

CHAPTER 185.

CO-OPERATIVES.

185.01	Definitions.	185.50	Income tax return, filing of, when.
185.02	Purposes.	185.51	Amendments to articles.
185.03	General powers.	185.52	Stockholder voting on amendments to articles.
185.04	Incorporators.	185.53	Filing and recording amendments; effect thereof.
185.045	Reserved name.	185.54	Restated articles.
185.05	Articles.	185.55	Amendments by bankruptcy court.
185.06	Organization meetings.	185.61	Merger and consolidation.
185.07	Bylaws.	185.62	Articles of merger or consolidation; effect thereof.
185.08	Principal office; registered agent; service of process.	185.63	Division of a co-operative.
185.09	Promotion expense; limitation.	185.64	Conversion of corporation.
185.11	Membership.	185.71	Voluntary dissolution.
185.12	Voting.	185.72	Involuntary dissolution.
185.13	Member meetings.	185.73	Liquidation under court supervision.
185.14	Quorum.	185.74	Property omitted from final distribution.
185.15	Notice to members, stockholders or other persons; waiver.	185.75	Amounts due unknown persons.
185.21	Stock; authorization, issuance, control, use, rights.	185.76	Survival of remedy after dissolution.
185.22	Subscriptions for stock; liability therefor.	185.81	Admission of foreign co-operatives.
185.23	Missing securities or records.	185.82	Filing and recording documents; penalty for false document.
185.24	Liability of co-operative for wrongful transfers of its securities.	185.83	Fees for filing.
185.31	Directors; number, election, removal and vacancies.	185.84	Fees or penalty due state.
185.32	Directors; meetings, quorum and waiver of notice.	185.85	Forms to be furnished by secretary of state.
185.33	Executive committee.	185.91	Voting requirements of articles.
185.34	Action without meeting by directors or members.	185.92	Defense of ultra vires.
185.35	Officers.	185.93	Member or stockholder derivative actions.
185.36	Compensation and benefits to directors, officers and employes.	185.94	Use of term "co-operative"; penalty for improper use.
185.37	Liability of directors and members.	185.95	Discrimination against association.
185.38	Disposition of assets; right to secure debts.	185.96	Application of chapter.
185.41	Co-operative contracts.	185.97	Title.
185.42	Filing of co-operative contracts; effect thereof.	185.981	Co-operative sickness care.
185.43	Relief against breach or threatened breach.	185.982	Manner of practicing medicine; payment; promotional expense.
185.44	Application of 185.41 to 185.43; venue of action.	185.983	Requirements of plan.
185.45	Apportionment and distribution of proceeds.	185.984	Authority to enjoin unlawful operation.
185.46	Unclaimed distributions, redemptions or payments.	185.985	Inconsistent provisions of the statutes.
185.47	Books and records; penalty for refusal to produce.	185.991	Voluntary benefit plans in schools.
185.48	Annual reports; filing thereof.	185.992	Requirements of plans.
185.49	Omission of seal.	185.993	Power to borrow money.
		185.994	Authority to enjoin unlawful operation.
		185.995	Exempt from taxation.
		185.996	Inconsistent provisions of statutes.

185.01 Definitions. As used in this chapter, unless the context requires otherwise, the term:

- (1) "Co-operative" means an association incorporated under this chapter.
- (2) "Foreign co-operative" means an association incorporated under a co-operative law of another state which has members residing within this state and which is operating on the following co-operative basis:
 - (a) Either no member of the foreign co-operative who is an individual is allowed more than one vote because of the amount of stock or membership capital he owns therein, or the foreign co-operative does not pay dividends on stock or membership capital in excess of 8 per cent per annum; and
 - (b) The foreign co-operative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members; and
 - (c) The foreign co-operative distributes its proceeds according to either s. 185.45 or the law of the state of the foreign co-operative's incorporation.
- (3) "Association" includes both co-operatives and foreign co-operatives.
- (4) "Corporation" means all corporations not associations.
- (5) "Member" means a person who has been qualified and accepted for membership in an association.
- (6) "Membership stock" means any class of stock, continuous ownership of which is required for membership in a co-operative.

(7) "Security" as used in ss. 185.23, 185.24 and 185.46 means any indebtedness, capital stock or other equity interest in a co-operative's assets.

History: 1955 c. 368, 652.

Revision Committee Note, 1955: "Co-operative basis" has been defined only as to foreign co-operatives along the lines of the federal Capper-Voistead act; it was felt no definition of "co-operative basis" was needed as to domestic co-operatives since they are subject to this entire chapter. "Membership stock" is a new concept. "Security" is defined for this chapter only; the definition has no bearing on ch. 189. (Bill 140-A)

185.02 Purposes. Co-operatives may be organized under this chapter for any lawful purpose except banking, insurance, and building or operating public railroads, but subject to statutes relating to the organization of specified kinds of corporations.

History: 1955 c. 368.

Revision Committee Note, 1955: This section conforms closely to 185.02 (1953) where the definition of purposes is carried over from the general corporation law. (Bill 140-A)

185.03 General powers. Unless otherwise provided by its articles, a co-operative may:

- (1) Exist perpetually.
- (2) Sue and be sued.
- (3) Have a seal.
- (4) Make contracts, incur liabilities and borrow money; issue certificates representing indebtedness, or representing equity interests in its assets; acquire property; dispose of, mortgage, pledge, lease or otherwise use in any manner any of its property, or any interest therein, wherever situated.
- (5) Invest its funds, lend money for its purposes, and hold any property as security for repayment.
- (6) Conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country.
- (7) Elect officers and appoint agents, define their duties and fix their compensation.
- (8) Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.
- (9) Make donations for charitable, scientific, educational or religious purposes.
- (10) Indemnify any present or former director, officer or agent against actual expenses necessarily incurred in defense of any proceeding in which he is a party because he is or was such director, officer or agent. This subsection does not apply to those proceedings in which he is adjudged liable for negligence or misconduct in the performance of duty. Such indemnification shall not be exclusive of other rights to which he may be entitled.
- (11) Cease its activities and surrender its franchise.
- (12) Exercise all powers necessary or convenient to effect its purposes.

History: 1955 c. 368.

Revision Committee Note, 1955: This section conforms closely to 180.04. (Bill 140-A)

185.04 Incorporators. Five or more adults, one of whom must be a resident, may form a co-operative by signing, acknowledging, filing and recording articles of association.

History: 1955 c. 368.

185.045 Reserved name. The provisions of s. 180.08 shall apply to co-operatives, with the word "co-operative" substituted for the words "corporate" and "corporation".

History: 1957 c. 484.

185.05 Articles. (1) The articles of association shall set forth:

- (a) The name of the co-operative.
- (b) The period of existence, unless perpetual.
- (c) The purposes for which organized. It is sufficient to state that the co-operative may engage in any activity within the purposes for which co-operatives may be organized, and all such activities shall then be deemed within its purposes, subject to express limitations.
- (d) Whether the co-operative is organized with or without capital stock.
- (e) The designation of classes of members, if more than one.
- (f) The number and par value of shares of each authorized class of stock; if more than one class is authorized, the designation, preferences, limitations and relative rights of each class shall also be set forth.
- (g) Which classes of stock are membership stock.
- (h) As to each class of stock, the rate of dividend, or that the rate of dividend may be fixed by the board, or that no dividend will be paid. If the dividend on any class of stock is to be cumulative, this shall also be stated.
- (i) Any reservation of a right to acquire or recall any stock.

(j) The basis of distribution of assets in the event of liquidation.

(k) The city, village or town in this state in which the co-operative's principal office is to be located, and if it is a town, then also the county and post office or the complete address in this state of its registered agent.

(l) The name and address of each incorporator.

(m) The names and addresses of at least 5 incorporators who will act as the temporary board.

(2) It is not necessary to set forth in the articles any of the powers granted by this chapter. The articles may include additional provisions, consistent with law, including provisions which are required or permitted to be set forth in the bylaws. Any provision required or permitted in the bylaws has equal force and effect if stated in the articles. Whenever a provision of the articles is inconsistent with a bylaw, the articles control.

(3) The articles shall be filed and recorded as provided in s. 185.82. The legal existence of a co-operative begins when the duplicate original articles are left for recording. Upon receipt of the certificate of the register of deeds that the duplicate original articles have been recorded, the secretary of state shall issue a certificate of incorporation.

(4) The certificate of incorporation shall be conclusive evidence, except as against this state in a proceeding to cancel or revoke such certificate, that all conditions precedent to existence have been met.

History: 1955 c. 368; 1957 c. 484.

185.06 Organization meetings. (1) After articles have been filed and recorded, an organization meeting of the temporary board shall be held at the call of a majority of the incorporators or of a majority of the temporary directors for the adoption of bylaws, election of temporary officers, and transaction of other business.

