

CHAPTER 185.

DOMESTIC CORPORATIONS.

CO-OPERATIVE ASSOCIATIONS.

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185.01 Definitions. In this chapter, unless the context or subject matter otherwise requires:

"Corporation" means a corporation not organized under this chapter.

"Association" means a corporation organized under this chapter.

"Co-operative basis," as applied to a corporation means that: (a) Each member has one vote and only one vote, (b) the rate of dividends upon stock is limited to eight per cent, (c) the net proceeds from the business of such corporation are distributed to the patrons in proportion to the volume of business transacted by said patrons with the corporation; provided, that deductions may be made, as required or authorized by the law of this state, or, in the case of a foreign corporation, by the law of the state of such corporation's creation.

"Net proceeds" mean the total proceeds minus expense of operation and cost of goods sold.

185.02 Organization. (1) Five or more resident adult persons may incorporate as an association for any purpose for which incorporation is authorized by section 180.01.

(2) They shall sign and acknowledge written articles which shall comply with and be filed and recorded as required by section 180.02, except as otherwise provided in section 185.20. At least one officer of the association shall reside in this state, and the association shall keep its principal books of account and its stock books at its location.

(3) Only par value stock is authorized. The association, if it issues preferred stock, may provide, by contract with its members or patrons, for retaining, out of any money due from the association to said members or patrons, an amount sufficient to pay the dividends on and to retire such preferred stock. An amendment relating to preferred stock may be adopted by complying with section 185.07, if it is also approved by a vote of three-fourths of those of the holders of preferred stock voting at such meeting. A copy of any amendment relating to preferred stock and a mail ballot thereon shall be sent each holder of common stock and each holder of preferred stock as provided in section 185.14.

(4) The articles, if the association is organized without capital stock, shall state whether the property rights of members shall be equal or unequal, and if unequal, the rule by which their rights shall be determined. The provision relating to property rights shall not be amended or repealed, except by the vote of at least three-fourths of the members.
[1943 c. 206]

Note: Name of proposed co-operative, name "Wisconsin Co-operative Brewery, Inc." 22 Atty. Gen. 471.
"Wisconsin Co-operative Brewery, Inc." sufficiently distinguishes it from existing corporation having name "Wisconsin Brewing Company"; secretary of state may, in his discretion, file articles of incorporation under (3) applies to amendment of articles of organization of co-operative association creating preferred stock. 29 Atty. Gen. 129.

185.03 [Repealed by 1927 c. 534 s. 86]

185.04 Filing fees. For filing the articles of incorporation of associations there shall be paid the secretary of state ten dollars, and for filing an amendment to such articles, five dollars; provided, that when the capital stock of such corporation shall be less than five hundred dollars such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. An association shall pay a further filing fee of one dollar for each one thousand dollars of its authorized capital stock in excess of twenty-five thousand dollars.

An association organized without capital stock shall pay a fee of five dollars for filing articles of incorporation and one dollar for filing an amendment.

Note: Where general corporation is converted into co-operative association and resolution also contains article of amendment, filing fee is amount provided by this section and not 180.02 (3) (b). 22 Atty. Gen. 982.

185.05 Board of directors; officers. (1) Every such association shall be managed by a board of not less than five directors. The directors shall be elected by the members of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for the time for which elected and until their successors are elected and shall enter upon the discharge of their duties; but a majority of the members shall have the power at any regular or special meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director, or officer so removed, shall cease to be a director or officer of said association. Every director shall be a member except where the members of the association are, themselves, corporations or associations. The officers of every such association shall be a president, one or more vice presidents, a secretary and a treasurer, who shall be elected annually by the directors, and each of said officers except the secretary and treasurer must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

(2) The association by vote of its board of directors, subject to any restrictions in its articles of incorporation, may borrow money, and mortgage its rights, privileges, authority and franchises, revenues and property, to secure payment of its debts. [1943 c. 206]

