or may be served as in other civil actions.

Current law and the bill authorize actions against different defendants to be consolidated, in the discretion of the court, if the alleged violations are of the same prohibition, have occurred in the same or an adjoining county, and consolidation can be made without prejudice to a substantial right of any defendant. For consolidation, law eliminated by the bill requires the alleged violations to relate to the same agricultural product and occur in the same production season. The bill instead requires the alleged violations to relate to the same product, service, or supply.

The bill provides a different mechanism by which violations of the above-mentioned prohibitions against unfair marketing practices may be addressed. The bill authorizes a member or cooperative, on behalf of its member or members, to bring an action to enjoin the violation, and states that, upon filing a sufficient bond, a cooperative is entitled to a temporary restraining order against anyone who violates or threatens to violate the prohibitions as set forth in the complaint in the court of common pleas of the county in which the violation occurred.

Law eliminated by the bill specifies that nothing in the above provisions can be interpreted in any way to affect the rights of a producer of raw agricultural products who has not signed a contract with a cooperative agricultural marketing association, to bargain for his crop individually with any processor. The eliminated language authorizes, but does not require, a processor to bargain for any of his raw agricultural product requirements with any cooperative agricultural marketing association or associations. In addition, law eliminated by the bill prohibits the inability of a processor or his refusal to meet the terms and conditions of any cooperative agricultural marketing association proposed contract from being interpreted as a boycott or discrimination against the cooperative agricultural marketing association, or its members.

The bill establishes that any person who solicits or persuades or permits or aids or abets, induces, or attempts to induce, any member or other person to breach a marketing agreement with a cooperative, by accepting or receiving from the member or other person, products for sale, marketing, manufacturing, or processing for sale, contrary to the terms of any marketing agreement of which the interfering person has knowledge or notice, is liable to the cooperative for damages caused by that interference, and the cooperative is entitled to an injunction against the interfering person to prevent further breaches and a multiplicity of actions.

The bill requires any person who violates or threatens to violate the prohibitions against unfair marketing practices to pay to the cooperative its reasonable attorney's fees and other costs incurred by the cooperative in any litigation or proceeding at law or in equity to enforce or defend the cooperative's rights and interests that are protected under "**Prohibitions against unfair marketing practices.**"

### **Penalty**

(sec. 1729.99)

Current law states that whoever violates the above prohibitions against unfair marketing practices must be fined not less than \$50 nor more than \$500. The bill increases the penalty to a fine of not less than \$500 nor more than \$5,000 for each offense.

### **Agricultural cooperatives**

#### **Contracts**

(sec. 1729.70(B); sec. 1729.19 (repealed))

Current law authorizes an agricultural cooperative, upon resolution of its board of directors, to enter into all necessary and proper contracts and to make all necessary and proper stipulations and arrangements, with any other cooperative corporation or agricultural cooperative formed in this or any other state, for the cooperative and more economical carrying on of any of its business. The bill basically retains this provision, but simplifies it by stating that an agricultural cooperative, upon resolution of its board, may enter into marketing agreements and other arrangements with any other agricultural cooperative.

The bill retains current law authorizing any two or more agricultural cooperatives, by agreement between them, to unite in employing or separately employing the same personnel, methods, means, and agencies for carrying on their respective businesses. Both current law and the bill authorize agricultural cooperatives, acting singly or collectively, to meet in conference with two or more purchasers of their products who are acting collectively, and at the conference to fix by agreement the prices to be paid by the purchasers to the agricultural cooperative for the products. Under current law and



the bill, such concerted action by the purchasers is not a contract in restraint of trade.

### **Not a restraint of trade**

(sec. 1729.70(A); sec. 1729.20 (repealed))

The bill retains current law providing that an agricultural cooperative is not a conspiracy, a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily; and the marketing agreements between an agricultural cooperative and its members, or any other marketing agreements or sales contracts authorized or described in provisions governing marketing agreements, unfair marketing practices, and agricultural cooperatives, are not illegal as such, in unlawful restraint of trade, or part of a conspiracy or combination to accomplish an improper or illegal purpose.