(2) The first meeting of the members shall be called by the temporary president or a majority of the temporary directors. Such meeting shall be held as soon as reasonably possible after the organization meeting of the temporary board, but not later than 6 months after recording the articles. Failure to hold such meeting within the time specified does not affect the validity of organization.

History: 1955 c. 368.

Revision Committee Note, 1955: No count slightly different than the past law. (Bill terpart in 1953 statutes. The organization 140-A) of a co-operative under this section is

185.07 Bylaws. The initial bylaw of a co-operative may be adopted by the temporary board. Thereafter, bylaws may be adopted and amended only by the members, unless the members adopt a bylaw which permits the board to make and amend specified bylaws. Any bylaw adopted or amended by the board shall be reported at the next regular member meeting. Any such bylaw shall be at any time subject to amendment or repeal by the members. Unless the bylaws provide otherwise, any bylaw may be adopted, amended or repealed by a majority of the members present at a meeting.

History: 1955 c. 368.

Revision Committee Note, 1955: No count board may adopt the initial bylaws of the terpart in 1953 statutes. This generally co-operative. Normally, only members there- changes the present law. The temporary after adopt or amend bylaws. (Bill 140-A)

185.08 Principal office; registered agent; service of process. (1) A co-operative shall maintain in this state either its principal office or a registered agent.

(2) The board may establish or change the location of the principal office or name and address of the registered agent by causing a statement in writing to be filed and recorded as an amendment to the articles as provided in s. 185.82. Such statement shall set forth the name of the co-operative, and the location of its principal office or the name and address of the registered agent as established or changed.

(3) A registered agent may resign by mailing a written notice to both the secretary of state and the co-operative. The resignation becomes effective when the co-operative names a new registered agent or 60 days after the receipt of notice by the secretary of state, whichever is sooner.

(4) Service of any process, notice or demand upon a co-operative may be made as provided in s. 180.11 or 262.09.

History: 1955 c. 368.

Revision Committee Note, 1955: This section the principal office or a registered agent to modifies 185.02 (1953) by requiring only be maintained in the state. (Bill 140-A)

185.09 Promotion expense; limitation. No co-operative funds may be used, nor any stock issued, in payment of any promotion expenses in excess of 5 per cent of the paid-up capital stock or membership fees.

History: 1955 c. 368.

Revision Committee Note, 1955: Conforms closely to 185.21 (1953). (Bill 140-A)

185.11 Membership. (1) A co-operative may be organized on a membership basis with no capital stock, or may be organized with capital stock.

(2) A co-operative may have one or more classes of members. The designation, qualifications, requirements, method of acceptance, and incidents of membership of each class shall be set forth in the bylaws. Any person, including a partnership, incorporated or unincorporated association, corporation, or body politic, may become a member in accordance with the bylaws.

(3) No member may transfer his membership except as permitted in the bylaws.

(4) The bylaws may provide for termination of membership and the conditions and terms thereof.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This specifically authorizes nonstock co-operatives. Member-ship provisions, however, are to be included in articles or bylaws of all co-operatives since the concepts of "membership" and "stock ownership" are made separate from each other. See 185.12. (Bill 140-A)

185.12 Voting. (1) Except as permitted in this section, s. 185.52, 185.61 or 185.63, no person other than a member may vote at any member meeting. A person who has not fully paid for his membership may not vote except as expressly permitted in the bylaws. If the co-operative permits 2 or more persons to hold one membership, the bylaws may provide how such member vote is to be cast.

(2) At any member meeting, each member entitled to vote shall have one vote, except that the articles may permit either or both:

(a) A member association to cast additional votes not exceeding a number equal to its membership.

(b) A co-operative whose member-patrons include other associations to base voting in whole or in part on a patronage basis.

(3) Voting by proxy shall not be allowed in any co-operative, except the bylaws may provide for representation of members by delegates apportioned territorially. A delegate shall cast the votes to which members represented by him are entitled.

(4) An absent member may submit a signed vote if he has been previously notified in writing of the exact motion or resolution upon which the vote is taken. The bylaws may limit use of signed votes except as provided in s. 185.52.

(5) In the absence of written notice that some person has been designated to represent a member who is other than a natural person, such member may be represented by any of its principal officers. Unless the bylaws provide otherwise, an individual may represent more than one such member, and may also vote as an individual if he is a member.

(6) The bylaws may set forth provisions, not inconsistent with this chapter, relating to the methods and procedures for voting.

History: 1955 c. 368.

Revision Committee Note, 1955: The right voting is permitted in federated organizations for the first time. The old mail ballot and not mere stock ownership. Patronage procedure has been simplified. (Bill 140-A)

185.13 Member meetings. (1) Unless the bylaws provide otherwise, member meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual member meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special member meetings may be called by the president, board, or members having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice, stating the place, day and hour, and in case of a special member meeting the purposes for which the meeting is called, shall be given not less than 7 nor more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which members are to be represented by delegates, notice to such members may be given by notifying such delegates and their alternates. Notice may consist of a notice to all members or may be in the form of an announcement at the meeting at which such delegates or alternates were elected.

(6) Action without a meeting may be taken pursuant to s. 185.34.

History: 1955 c. 368.

Revision Committee Note, 1955: Annual meeting requirements are strengthened. Notice provisions are slightly changed; and action without meeting by unanimous consent is new. (Bill 140-A)

185.14 Quorum. A quorum at a member meeting shall be 10 per cent of the first 100 members plus 5 per cent of additional members, present in person or represented by delegate. Unless the bylaws fix a larger number of members to constitute a quorum, a quorum shall never be more than 50 members nor less than 5 members or a majority of all members, whichever is smaller. Members represented by signed vote may be

counted in computing a quorum only on those questions as to which the signed vote is taken.

History: 1955 c. 368, 660.

Revision Committee Note, 1955: 185.15 (1953) contains a requirement impossible to meet in some co-operatives. Rather than setting the minimum at twice the board of directors, a minimum quorum of 5 is set. An exact percentage figure was introduced to make for ease in computing a quorum. (Bill 140-A) [See later amendment on quorum by ch. 660, Laws 1955.]

185.15 Notice to members, stockholders or other persons; waiver. (1) Whenever notice is required by this chapter to be given to any person, such notice shall be given either personally or by mail. If mailed, such notice is given when deposited in the United States mail, with postage prepaid thereon, addressed to such person at his address as it appears on the records of the co-operative.

(2) A signed waiver is equivalent to personal notice to the person so signing. The waiver may be signed at any time.

History: 1955 c. 368; 1957 c. 484.

Revision Committee Note, 1955: This general notice section applies to notice required to be given to any person, whether a member or a stockholder or another person. To this extent, there is no counterpart in 1953 statutes. (Bill 140-A)

185.21 Stock; authorization, issuance, control, use, rights. (1) A co-operative organized with capital stock may issue the amount of stock stated in its articles. Such stock may be divided into 2 or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles, except that:

(a) Stock as such has no voting power, except as stated in ss. 185.52, 185.61 and 185.63;

(b) Stock without par value shall not be authorized or issued;

(c) The rate of dividends upon stock shall not exceed 6 per cent of its par value for any year, but dividends may be cumulative.

(2) (a) The articles may require that members own one or more shares of membership stock. Such stock shall be issued or transferred only to a person eligible to become a member, and only when such person satisfies other requisites for membership.

(b) Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

(3) Each certificate for stock shall bear the manual or facsimile signature of a principal officer and shall state:

(a) The name of the co-operative, the number, par value and class of the shares represented by the certificate, and whether or not it is membership stock.

(b) Any restrictions on the issuance or transfer of such stock, including those provided in sub. (2) (a);

(c) If more than one class of stock is authorized, the designation of the several classes, and their respective preferences, limitations and relative rights. In lieu of the full statement, this information may be given in summary form, or the certificate may state that the co-operative will, upon request, furnish the information required by this subsection.

(4) No stock certificate may be issued except upon payment of the par value of the stock it represents. Payment for stock may be in cash or other property. If in other property, the value thereof shall be determined by the board and such determination, if made in good faith, shall be conclusive.

(5) Unless the articles provide otherwise, a co-operative may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the co-operative a prior right to acquire any stock offered for sale, or a right to recall the stock of any stockholder, or both of said rights. The consideration paid for stock recalled by the co-operative shall be its par value and accrued unpaid dividends, provided that if the book value of such stock is less than the par value, the consideration shall be such book value. The co-operative may set off obligations of the stockholder to it. If the remaining assets would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, no stock shall be acquired, recalled, exchanged or redeemed for a consideration other than stock or certificates of equity interest of equal or subordinate rank.