185.06 Special meetings. The president of any association may call special meetings of the association upon giving notice to the members personally or by mail to their last known addresses as shown on the records of the association, not less than seven nor more than twenty days in advance of such meeting, and specifying the purpose of the meeting; provided, however, that upon written demand signed by at least twenty per cent of the members the president shall call a special meeting for the purpose to which the demand relates in the manner herein described. The president of any association shall give notice of the regular meeting in the same manner as is herein described for a special meeting, except that the purpose of the regular meeting need not be specified. Whenever an association has provided for representation of members by delegates in accordance with section 185.10, the notice of any meeting at which delegates are to attend need be given only to such delegates but notice of any meeting to be held for the purpose of electing delegates by members as such shall be given to such members.

185.07 Amendment to articles; dissolution. (1) The association may amend its articles of incorporation by a vote of three-fourths of those of its members voting at any regular or special meeting, legally convened, except as stipulated in section 185.02; provided that notice of the nature of the proposed amendment or amendments shall first be given personally or by mail to all members at least seven and not more than twenty days prior to said meeting. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares; provided, that the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time that the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be filed in the office of the secretary of state and recorded with the register of deeds of the county where the principal office is located. No change of the principal office of any such association from one county to another county shall be valid until the articles and all amendments shall have been recorded in the office of the register of deeds of the county to which said association's office is changed.

(2) Any association may dissolve in the same manner as is provided in the general corporation law, except that the vote necessary for dissolution shall be at least a majority of the members in all cases. [1939 c. 398]

Note: Amendments to articles of incorporation should be filed within thirty days after adoption, but can be filed or can be compelled to be filed after that time if not filed within said time; secretary of state should file articles or amendments thereto, even though they were presented after thirty days from date they were adopted. 19 Atty. Gen. 186.

Corporate articles containing voting requirement inconsistent with that provided by ch. 398, Laws 1939 are ineffective to extent of such inconsistency, whether corporation was organized before or after enactment of said chapter. 29 Atty. Gen. 4.

185.08 Powers; contracts; stock. (1) An association created under sections 185.01 to 185.22, inclusive, shall have all the powers of a corporation organized under section 180.02, subject to the provisions of section 185.20.

(2) Contracts between any association and its members, whereby such members agree to sell all or a specified part of their products to or through, or to buy all or a specified part of goods from or through the association or any facilities created by the association, shall,

if otherwise lawful, be valid; provided that the term of such contracts does not exceed five years; provided, however, that this requirement shall not prevent such contracts from being made self-renewing for periods not exceeding five years each.

(3) A provision in any such contract determining a specific sum to be paid by the member as liquidated damages for breach of said contract shall be valid; provided, that the amount of said liquidated damages does not exceed thirty per cent of the value of the products which are the subject of the breach. In lieu of a specific sum, such liquidated damages may be stated to be an amount equal to a certain percentage, not exceeding thirty per cent, of the value of the products which are the subject of the breach. Where a specific sum is provided as liquidated damages, but the specific sum exceeds thirty per cent of the value of the products which are the subject of the breach then the contract shall be construed as providing for an amount equal to said thirty per cent. The provisions of this subsection shall apply to all contracts authorized by subsection (2) of this section, whether heretofore or hereafter made.

(4) The association, in the event of a breach or threatened breach of any such contract by a member, shall be entitled to an injunction to prevent the breach or further breach thereof and to a decree for specific performance. Pending the final determination of such an action and upon the filing of a verified complaint showing the breach or threatened breach, and upon the filing of a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