### **Unfair marketing practices**

(sec. 1729.69; sec. 1729.192 (repealed))

The bill retains current law prohibiting a handler, under certain conditions, from engaging in certain unfair marketing practices with respect to an agricultural cooperative. Under current law and the bill, either of the following constitutes such an unfair marketing practice:

(1) If a handler or cooperative fails to bargain in good faith with the cooperative or such handler for the purpose of negotiating sales contracts for the specified fruit or vegetables Under "**Agricultural cooperatives--unfair marketing practices**," where "fruit or vegetables" appears in current law, the bill broadens the language by replacing it with "agricultural products or produce." to be delivered to a facility of the handler. The bill eliminates law stating that the provision applies when the cooperative requests such negotiations between January 1 and February 28 of any year and specifying that the obligation to negotiate in no event extends past March 31 for annual plantings or past July 31 for perennial plantings.

(2) If a handler enters into a sales contract directly with a producer, pertaining to specified fruit or vegetables to be delivered to the same facility, with the intent to cause the marketing cooperative to fail to meet the conditions set forth in the first "(2)" and "(3)" directly below "**Agricultural cooperatives--unfair marketing practices**."

Under current law, whoever commits an unfair marketing practice described directly above in (1) and (2) is fined not less than \$100 nor more than \$2,500 for each offense. The bill increases this penalty to a fine of not less than \$500 nor more than \$5,000 for each offense.

### **Membership in other entities**

(sec. 1729.80; sec. 1729.22 (renumbered))

Law eliminated by the bill authorizes an association to organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporations engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling the agricultural products handled by the association or the by-products of such products.

The eliminated language provides that if such other corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person against commodities delivered to them, and such legal warehouse receipts must be considered an adequate collateral to the extent of the usual and current value of the commodity represented by them.

The bill broadens the above language by authorizing an association to organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other cooperative, corporation, or other form of organization.

### **Stock not to be considered securities**

(sec. 1729.85)

The bill specifies that membership stock and patronage stock of an association are not to be considered securities under the law governing securities.

### **Application to associations organized prior to bill's effective date**

(sec. 1729.86)

Except as otherwise provided in the Ohio Cooperative Law, the bill applies to all associations, whether organized prior to



the bill's effective date or after that date.

### **Dairy law**

(secs. 917.01 and 917.16)

For purposes of the law governing dairies, current law defines "person" as any individual, government agency, political subdivision, partnership, corporation, affiliate or subsidiary of a corporation, association, cooperative association, or other business unit. The bill removes from this definition an affiliate or subsidiary of a corporation.

Current dairy law defines "co-operative association" as any association organized under the law governing agricultural cooperatives or under the federal "Co-operative Marketing Associations (Capper-Volstead) Act," and qualified to do business in Ohio, if the Director of Agriculture finds the association has, in good faith, its entire activities under the control of its members and has been and is exercising full authority in the sale of milk or cream for its members. The bill adds that "agricultural cooperative association" means the same as "co-operative association" and removes from the definition agricultural cooperatives organized under the federal "Co-operative Marketing Associations (Capper-Volstead) Act." The bill replaces the reference to the law governing agricultural cooperatives with a reference to the Ohio Cooperative law.

### **Exemption from certain provisions of the law governing securities**

(sec. 1707.02(I))

Under current law, any security, except notes, bonds, debentures, or other evidences of indebtedness or of promises or agreements to pay money, which is issued by a person, corporation, or association organized not for profit, including persons, corporations, and associations organized exclusively for cooperative marketing or for certain other purposes, is exempt from certain provisions governing securities, if no part of the net earnings of the issuer inures to the benefit of any shareholder or member of the issuer or of any individual, and if the total commission, remuneration, expense, or discount in connection with the sale of the securities does not exceed 2% of the total sale price thereof plus \$500. The bill specifies that the exemption applies to *agricultural* cooperative marketing, subject to the bill's provision stating that membership stock and patronage stock of an association are not to be considered securities for purposes of the securities law.

### **Elimination of current law governing associations organized and contracts made before July 17, 1923**

(sec. 1729.26 (repealed))

The bill eliminates law governing the means by which associations organized and contracts made before the effective date of the existing law governing agricultural cooperatives could become subject to that law.

## **HISTORY**

### **ACTION DATE JOURNAL ENTRY**

Introduced 10-02-97 p. 1719

[Top of Page](#)

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[Home](#) | [Ohio General Assembly](#)  
[LSC 122nd GA Status Sheet](#) | [LSC 122nd GA Bill Analyses](#)  
[Senate Analyses](#) | [Final Analyses](#) | [Digest](#)

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