(6) When stock is acquired, recalled, exchanged, or redeemed by the co-operative, such stock is restored to the status of authorized but unissued stock.

(7) Stockholders as such have no pre-emptive right to purchase additional stock.

History: 1955 c. 368.

Revision Committee Note, 1955: This section is a complete rewriting and reworking of 185.081 (1953). There is no exact counterpart anywhere. Portions of the section were patterned after ch. 180. Other portions were patterned after present practice and anticipated future needs of co-operatives. All sections relating to the issuance and control of stock are gathered together here in one section. (Bill 140-A)

185.22 Subscriptions for stock; liability therefor. (1) A subscription for stock of a co-operative is irrevocable for 6 months unless otherwise provided by the subscription agreement, or unless all subscribers consent to the revocation.

(2) Except as provided in s. 185.37, a stockholder or subscriber is under no obligation to any person with respect to his stock or subscription other than the obligation to pay to the co-operative the full consideration for which such stock was to be issued.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section was patterned on 180.13 (1) and 180.20 (1). (Bill 140-A)

185.23 Missing securities or records. (1) When a security issued by a co-operative is missing, the co-operative shall issue a duplicate security if the owner so requests and furnishes an indemnity acceptable to the co-operative.

(2) When records showing ownership of securities of apportionment of equity interest in the assets are missing and the information therein contained is necessary to a proposed redemption of the interest, the co-operative may give notice and redeem as follows:

(a) The co-operative shall set aside an amount equal to the value of the interests to be redeemed.

(b) The co-operative shall give notice of such redemption to all owners of interests of which the co-operative has knowledge.

(c) If there are interests, the ownership of which is unknown to the co-operative, it shall publish notice of the redemption at least once a month for 4 months both in a publication circulated among members of co-operatives in the area and in a newspaper of general circulation in the area.

(d) Any unclaimed outstanding interest represented by the missing records may then be terminated in accordance with s. 185.46.

History: 1955 c. 368.

Revision Committee Note, 1955: This section is entirely new. There is no counterpart for it anywhere. (1) was adopted in part from provisions of the uniform commercial code. (2) was designed to meet a particular problem existing in co-operatives where certain records have either been lost or destroyed. It details provisions giving the best possible notice under the anticipated circumstances. It permits the co-operative in such circumstances to clear up its books. (Bill 140-A)

185.24 Liability of co-operative for wrongful transfers of its securities. (1) A co-operative is not liable for acting upon wrongful transfers of its securities unless it has notice that the certificate was not transferred by a proper person or has notice that the transfer was wrongful.

(2) As used in this section:

(a) "Proper person" means the registered owner or last prior transferee, whether or not described as fiduciary for another, or his authorized agent, legal representative, or successor to his interest by operation of law.

(b) "Wrongful transfer" means a transfer which is in excess of the authorization or capacity of the transferor, or which is made in breach of the transferor's fiduciary duty.

(c) "Transfer" includes a redemption or recall of stock.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section was adopted from the July 1, 1954, draft of the proposed model exoneration act of the American Bar Association. (Bill 140-A)

185.31 Directors; number, election, removal and vacancies. (1) The business and affairs of a co-operative shall be managed by a board of directors. Every director shall be a member or a representative of a member who is other than a natural person. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified territorial districts.

(2) The number of directors shall not be less than 5, provided that, in a co-operative with less than 50 members, the number of directors shall not be less than 3. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws.

(3) The directors constituting the temporary board, named in the articles, shall hold office until the first member meeting. At that meeting and thereafter, directors shall be elected by the members at a member meeting in the manner and for the terms provided in the bylaws. If the bylaws provide that directors be from specified territorial districts, the articles may limit voting for any director to members from within the territorial district from which such director is to be elected. Unless the bylaws provide otherwise, a director's term of office shall be one year. Each director shall hold office for the term for which elected and until his successor takes office. The bylaws may permit selection of alternates to take the place of directors absent at a meeting of the board. Whenever any change is

made in the board, the co-operative shall file within 20 days with the secretary of state a report showing the names and addresses of all directors.

(4) Unless the bylaws provide otherwise, a director may be removed upon a majority vote of all members.

(5) Unless the bylaws provide otherwise, any vacancy existing in the board may be filled until the next annual meeting by appointment by a majority vote of the directors then in office.

History: 1955 c. 368.

Revision Committee Note, 1955: In small voting for such directors may be restricted co-operatives it is permissible to have a 3- to members of that district. This section member board. Where directors are per- also permits selection of alternates to take mitted to be elected upon a district basis, the place of absent directors. (Bill 140-A)

185.32 Directors; meetings, quorum and waiver of notice. (1) Meetings of the board shall be held at such place and upon such notice as is prescribed in or pursuant to the bylaws.

(2) Unless a greater number is required in the bylaws, a majority of the directors in office shall constitute a quorum for transaction of business. Unless a greater number is required in the bylaws, an act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board.

(3) A signed waiver of notice of a board meeting is equivalent to personal notice to the person so signing. The waiver may be signed at any time. Attendance at a meeting is a waiver of notice of such meeting, except when a director attends the meeting and objects thereat to the transaction of business because the meeting was not lawfully convened.

(4) Unless the bylaws provide otherwise, the purposes of any meeting of the board need not be specified in the notice or waiver of notice of such meeting.

History: 1955 c. 363; 1957 c. 434.

Revision Committee Note, 1955: This section follows 180.35 and 180.37 in part. (Bill 140-A)

185.33 Executive committee. (1) If the bylaws so provide, the board may elect an executive committee to consist of 3 or more directors. When the board is not in session, such committee shall have all powers of the board except in respect to:

- (a) Powers reserved by the board to itself.
- (b) Apportionment or distribution of proceeds.
- (c) Election of officers.
- (d) Filling of vacancies in the board.
- (e) Amendments to the bylaws.

(2) The board may elect other directors as alternates for members of the executive committee.

History: 1955 c. 363.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section permits the co-operative to have an executive committee subject to certain restrictions. (Bill 140-A)

185.34 Action without meeting by directors or members. Any action which may be taken at a meeting may be taken without a meeting if a writing setting forth and approving the action taken shall be signed by all of the co-operative members, directors or executive committee members entitled to vote on such action. Such consent shall have the same force and effect as a unanimous vote at a meeting.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This follows, in part, 180.91. (Bill 140-A)

185.35 Officers. (1) The principal officers of a co-operative are a president, one or more vice presidents as prescribed in the bylaws, a secretary and a treasurer. They shall be elected annually by the board at such time and in such manner as the bylaws provide. Upon original election and whenever any change is made in such officers, the co-operative shall file with the secretary of state, within 20 days, a report showing the name and address of all officers. Each principal officer except the secretary and the treasurer must be a director of the co-operative. The offices of secretary and treasurer may be combined in one person.

(2) Any other officer may be chosen by the board or as provided in the bylaws.

(3) All officers shall have such authority and perform such duties as the bylaws provide, or as the board may determine not inconsistent with the bylaws. Any officer may be removed by the board whenever in its judgment the best interests of the co-operative will be served thereby. Election or appointment shall not of itself create contract rights.

History: 1955 c. 368.

Revision Committee Note, 1955: There is 1953 statutes. This section follows, in part, no substantial difference between this and 180.41 and 180.42. (Bill 140-A)

185.36 Compensation and benefits to directors, officers and employes. (1) Unless the bylaws provide otherwise, only the members may establish compensation or other benefits for a director, not available generally to officers and employes, for services as a director.

(2) Unless the bylaws provide otherwise, for prior or future services of any officer or employe, the board may provide reasonable compensation, pension, bonuses or other benefits to such officer or employe, and pension or other benefits to a member of his family or his beneficiaries. No officer or employe who is a director may take part in the vote on his salary for services rendered the co-operative.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section was designed not to follow the provisions of ch. 180. Following normal practice, in most cases only the members may establish the compensation for directors. The board of directors may, however, provide compensation, bonuses, pensions, health insurance and other benefits to officers and employes of the co-operative and their families. (Bill 140-A)

185.37 Liability of directors and members. (1) Directors who negligently or in bad faith vote for any distribution of assets contrary to this chapter or the articles are jointly and severally liable to the co-operative for the value of assets distributed in excess of the amount which could have been distributed without violating this chapter or the articles.