(5) The association may cause to be filed in the office of the register of deeds of the county in which the member maker of such contract resides, a copy of any such contract to sell to or through the association. In case it has more than one contract in any one county, it may cause a copy of any uniform contract, together with a sworn list of the names of all makers of such contracts residing in any such county, to be so filed. Such sworn statement shall contain the further statement that the said uniform contract and such sworn statement are filed pursuant to the provisions of this section. The register of deeds shall file such contracts and shall indorse upon such instruments a number in regular order, together with the time of receiving same, and the register of deeds shall enter the name of every member maker of all contracts heretofore or hereafter filed in a book to be kept for that purpose alphabetically, placing member makers and associations under a separate head and stating in separate columns, opposite each name, the number indorsed upon the contract, the date of the filing, and a brief description of the type of commodity covered by said contract. For filing and entering every such contract hereafter presented, the register of deeds shall receive the sum of 50 cents, or in case a sworn list of member makers as aforesaid be filed then for the name of each member maker the sum of 5 cents. From and after the date of such filing, and upon certification by the association of its members who have signed the contract to any person purchasing products specified in the contract, such person shall be bound thereafter by any partial assignment of funds in favor of the association provided for in the contract. From and after the date of such filing the same shall constitute notice to any and all persons that an interest in the title to all property so agreed to be sold by the maker of such contract during the term of such contract is vested in the said association. In case of a purchase thereafter of any such property by any party other than the association from any party other than the association, no title of any kind or nature shall pass to such other purchaser, and the said association may recover the possession of such property from any and all such other parties or from any party in whose possession the same may be found, by replevin action, or may sue for an injunction.

(6) Where any contract exists between an association and a member, any person who, with knowledge or notice of the existence of the contract, induces or attempts to induce or aids in the breach thereof by any means, shall be liable to the aggrieved party for damages on account of such interference with said contract and shall also be subject to an injunction to prevent the interference or further interference therewith.

(7) Upon the filing of any such contract and the sworn statement containing the name of the maker or makers of such contract with the register of deeds, as provided by subsection (5) of this section, the same shall constitute notice that such contract, for the purposes of this section, is and remains a valid contract as to all persons, until its expiration according to its terms, or until canceled by mutual agreement in writing or by the final judgment of a court in an action to annul the same. Whenever such a contract shall have terminated in any of the ways above mentioned, the association shall on demand give to the member a certificate to that effect, and the member shall within ten days thereafter cause the said certificate to be filed with the register of deeds in whose office the copy thereof was filed. The register of deeds shall be entitled to the sum of twenty-five cents as a filing fee.

(8) The legislature intends that subsection (5) of this section shall protect property interests of an association under those contracts to sell to the association which are specifically authorized by subsection (2) of this section. The legislature intends that subsection (6) of this section shall prevent wrongful interference with any contract between an association and its member, no matter whether said contract is such a contract to sell to the association or is one of agency or otherwise, and regardless of whether said contract is specifically authorized by subsection (2) of this section or not, and irrespective of whether the interference is with the rights of the association or of the member under said contract.

(9) The proper place of trial of any action by or against an association under the foregoing provisions of this section shall be the county where such association has its principal office, according to its articles of incorporation.

(10) Whenever any corporation shall have discriminated against any co-operative association transacting business in this state, its charter may be vacated or its existence annulled, if it is a domestic corporation; or, if it is a foreign corporation, its license to transact business in Wisconsin may be revoked in the manner provided in section 286.36. [1931 c. 218; 1933 c. 204; 1947 c. 432]

Note: The language of a contract is "ambiguous," within the parol-evidence rule, when it may reasonably be taken in more than one sense; but the parol evidence, to be competent, must establish a sense or meaning which the language of the contract will reasonably bear. A producers' contract to market milk exclusively through a co-operative association is determined, in an action by members against the association for its breach, to be ambiguous, entitling either party to introduce parol evidence for interpretation thereof, and that exclusion of certain of such evidence offered was error, requiring a new trial. It was error to submit to the jury the question as to whether the contract was sufficiently ambiguous to permit consideration of parol evidence, as whether there is ambiguity in a written contract is a question for the court to determine. *Wheelwright v. Pure M. Ass'n*, 208 W 40, 240 NW 769.