(2) Members, stockholders and patrons of a co-operative are neither obligated to pay, nor liable upon, any co-operative obligation, except that stockholders are liable to an amount equal to the par value of their shares for debts due an employe for not more than 6 months' service to the co-operative.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. As to (2), the 1949 corporation law used the term "clerks, servants and laborers." It is supposed that "employes" covers these people and no others. Since extensive case law has been developed on this point, no change was felt desirable and no change was intended. (Bill 140-A)

185.38 Disposition of assets; right to secure debts. (1) Except as authorized by the members, the board may not dispose of all or substantially all of a co-operative's fixed assets. At any meeting the members may authorize the disposition of all or substantially all of a co-operative's fixed assets if:

(a) Notice that such disposition will be considered at such meeting has been given to all persons entitled to vote thereon; and

(b) Such disposition has been approved by two-thirds of those entitled to vote thereon voting at the meeting.

(2) Unless the bylaws provide otherwise, the board may secure payment of a co-operative's debts by mortgaging the co-operative's rights, privileges, authority and franchises, revenues and other property.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. (2) follows 185.05 (2) (1953). In general, no disposition of assets may be made by the board where all or substantially all of a co-operative's fixed assets are involved. The members may authorize such disposition. (2) simply restates the former law relating to the securing of debts. (Bill 140-A)

185.41 Co-operative contracts. (1) If otherwise lawful, contracts for any of the following purposes, whether written or contained in the bylaws, are valid when made between an association and any member in which such member agrees to:

(a) Sell, market or deliver all or any specified part of products produced or to be produced either by him or under his control to or through the association or any facilities furnished by it.

(b) Authorize the association or any facilities furnished by it to act for him in any manner with respect to all or any specified part of such products and any services to be furnished by him.

(c) Buy or procure all or a specified part of goods or services from or through the association or any facilities furnished by it.

(d) Authorize the association or any facilities furnished by it to act for him in any manner in the procurement of goods or services.

(2) The term of such contracts may not exceed 5 years, but they may be made self-renewing for periods not exceeding 5 years each, subject to the right of either party to terminate at the end of the original and each renewal term upon giving written notice of such termination during a period specified in such contract. Such period shall be of at least 30 days' duration during the last year of each term. The association shall furnish to each member-maker a completed original or copy of his contract, and on his request at any time shall promptly furnish him information as to his rights of termination. The 5-year

limitation herein contained shall not apply to contracts for the furnishing of electric energy or service involving an investment by the vendor in fixed assets to be amortized over a longer term.

(3) Such contract may require liquidated damages to be paid by the member in the event of a breach of the contract. Liquidated damages may be either a percentage of the value of the products, goods or services, or a specific sum, but neither may be more than 30 per cent of the value of the products, goods or services, subject to the breach. Where a specific sum is provided as liquidated damages, but such sum exceeds 30 per cent of the value of the products, goods or services which are the subject of the breach, then the contract shall be construed as providing an amount equal to 30 per cent.

(4) If any contract authorized by sub. (1) (a) or (b) contains an assignment to the association of any part or all of funds due or to become due the member during the life of the contract for any product produced or to be produced by him or for any services performed or to be performed in producing any product, any person who accepts or receives such product from the member is bound by such assignment after receiving written notice from the association or the member of the amount and duration of such 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 2 consecutive years during the life of the contract, thereafter the assignment shall not be binding upon any person who receives or accepts such product from the member until the assignment is reaffirmed by the member in writing and written notice thereof is given by the association or the member. Any such reaffirmation shall continue to be effective during the life of the contract until another such lapse of 2 consecutive years shall occur.

History: 1955 c. 368.

Revision Committee Note, 1955: In general this follows former law but broadens somewhat the types of authorized contracts. (4) is enlarged to cover so-called "bailment" contracts. (Bill 140-A)

185.42 Filing of co-operative contracts; effect thereof. (1) The association may file in the office of the register of deeds of the county in which the member-maker of the contract resides:

- (a) A copy of any contract authorized by s. 185.41; and
- (b) If a uniform contract is used, a sworn list of the names of all member-makers of that contract residing in the county.

(2) The register of deeds, upon payment of a fee of 50 cents for each contract and of 5 cents for each member-maker of a uniform contract, shall number each contract consecutively and shall file it. The register of deeds shall enter the name of every member-maker of such a contract alphabetically in a book to be kept for that purpose. He shall place members and co-operatives under a separate head and shall state in separate columns, opposite each name, the number of the contract, the date of the filing, and a brief description of the products, goods or services covered by such contract.

(3) The filing constitutes notice to all persons of the association's rights under the contract. The filing also constitutes such notice that an interest in the title to all products agreed to be sold by the member-maker of such contract to the association during the term of such contract is vested in the association. In case of a purchase of any such product thereafter by any party other than the association from any party other than the association, no interest of any nature shall pass to such other purchaser; the association may recover the possession of such products from any person in whose possession they may be found, may obtain an injunction to prevent any attempted purchase, receipt or transfer not permitted by the contract or may enforce its rights in any manner permitted by law.

(4) The filing constitutes notice to all persons that the contract is and remains a valid contract until:

- (a) It expires according to its terms; or
- (b) It is canceled by written mutual agreement of the parties thereto; or
- (c) It is annulled or otherwise terminated by final judgment of a court.

(5) Whenever the contract has been terminated in any such manner, the association shall give, upon demand, a statement of termination to the member-maker of the contract. Such member may file such statement in the office of the register of deeds where the contract was originally filed. The register of deeds shall stamp "expired" after the name of the member in the alphabetical index. For such filing and stamping, the register of deeds shall receive a 25-cent fee. At least once each year the association shall file in the office of the register of deeds where the contract was originally filed, a sworn list of the names of all member-makers whose contract has been terminated in any manner specified by sub. (4) (b) and (c). The register of deeds shall stamp "expired" after the name of

the members in the alphabetical index. For such filing and stamping the register of deeds shall receive a fee of 5 cents for each member-maker.

History: 1955 c. 368.

Revision Committee Note, 1955: This generally restates former law. The last part of (5) is designed to keep register of deeds' records more current than under old law. (Bill 140-A)

185.43 Relief against breach or threatened breach. (1) In the event of a breach or threatened breach of a contract authorized by s. 185.41 by a member, the association shall be entitled to an injunction to prevent the breach or any further breach thereof, and to a decree of specific performance. Upon filing of a verified complaint showing such breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order against the member.

(2) Any person, with actual or constructive notice that a contract exists, who induces or attempts to induce any member to breach or repudiate his contract with the association, or who in any manner aids a breach of such contract, is liable to the aggrieved party for damages caused by such interference. The association is also entitled to an injunction to prevent any interference or further interference with the contract.

History: 1955 c. 368.

Revision Committee Note, 1955: No substantial change is intended from provisions in 185.08 (1953). (Bill 140-A)

185.44 Application of 185.41 to 185.43; venue of action. (1) Sections 185.41 to 185.43 apply after July 13, 1955 to all contracts whether made before or after that date.

(2) The proper place of trial of any action by or against an association when based on ss. 185.41 to 185.43 is in the county where the association has its principal office or registered agent.

History: 1955 c. 368.

Revision Committee Note, 1955: (2) restates 185.08 (1953). (Bill 140-A)

185.45 Apportionment and distribution of proceeds. At least once annually the directors shall determine and distribute net proceeds as follows:

(1) There shall be deducted from total proceeds:

- (a) All operating expenses and costs.
- (b) The cost of supplies, commodities, equipment and other property or services procured or sold for patrons.
- (c) The cost of services performed for patrons.
- (d) All taxes and all other expenses.
- (e) Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices.

(2) The remainder of the total proceeds are net proceeds and shall be distributed and paid as follows:

(a) An amount not to exceed 5 per cent thereof may be set aside as an educational fund to be used in teaching or promoting co-operative organization or principles. Such funds shall for all purposes except the computation of net proceeds be deemed an expense of operation of the co-operative.

(b) A share of the net proceeds may be set aside for or paid to officers or employes, or both. Such amount shall for all purposes except the computation of net proceeds be deemed an expense of operation of the co-operative.

(c) In a co-operative organized with capital stock such dividend may be paid upon capital stock as is authorized by the articles. No dividend may be paid if the capital is impaired or if payment of such dividend would result in an impairment of capital.

(3) Unless the articles or bylaws otherwise expressly provide, none of the remainder of the net proceeds shall constitute income of the co-operative but all thereof shall be distributed and paid to patrons, whether members or not, as follows:

(a) Reasonable reserves for necessary purposes may be created, which shall be credited to patrons in accordance with the ratio which their patronage bears to total patronage.

(b) All the remainder of the net proceeds shall be distributed and paid to patrons in accordance with the ratio which their patronage bears to total patronage.

(c) There shall be no distinction between the persons entitled thereto, but such reserves and distributions may be based upon business done with particular departments or in particular commodities, supplies or services, or upon classification of business according to the type or nature thereof.

(4) If the articles or bylaws so provide:

(a) Any of the net proceeds may be credited to allocated or unallocated surplus or reserves of the co-operative.