Contracts of members of a co-operative association for marketing their live stock through the association are within the co-operative marketing act, and as such may be filed in the office of the register of deeds for the purposes and effect prescribed by that act; the marketing agency of the association after such filing is coupled with a substantial vested interest in such live stock, not merely in the proceeds of sales thereof, and the association may maintain an action to enjoin, and recover damages for, the purchase of live stock from members by others; and unlawful interference with such contracts is a tort, and since one of a number of tort-feasors may be sued alone members of plaintiff association from whom defendants purchased live stock in violation of member's agency contracts with association are not necessary parties to an action for relief under (6). *Spencer Co-op L. S. S. Ass'n v. Schultz*, 209 W 344, 245 NW 99.

For proper place of trial, see note to section 261.01, citing *State ex rel. National C. P. Federation v. Foley*, 209 W 471, 245 NW 107.

Contract between co-operative association and local providing for purchase of all cheese at average price received on resale for cheese of same type and quality, less uniform charge to cover marketing expense, payment to be made on twentieth of second

month following shipment, with reasonable advances in association's discretion after delivery, held contract of purchase and sale, and payments by association to local member were not "advances" subject to revision by association in case of deficit, though surpluses were distributed among members. *Neith Co-op. D. P. Ass'n v. National C. P. Federation*, 217 W 202, 257 NW 624.

The provisions of (9) are constitutional. *State ex rel. Saylesville C. Mfg. Co. v. Zimmerman*, 220 W 682, 265 NW 856.

Under findings of the trial court, supported by the evidence, that the plaintiff was the absolute owner of certain cows and that the plaintiff's father had no interest in them, an injunction was warranted restraining a co-operative marketing association from interfering with the marketing of the plaintiff's milk, as against the contention that the sale of the cows to the plaintiff by his father, who had agreed to deliver to the association all milk produced by him, was a mere device or subterfuge to avoid performance of the father's contract. *Wesemann v. Watertown Milk Co-op. Ass'n*, 222 W 475, 269 NW 246.

Where producer informed cattle dealer that producer's membership in co-operative shipping association had terminated and dealer purchased producer's live stock without investigating to determine whether contract had actually terminated, co-operative shipping association was entitled to permanent injunction restraining dealer from interfering with its contracts where recorded contract with producer had not expired. *Neillsville Shipping Ass'n v. Lastofka*, 225 W 350, 274 NW 280.

The damages that may be recovered by co-operative shipping association from person inducing, attempting to induce, or aiding in breach of shipping agreement between association and member of association must be proved and reasonably sustained by evidence. *Neillsville Shipping Ass'n v. Lastofka*, 225 W 350, 274 NW 280.

After filing with register of deeds under (5) of uniform contract between co-operative association and its members, subsequent filing fee for additional list of member makers is five cents per name and there is no additional filing charge for second copy filed with additional names merely for purposes of identification. 24 Atty. Gen. 273.

185.081 Control of stock holdings. Any association organized under sections 185.01 to 185.22, inclusive, may provide that its common stock shall be sold only to a class of persons designated or described in the articles of incorporation or by-laws and that the stockholder shall lose the power to vote if he ceases to belong to the class of persons designated or described in said articles of incorporation or by-laws. Any association organized under sections 185.01 to 185.22, inclusive, may limit the number of shares which any person may hold and may reserve to the board of directors of the association the prior option to buy for the association the stock of any stockholder which is offered by such stockholder for sale and may reserve to said board of directors the right to recall for value the stock of any stockholder, subject to the limitation that not more than ten per cent of the common stock may be recalled by the board of directors during the period intervening between any two regular stockholders' meetings and subject to the further limitation that

such association, upon exercising said option to buy or right to recall, shall pay for the stock at its book value or at its par value where the book value is less than the par value; provided, that no restriction upon the ownership or transfer of stock authorized by this section shall be valid unless a provision setting out the terms of such restriction is contained in the articles of incorporation of the association and printed upon the stock subscription paper, if any, and upon the stock certificate.

185.09 Votes. No member in any association organized without capital stock and no holder of stock, whether common or preferred, shall be entitled to more than one vote, but every member in an association organized without capital stock and every holder of common stock shall be entitled to one vote in any association; provided, that it shall be lawful for any association which is a member of any corporation or association organized with or without capital stock, to cast votes in such corporation or association in proportion to the number of its own members, in such manner as the articles of incorporation or by-laws of the corporation or association, of which it is a member, may provide, but, unless such provision is thus made, the requirements of this section shall apply.