(b) None of the remainder shall constitute income to the co-operative, but all thereof shall be distributed and paid in accordance with the ratio which individual patronage bears to total patronage, either to member patrons only, or to all patrons with nonmembers receiving a lower proportion than members, as the bylaws may provide. There shall be no other distinction between members and nonmembers, but distribution may be based on business done with particular departments, or in particular commodities, supplies or services, or upon classification of business according to type or nature thereof.

(5) The distribution and payment of net proceeds under sub. (3) or (4) may be in cash, credits, stock, certificates of interest, revolving fund certificates, letters of advice, or other certificates or securities of the co-operative or of other associations or corporations, in other property, or in any combination thereof.

(6) All or any part of the net proceeds may be applied to losses incurred in prior years, and the bylaws may also include any reasonable provisions for the apportionment of losses.

History: 1955 c. 368.

Revision Committee Note, 1955: This section on apportionment and distribution of proceeds has been completely rewritten from the former provision contained in 185.16 (1953). It provides 2 methods of distribution: (3) to be used by those associations which desire federal income tax exemption; (4) may be used by other associations. In general, this section is set up in accordance with usual and customary accounting procedures. The general welfare clause of the former statute and the provision relating to direction by members of directors as to the distribution of proceeds were omitted as superfluous. (Bill 140-A)

185.46 Unclaimed distributions, redemptions or payments. (1) Any distribution of proceeds, redemption of or payment based upon any security by a co-operative which remains unclaimed 6 years after the date authorized for retirement or payment in cash or other property may be forfeited by the board. Any amount forfeited may revert to the co-operative, if, at least 6 months prior to the declared date of forfeiture, notice that such payment is available has been mailed to the last known address of the person shown by the records to be entitled thereto, or if the address is unknown, is published under s. 185.23.

(2) This section applies to all such payments authorized before or after July 13, 1955, except this section does not authorize the forfeiture prior to June 30, 1957, of any right to any such amount which would not otherwise have been barred prior to such date.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section generally follows 180.395. The same reasons that made such a provision necessary there apply likewise in the case of co-operatives. (Bill 140-A)

185.47 Books and records; penalty for refusal to produce. (1) A co-operative shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board and executive committee. The co-operative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any member or stockholder, or his agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the co-operative at least one week in advance, may examine for a proper purpose any books or records pertinent to the purpose specified in such notice.

(2) In any proceedings, or upon petition for such purpose any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the co-operative's books or records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to be brought within this state. Such documents shall be kept at such place and for such time and purposes as the order designates. Any co-operative failing to comply with the order is subject to dissolution, and its directors and officers are liable for contempt of court.

History: 1955 c. 368.

Revision Committee Note, 1955: This section follows, somewhat, a similar provision in 180.43. (Bill 140-A)

185.48 Annual reports; filing thereof. (1) A co-operative shall file an annual report signed by a principal officer or the general manager setting forth:

- (a) Its name and complete address.
- (b) The names and addresses of its directors and principal officers.
- (c) A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.
- (d) A statement as to the general type of business engaged in during the prior year.

(2) Such annual report shall be made on forms furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of

the report. Each December the secretary of state shall forward report blanks to each co-operative in good standing required to make an annual report.

(3) The annual report shall be delivered to the secretary of state between January 1 and March 31 of each year following incorporation. If the report does not conform to requirements, it shall be returned to the co-operative for necessary corrections. The penalties for failure to file such report shall not apply if it is corrected and returned within 30 days after receipt thereof.

(4) Any report filed after March 31 may be filed only upon payment to the secretary of state of the following fees:

(a) If filed prior to May 1, \$5.

(b) If filed thereafter but not later than the following December 31, \$10.

(5) If the report is not filed before the following January 1, the co-operative is not in good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting such co-operative except those incident to its dissolution.

(6) The co-operative may be restored to good standing by delivering to the secretary of state a current annual report and by paying \$10 for each calendar year or part thereof during which it was not in good standing, not exceeding a total of \$100.

History: 1955 c. 368.

Revision Committee Note, 1955: This section follows the annual report section of 180.791. (Bill 140-A)

185.49 Omission of seal. Whenever any document is required to be sealed, no seal is required if the document includes a statement to the effect that the co-operative has no seal.

History: 1955 c. 368.

Revision Committee Note, 1955: This section, in general, follows 180.861. No counterpart in ch. 185 (1953). (Bill 140-A)

185.50 Income tax return, filing of, when. Any co-operative association, society, company, corporation, exchange or union organized under the provisions of ch. 185 shall not be obliged to file a state income tax return unless such association, society, company, corporation, exchange or union is at the time subject to a state income tax.

History: 1955 c. 368.

185.51 Amendments to articles. (1) At any member meeting a co-operative may adopt any amendment to its articles which is lawful under s. 185.05, if a statement of the nature of the amendment was contained in the notice of the meeting.

(2) Unless stockholders are entitled by s. 185.52 to vote on an amendment, an amendment is adopted when approved by members holding two-thirds of the member votes cast thereon.

History: 1955 c. 368.

Revision Committee Note, 1955: This section changes 185.07 (1) (1953) by requiring two-thirds of the member vote cast at the meeting. (Bill 140-A)

185.52 Stockholder voting on amendments to articles. (1) Whether or not permitted to vote by the articles, a holder of stock other than membership stock who is affected by a proposed amendment to articles shall be entitled to cast one vote on such amendment regardless of the dollar amount of stock he holds, or the number of affected classes of stock held by him, provided that the articles may permit such affected stockholder to cast one vote for each share of stock he holds. A member holding stock affected by a proposed amendment may vote both as a member and as an affected stockholder.

(2) For purposes of this section, a holder of stock is affected as to any class of stock owned by him only if an amendment would expressly:

(a) Decrease the dividends to which that class may be entitled or change the method by which the dividend rate on that class is fixed.

(b) Restrict rights to transfer that class.

(c) 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 which is the same or higher than preferences of that class.

(d) 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.

(e) Increase the number of authorized shares of any class having a higher preference as to dividends or upon dissolution.

(f) Require or permit an exchange of shares of any class with lower preferences as to dividends or upon dissolution for shares of that class or any other class with the same or higher preferences.

(3) If stockholders are entitled to vote on an amendment, such amendment is adopted if:

(a) Notice of the meeting, a copy of the proposed amendment and a mail ballot thereon has been sent to each member and each affected stockholder; and

(b) Members holding two-thirds of the member votes cast thereon approve; and

(c) Two-thirds of the affected stockholders voting thereon approve. If stockholders are permitted by the articles to cast one vote for each share of stock they hold, the amendment shall be adopted by the holders of at least two-thirds of the shares of each class entitled to vote thereon voting at the meeting.

(4) This section shall not apply to stock issued prior to June 30, 1956, unless the co-operative adopts an amendment to its articles making such stock subject to this section. As to such stock, the amendment shall be adopted in the manner and by the vote required prior to July 13, 1955.

History: 1955 c. 368.

Revision Committee Note, 1955: This section is wholly new. It is designed to specify with particularity the only situations in which a stockholder is entitled to vote as such, and to specify how such voting is done. The articles may permit stockholders to have one vote for each share in these situations. (Bill 140-A)

185.53 Filing and recording amendments; effect thereof. (1) Amendments to articles shall be signed by the president or a vice president and the secretary or an assistant secretary, shall be sealed with the co-operative's seal, and shall set forth:

(a) The name of the co-operative.

(b) The amendment and date of adoption.

(c) The number of members.

(d) The number of members voting for and against such amendment.

(e) If affected stockholders have the right to vote under s. 185.52, the number of affected stockholders voting for and against such amendment. If affected stockholders voted on a share basis, then the shares of each class voting for and against the amendment.

(2) The amendment shall be filed and recorded as provided in s. 185.82. The amendment becomes effective upon leaving a duplicate original for recording. Upon receipt of the certificate of the register of deeds, the secretary of state shall issue a certificate of amendment.

(3) No amendment may affect any existing cause of action or proceeding to which the co-operative is a party, or existing rights of persons other than members or stockholders.

(4) No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within 2 years after the date of recording.

History: 1955 c. 368.

Revision Committee Note, 1955: See provisions in 180.53 and 180.57. (4) is new. 185.07 (1953). This section follows similar (Bill 140-A)

185.54 Restated articles. A co-operative may, by action taken in the manner required for an amendment, adopt restated articles. When filed and recorded in the manner prescribed for an amendment, restated articles supersede existing articles and all amendments thereto. Restated articles shall meet all requirements of original articles except:

(1) Incorporators constituting the temporary board and the names and addresses of the incorporators may be omitted; and

(2) The location of the principal office, or the complete address of the present registered agent, shall be set forth as of the time of adoption of the restated articles. The name and address of a new registered agent may be set forth in lieu thereof.

History: 1955 c. 368; 1957 c. 484.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section follows, generally, 180.55. (Bill 140-A)

185.55 Amendments by bankruptcy court. Certified copies of any order of a court of the United States, in proceedings under the bankruptcy laws, shall be filed and recorded as an amendment if the order effects an amendment to the articles. The principal officers of a co-operative shall cause each order to be promptly filed and recorded after it becomes final.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in 1953 statutes. This section follows, generally, a similar provision in ch. 185 (1953). This section follows 180.56. (Bill 140-A)

185.61 Merger and consolidation. If otherwise lawful, any 2 or more associations may merge or consolidate under this chapter or under the law of the state where the surviving or new association will exist. Before a co-operative may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board or the members for that purpose. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on all members and stockholders of the co-operative. In case of consolidation, the plan shall also contain the articles of the new association. The members, and such stock-

holders as are entitled to vote thereon, shall approve the plan in the manner provided in s. 185.52 for amendments to the articles.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section is designed to make a fairly simple method of merging or consolidating any combination of domestic or foreign co-operatives. It is expected that the foreign co-operative will meet the requirements of its law. In any case, each domestic co-operative must meet all the requirements set forth in this section. (Bill 140-A)

185.62 Articles of merger or consolidation; effect thereof. (1) Articles of merger or consolidation shall set forth the approved plan and such other information as is required by s. 185.53. They shall be signed by 2 principal officers of each association merging or consolidating, sealed with the seal of each such association, filed and recorded as an amendment to the articles in each county where any of the co-operatives have their principal office or registered agent. Unless otherwise specified in the plan, the merger or consolidation is effective when the articles are so recorded.

(2) After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(3) The surviving or new association possesses all the rights and all the property of each of the individual associations, and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(4) The articles of the surviving association are deemed amended to the extent provided in the plan of merger.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section, in general, follows similar provisions in 180.64, 180.65 and 180.66. (Bill 140-A)

185.63 Division of a co-operative. (1) Any co-operative may divide itself into 2 or more co-operatives under this chapter. A written plan of division shall be prepared by the board or by a committee selected by the board for that purpose. Such plan shall set forth all the terms of the division and the proposed effect thereof on all members and stockholders of the co-operative. The plan shall also contain the articles of each new co-operative being formed and any amendments to the articles of the remaining co-operative.

(2) The members, and such stockholders as are entitled to vote thereon, shall approve the plan in the manner provided in s. 185.52 for amendments to articles.

(3) Articles of division shall set forth the approved plan and such other information as is required by s. 185.53 and shall be filed and recorded as an amendment to the articles. Each part of the plan which contains the articles of a new co-operative shall be separately filed and recorded as articles of association for such new co-operative.

History: 1955 c. 368.

Revision Committee Note, 1955: There is no counterpart to this anywhere. It is designed to provide a simple procedure for dividing co-operatives. (Bill 140-A)

185.64 Conversion of corporation. A corporation may convert itself into a co-operative by adopting an amendment to its articles by which it elects to become subject to this chapter, together with changes in its articles required by this chapter and other desirable changes permitted by this chapter. Such amendment shall be adopted, filed and recorded in the manner provided by the law then applicable to the corporation.

History: 1955 c. 368.

Revision Committee Note, 1955: This section, in general, follows 185.19 (1953). A co-operative may not convert itself to a corporation. (Bill 140-A)

185.71 Voluntary dissolution. (1) At any member meeting, whether or not a quorum is present, a co-operative may dissolve if:

(a) Notice that a resolution for dissolution will be considered and acted upon has been given to all members and to all other persons entitled by the articles to vote thereon; and

(b) Such resolution is adopted by members holding three-fourths of the member votes cast thereon. The articles may permit stockholders to vote on the resolution for dissolution.

(2) When the resolution is adopted, either a committee designated by the resolution or the board shall liquidate all assets and pay the net proceeds of such liquidation available for distribution to all persons entitled to the same by law, the articles and the bylaws.

(3) Articles of dissolution shall be signed by a majority of directors or of committee members and shall be sealed with the co-operative's seal. They shall set forth:

(a) The name of the co-operative.

(b) The name and address of each director or committee member.

(c) The date of adoption of the resolution of dissolution.

(d) A statement that all liquidation activities have been completed.

(4) The articles of dissolution shall be filed and recorded as provided in s. 185.82, and thereupon the existence of the co-operative ceases.

History: 1955 c. 368.

Revision Committee Note, 1955: This section is a complete rewriting of provisions in ch. 185 (1953) dealing with dissolution. The procedure followed is not similar to ch. 180. (Bill 140-A)

185.72 Involuntary dissolution. (1) A co-operative may be dissolved involuntarily by a decree of the circuit court where the principal office or registered agent is located in an action commenced by the attorney general when it is established that:

(a) The co-operative failed to file its annual report as required by this chapter; or

(b) The co-operative's certificate of association was procured through fraud; or

(c) The co-operative has continued to exceed or abuse the authority conferred upon it by this chapter; or

(d) The co-operative failed to comply with a court order for the production of books, records or other documents of the co-operative as provided in s. 185.47.

(2) If the co-operative cures its defaults other than those under sub. (1) (b) and (c) prior to the entry of the court's final decree and pays all penalties and court costs that have accrued, the cause of action with respect to the defaults so cured will abate.

History: 1955 c. 368.

Revision Committee Note, 1955: No court involuntarily dissolving a co-operative are terpart in ch. 185 (1953). The reasons for the same as those in 180.769. (Bill 140-A)

185.73 Liquidation under court supervision. (1) The circuit court of the county where the principal office or registered agent of the co-operative is located may liquidate the assets and business of such co-operative when a petition to that effect is filed by or on behalf of:

(a) A majority of the designated committee or directors when a resolution is adopted pursuant to s. 185.71.

(b) The attorney general when a decree of dissolution has been obtained pursuant to s. 185.72.

(c) A judgment creditor whose execution is returned unsatisfied when it is established that the co-operative is unable to pay its debts as they become due in the usual course of its business.

(d) Any creditor when it is established that the co-operative is dissolving pursuant to s. 185.71 without making adequate provision for payment of all creditors.

(2) Upon filing of any such petition, the court acquires exclusive jurisdiction of all matters pertaining to the liquidation of such co-operative and the distribution of its assets to persons entitled thereto and may determine and order paid the expense of such liquidation proceedings. The court has power to issue injunctions, appoint receivers with such duties and powers as the court may direct, and take any other action necessary to the co-operative's liquidation. A receiver appointed in such proceeding has authority to sue and be sued as receiver for the co-operative.

(3) The court shall fix the time within which creditors may file claims and shall prescribe the notice to be given to interested persons. Creditors who do not file their claims within the time limit may not participate in any distribution thereafter made, unless the court upon good cause shown extends their time for filing.

(4) When the court approves the final distribution of a co-operative's assets, it shall enter a decree in the nature of articles of dissolution which shall be filed and recorded as provided in s. 185.82.

(5) The filing of a petition under this section operates as a stay of all other proceedings against the co-operative until such time as the court issues its final judgment or directs otherwise.

(6) The court upon proper cause shown may at any time order the proceedings dismissed upon such terms and conditions as the court may impose.

History: 1955 c. 368.

Revision Committee Note, 1955: It was felt desirable to spell out in detail who could go into a court to liquidate a co-operative. This section combines portions of 185.165 (1953) and 180.771 through 180.779. (Bill 140-A)

185.74 Property omitted from final distribution. (1) Upon filing and recording the articles or decree of dissolution, title to any property omitted from the final distribution vests in the surviving directors or committee members who signed the articles, as trustees. They have all the powers of the co-operative with respect to such property and shall distribute the property or its proceeds to the persons beneficially entitled thereto.

(2) When no trustee can be found, the circuit court of the county where the property is located has power to appoint trustees upon application of any person having an interest in such property or its disposition.

(3) Any trustee may at any time make application to the proper circuit court for supervision of liquidation pursuant to s. 185.73.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section, in general, follows 180.768. (Bill 140-A)

185.75 Amounts due unknown persons. Upon liquidation of a co-operative, the assets distributable to persons who are unknown or cannot be found may be reduced to cash and deposited with the state treasury. If claimed within 10 years thereafter such funds shall be paid without interest to persons entitled thereto upon proof satisfactory to the state treasurer of their right thereto.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section, in general, follows 180.785. (Bill 140-A)

185.76 Survival of remedy after dissolution. Except as provided in s. 185.73, the dissolution of a co-operative does not impair any remedy available to or against such co-operative, its directors, stockholders, or members for any claim existing or any liability incurred prior to such dissolution if a proceeding thereon is commenced within 2 years after the date of recording the articles or decree of dissolution.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section, in general, follows 180.787. (Bill 140-A)

185.81 Admission of foreign co-operatives. A foreign co-operative is entitled to all rights, exemptions and privileges of a co-operative organized under this chapter, if it is authorized to do business in this state under ch. 180. Such foreign co-operative may qualify under ch. 180 whether or not formed for profit and whether or not formed with stock. Any such foreign co-operative claiming to be subject to s. 71.01 (3) (a) may be required to furnish the department of taxation with such facts as said department shall deem necessary to establish the foreign co-operative's rights thereunder.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953), except for certain references in 185.22 to use of name by foreign co-operative. Rather than detail provisions under which foreign co-operatives may operate within the state, the committee felt it best to permit the co-operatives to come in under the provisions of ch. 180 relating to admission of foreign corporations. Such co-operative may qualify under ch. 180. (Bill 140-A)

185.82 Filing and recording documents; penalty for false document. (1) When any document is to be filed and recorded duplicate originals shall be delivered to the secretary of state. He shall stamp on both the date of filing and return one to the co-operative with his certificate of filing. If the document is required to be recorded in more than one county, additional duplicate originals may be delivered to the secretary of state to be so stamped and certified.

(2) A duplicate original so returned shall be recorded in the office of the register of deeds of the county where the principal or registered office is located. The register of deeds shall transmit to the secretary of state his certificate showing the time of recording upon payment of a fee of 25 cents. The register of deeds shall note on the record of the original articles the volume and page where any subsequent documents are recorded. If a document effects a change in the county where the principal or registered office is located, the original articles and all subsequent documents, or certified copies thereof, shall also be recorded in such new county.

(3) Any document is recorded when left for record in the proper office with all required fees paid.

(4) Whoever causes any document to be filed or recorded, knowing such to be false in any material respect, may be fined not more than \$1,000 or imprisoned not more than 3 years, or both.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). It follows, in general, 180.86 and 180.83. (Bill 140-A)

185.83 Fees for filing. (1) The secretary of state shall collect from any co-operative for filing:

(a) Articles of association and articles of consolidation or division for a new co-operative, \$1 for each \$1,000 of authorized stock, but in no case less than \$10. A co-operative organized without capital stock shall pay a fee of \$10.

(b) An amendment to the articles or articles of merger or division, \$5; and an additional fee of \$1 for each \$1,000 of authorized stock not authorized at the time of amendment, merger or division.

(c) Articles or decree of dissolution, \$1.

(d) Receiving services of any process, notice or demand, \$2.

(2) No document may be filed or recorded until all fees therefor have been paid.

History: 1955 c. 368.

185.84 Fees or penalty due state. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state.

History: 1955 c. 368.

185.85 Forms to be furnished by secretary of state. The secretary of state may provide forms for any document to be filed in his office under this chapter.

History: 1955 c. 368.

185.91 Voting requirements of articles. Whenever the articles require the vote of a greater proportion of the members or stockholders than required by this chapter, the articles control except for dissolution under 185.71.

History: 1955 c. 368; 1957 c. 484.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section follows somewhat a similar provision in 180.90. (Bill 140-A)

185.92 Defense of ultra vires. No act and no transfer of property to or by a co-operative is invalid because made in excess of the co-operative's power, except that such lack of power may be asserted in a proceeding by:

(1) A member, stockholder or director against the co-operative to enjoin any act or any transfer of property to or by the co-operative.

(2) The co-operative or its legal representative against any present or former officer or director.

(3) The attorney general against the co-operative in an action to dissolve the co-operative or to enjoin it from the transaction of unauthorized business.

History: 1955 c. 368.

Revision Committee Note, 1955: No counterpart in ch. 185 (1953). This section, in general, follows 180.06. (Bill 140-A)

185.93 Member or stockholder derivative actions. (1) No action may be instituted or maintained in the right of any association by a member or stockholder unless he:

(a) Alleges in his complaint that he was a member or registered stockholder when any part of the transaction of which he complains took place, or that his stock thereafter devolved upon him by operation of law from a stockholder at such time.

(b) Alleges in his complaint with particularity his efforts to secure from the board such action as he desires. He shall allege further that he has either informed the association or board in writing of the ultimate facts of each cause of action against each director or that he has delivered to the association or board a copy of the complaint which he proposes to file. He shall state the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) Files the complaint in such action within 20 days after the action is commenced.

(2) The action shall not be dismissed or compromised without the approval of the court.

(3) If anything is recovered or obtained as the result of the action, whether by means of a compromise and settlement or by a judgment, the court may, out of the proceeds of the action, award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and may direct the plaintiff to account to the association for the remainder of such proceeds.

(4) In any action brought in the right of an association by less than 3 per cent of the members or by holders of less than 3 per cent of any class of stock outstanding, the defendants may require the plaintiff to give security for the reasonable expenses of defending such action, including attorneys' fees. The amount of such security may thereafter be increased or decreased in the discretion of the court upon showing that the security provided is or may be inadequate or is excessive.

History: 1955 c. 368.

Revision Committee Note, 1955: This section is patterned primarily after 108.405. (Bill 140-A)

185.94 Use of term "co-operative"; penalty for improper use. (1) The term "co-operative", or any variation thereof, may be used either by an association or by a credit union organized under ch. 186.

(2) No other person may use the term "co-operative", or any variation thereof, as part of his corporate or other business name or title, nor may any other person in any other manner represent himself to be a co-operative. Whoever violates this subsection may be fined not more than \$100. Each day of improper use constitutes a separate offense.

(3) Any co-operative may obtain an injunction against acts prohibited by sub. (2) without showing any damage to itself.

(4) Every co-operative shall use the term "co-operative" or an abbreviation thereof as part of its corporate name or affixed thereto.

History: 1955 c. 368.

Revision Committee Note, 1955: Use of term only to co-operatives has been retained. (3) is new. This self-help remedy in this section to a credit union. That part is in place of the considerably more drastic of the 1953 law which restricts use of the remedy in 185.22 (4) (1953). (Bill 140-A)

185.95 Discrimination against association. Whenever any corporation has discriminated against any association transacting business in this state, its charter may be vacated or its existence annulled, or its license to do business in this state may be revoked in the manner provided in s. 286.36.

History: 1955 c. 368.

Revision, Committee Note, 1955: Taken in substance from 185.08 (1) (1953). (Bill 140-A)

185.96 Application of chapter. (1) After June 30, 1956, this chapter applies to all co-operatives. Any co-operative may elect to become subject to this chapter before said date by adopting an amendment to its articles making such election. All co-operatives formed after July 13, 1955 shall be formed under this chapter.

(2) After January 1, 1956, this chapter applies to all foreign co-operatives.

(3) Application of this chapter to associations existing before July 13, 1955 does not affect property rights of stockholders or members in such associations which were accrued or established at such time, nor does it affect any liability enforceable at such time, nor does it affect the validity or enforceability of contracts existing before such time.

(4) Section 185.48 dealing with annual reports shall apply to all co-operatives on July 13, 1955.

History: 1955 c. 368.

Revision Committee Note, 1955: The provision in (3) is intended to be the same as the provision in 180.95. (Bill 140-A)

185.97 Title. Chapter 185 may be cited as the "Wisconsin Co-operative Association Act."

History: 1955 c. 368.

185.981 Co-operative sickness care. (1) Co-operative associations may be organized under this chapter without capital stock, exclusively to establish and operate in the state or in any county or counties therein a nonprofit plan or plans for sickness care, including hospital care, for their members and their dependents through contracts with physicians, medical societies, dentists, dental societies, hospitals and others.

(2) Such associations shall operate only on a co-operative nonprofit basis and for the purpose of establishing, maintaining and operating a voluntary nonprofit medical or dental care plan or plans or for constructing, operating and maintaining nonprofit hospitals whereby sickness or hospital care is provided at the expense of such association to such persons or groups of persons as shall become subscribers to such plan, under contracts which will entitle each such subscriber to definite medical, surgical, dental, or hospital care, appliances and supplies, by physicians and surgeons licensed and registered under s. 147.175, or by dentists licensed under s. 152.05 in their offices, in hospitals and in the home.

(3) No co-operative association organized for the purposes provided in ss. 185.981 to 185.983 shall be prevented from contracting with any hospital in this state for the rendition of such hospital care as is included within such a plan because such hospital participates in any other such plan, or in a plan organized and operated under the provisions of s. 182.032. No hospital may discriminate against any physician and surgeon or dentist with respect to the use of such hospital's facilities by reason of his participation in a sickness care plan of a co-operative.

(4) No contract by or on behalf of any such co-operative association shall provide for the payment of any cash, indemnity or other material benefit by that association to the subscriber or his estate on account of death, illness or injury, nor be in any way related to the payment of any such benefit by any other agency, but any such association may stipulate in its plan that it will pay any nonparticipating physician and surgeon, dentist or hospital outside of its normal territory for sickness or hospital care rendered any covered member or his covered dependent who is in need of the benefits of such plan when he is outside of the territory of such association in which the benefits of such plan are normally available. Any such plan may prescribe monetary limitations with respect to such extra-territorial benefits.

(5) Every such co-operative association is hereby declared to be a charitable and benevolent corporation, and its property, real, personal and mixed, its income and property transferred to it, shall be exempt from taxation as provided in ss. 70.11, 71.01 (3),

72.04 and 72.75 to 72.81, and its employes shall be excluded from the provisions of ch. 108 as provided in s. 108.02.

History: 1955 c. 368.

185.982 Manner of practicing medicine; payment; promotional expense. (1) No sickness care plan or contract issued thereunder by such co-operative association shall interfere with the manner or mode of the practice of medicine or dentistry, the relationship of physician or dentist and patient, nor the responsibility of physician or dentist to patient. Any person who is covered by any such plan shall be free to choose for sickness care any medical or osteopathic physician or dentist licensed to practice in Wisconsin who has agreed to participate in such plan and abide by its terms, and no such physician or dentist shall be required to participate exclusively in any such plan. Except for professional cause, no such co-operative association shall deny to any duly licensed physician or dentist the opportunity to participate in such a plan who agrees to participate therein according to its terms.

(2) Any co-operative association operating a voluntary sickness care plan under the provisions of this chapter may pay physicians and surgeons, or dentists on a salary, per capita or fee-for-service basis to provide sickness care to members of such association. No such payment shall be made on a percentage basis of work done, nor shall any such association retain any part of the physician's or dentist's fee if a fee-for-service payment basis is used to provide members with such sickness care service. Every association shall contract only with its own members for the benefits of any plan which it operates, but any association which operates a hospital may make the facilities thereof available to nonmembers and to nonparticipating physicians or dentists.

(3) Promotional expenses of any such associations, including promotional expense for building or investment purposes, shall be limited to 5 per cent as provided in s. 185.09.

History: 1955 c. 10, 368.

185.983 Requirements of plan. (1) Every such voluntary nonprofit sickness care plan shall be exempt from the state insurance laws but the sponsoring association shall:

(a) File with the commissioner of insurance a declaration defining the organization and operation of the plan, all printed literature and specimen copies of all proposed contracts with persons covered and with participating physicians and hospitals, including all amendments thereto. The form of all such contracts and amendments shall be subject to approval by the commissioner of insurance but the commissioner may not withhold approval if the form of such contracts or changes therein comply with the provisions of ss. 185.981 to 185.985.

(b) Provide for like rates, benefits, terms and conditions for all persons in the same class.

(c) Invest its funds only in property and securities approved for domestic life insurance companies.

(d) File with the commissioner of insurance, on such forms as may be prescribed by him, an annual report of its financial condition as of December 31 each year, on or before the last day of February following.

(e) Maintain sufficient reserves to discharge its obligations, having regard for the nature of its contracts and the area and number of persons covered.

(2) Every such plan shall make provision for a minimum of one physician and surgeon, or dentist to each 2,000 persons covered for medical or dental care and a minimum of 6 hospital beds for each 2,000 persons covered for hospital care.

History: 1955 c. 368.

185.984 Authority to enjoin unlawful operation. The books and records of any co-operative association establishing and operating any sickness care plan under the provisions of ss. 185.981 to 185.983 shall at all times be subject to examination by the commissioner of insurance. If at any time the commissioner shall find that any such sickness care plan does not comply with the provisions of ss. 185.981 to 185.983 the commissioner shall direct said co-operative to comply with said provisions. In the event that any co-operative association fails to comply with such order, the commissioner may commence an action in the circuit court in the county where the principal office of said co-operative association is located for the purpose of enjoining the continued operation of said plan. If the court shall find that said co-operative association or the sickness care plan or plans being operated by it do not comply with the provisions of ss. 185.981 to 185.983 in such a material manner as to jeopardize the rights of member subscribers to receive the benefits to which they are entitled, it may enjoin the continued operation of such association or plan.

History: 1955 c. 368.

185.985 Inconsistent provisions of the statutes. Sickness care or hospital plans operated by co-operative associations organized under this chapter shall be operated ex-

clusively under the provisions of ss. 185.981 to 185.985. Other provisions of the statutes inconsistent with any of such provisions shall not be applicable to co-operative associations or sickness care plans operated by co-operative associations pursuant to this chapter.

History: 1955 c. 368.

185.991 Voluntary benefit plans in schools. (1) Any plan directed by schools or school authorities in this state, as members of a voluntary association or otherwise, whereby benefits are provided for injury or accidental death of pupils attending such schools arising out of or in conjunction with athletic activities or in any other manner, may be organized and operated only in accordance with ss. 185.991 to 185.996. Such plans must be nonprofit and without capital stock.

(2) Any plan may contract to provide its scheduled benefits to students.

(3) Boards of school districts and municipalities however classified are authorized to pay the whole or a part of the dues and fees required to provide the benefits of any such plan to students within their jurisdiction notwithstanding any other statute to the contrary.

(4) The governing body shall consist of not less than 3 nor more than 7 individuals who shall be the same individuals who comprise the governing body of the organization sponsoring the plan.

(5) The fiscal year for such plans shall be from July 1 to June 30.

History: 1951 c. 406; 1955 c. 368.

185.992 Requirements of plans. Every such interscholastic benefit plan shall be exempt from the state insurance laws but the sponsoring association shall:

(1) File with the commissioner of insurance its rules and regulations and a schedule of the benefits contemplated, together with the form of agreement entered into with students, parents, guardians or others all of which shall be subject to approval by the commissioner.

(2) File with the commissioner for his approval rates applicable to the benefit schedule.

(3) File with the commissioner its constitution and bylaws.

(4) Invest its funds only in property and securities approved for domestic life insurance companies.

(5) File with the commissioner on such forms as may be prescribed by him an annual report of its financial condition as of June 30 each year on or before the last day of August following.

(6) Maintain sufficient reserves to discharge its obligations and for any prepayment of dues or fees collected.

(7) Have the participation in each fiscal year of at least 25,000 students taking part in athletic programs or at least 50,000 students if others than those engaged in athletics are included. Any such interscholastic benefit plan may administer benefit plans for other groups which do not have the required minimum number, provided the funds of such other groups are segregated.

(8) The governing body shall elect its officers and determine the method of handling claims.

History: 1951 c. 406; 1953 c. 61; 1955 c. 368.

185.993 Power to borrow money. Such benefit plans may borrow money to pay losses and expenses incurred during any fiscal year but every such loan must be repaid prior to the end of the calendar year in which it is made.

History: 1951 c. 406; 1955 c. 368.

185.994 Authority to enjoin unlawful operation. The books and records of any plan under ss. 185.991 to 185.996 shall at all times be subject to examination by the commissioner of insurance. If at any time the commissioner shall find that any such plan does not comply with ss. 185.991 to 185.996, the commissioner shall direct such plan to comply with said provisions. In the event that any plan fails to comply with such order, the commissioner may commence an action in the circuit court in the county where the principal office of such plan is located for the purpose of enjoining the continued operation of said plan. If the court shall find that any such plan or plans being operated fails to comply with ss. 185.991 to 185.996 in such a material manner as to jeopardize the rights of others to receive benefits to which they are entitled, the court may enjoin the continued operation of such plan.

History: 1951 c. 406; 1955 c. 368.

185.995 Exempt from taxation. Every such plan is hereby declared to be a charitable and benevolent organization and its property, real, personal and mixed, its income, and property transferred to it, shall be exempt from taxation as provided in ss. 70.11,

71.01 (3), 72.04 and 72.75 to 72.81, and its employes shall be excluded from the provisions of ch. 108 as provided in s. 108.02.

History: 1951 c. 406; 1955 c. 368.

185.996 Inconsistent provisions of statutes. Such plans organized or permitted to operate under this chapter shall be operated exclusively under ss. 185.991 to 185.996. Other provisions of the statutes inconsistent with any such provision shall not be applicable to athletic benefit plans operating pursuant to those sections, but any plan operating under authorization of s. 201.85 prior to July 5, 1951 may continue such operation until September 1, 1951, after which date it shall comply fully with the requirements of ss. 185.991 to 185.996.

History: 1951 c. 406; 1953 c. 61; 1955 c. 368.