185.10 Proxies. Voting by proxy shall not be allowed in any association; but the articles of incorporation or by-laws of any such association may provide for representation of members by delegates apportioned territorially, and every such delegate shall cast one vote for each member represented by him; provided, that no delegate shall represent more than ten per cent of the members of the association.

185.11 Holding stock in other associations. (1) At any regular or special meeting, legally called, an association may, by a three-fourths vote of those of its members voting at such meeting, invest not to exceed twenty-five per cent of its paid-up common stock and reserve fund in the capital stock of any corporation or other co-operative association; and any association which is a member of, and is selling its products to or through or buying products from or through another association may hold stock in such latter association to any amount which is necessary in order that continuous capital may be raised for such latter association from its member associations, based in amount upon the volume of business transacted by such member associations with said association; provided that notice of the nature of any action proposed to be taken pursuant to this subsection shall first be given personally or by mail to all members at least seven and not more than twenty days prior to said meeting.

(2) An association by a three-fourths vote of those of its members voting at any regular or special meeting, legally called, and subject to the provision as to notice of such meeting contained in subsection (1) of this section, may become a member of any corporation or association organized without capital stock. [1939 c. 398]

185.12 May issue stock to purchase. Whenever an association shall purchase the business of another corporation, association, partnership or person it may pay for the same in whole or in part by issuing to the selling corporation, association, partnership or person shares of its capital stock to an amount, which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued. In any such transaction, the directors of the purchasing association are authorized to hold the shares in trust for the vendor and to dispose of the same to such persons and within such time as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the vendor.

Note: Section 185.12 does not require that the shares in a new or consolidated association be converted into cash. This section authorizes a "consolidation" as well as a "merger" of cooperative associations, and so far as requiring dissenting members of the vendor association to accept stock in the new or consolidated association in payment for their interest as shareholders in the vendor association, is not unconstitutional, as depriving them of property without due process of law, as applied to members of a vendor association who became members after the enactment of the statute, since the provisions of the statute became part of their contract with the association. *Pearson v. Clam Falls Coop. Dairy Ass'n*, 243 W 369, 10 NW (2d) 132.

185.13 Stock issued; certificates; voting. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as stockholders; provided, that part of the stock subscribed for has been paid for and the remainder covered by a promissory note or other evidence of indebtedness. In an association organized without capital stock, no certificate of membership shall be issued to any person until such person has paid in full the membership fee; but the by-laws may permit any person to vote as a member, provided, that part of the membership fee of such person has been paid for and the remainder covered by a promissory note or other evidence of indebtedness.

185.14 Voting by mail. At any regular or special meeting, legally called, a written vote received by mail from any absent member, and signed by him, may be read in such

meeting, and shall be equivalent to a vote of the member so signing; provided, that he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of the same is forwarded with and attached to the vote so mailed by him. Such vote by mail, however, shall not be counted in computing a quorum.

185.15 Quorum. The percentage of members necessary to constitute a quorum at a meeting of the members of an association organized under this chapter shall be as follows:

- (1) In associations having a total membership of under two hundred, twenty per cent;
- (2) In associations having a total membership equal to two hundred but less than five hundred, fifteen per cent;
- (3) In associations having a total membership equal to five hundred and not in excess of one thousand, ten per cent;
- (4) In associations having a total membership in excess of one thousand, ten per cent of the first thousand members and five per cent of the number of members in excess of one thousand; provided that, at any regular or special meeting legally called, a number of members not less than twice the number of the board of directors may constitute a quorum to transact any business, other than amending articles of incorporation, which has been specifically set forth in the notice of the meeting, including business transacted pursuant to section 180.25. Said quorum shall be present in person or represented by territorial delegates in accordance with section 185.10. [1939 c. 393]

185.16 Apportionment profits; dividends. (1) The directors in any association organized with capital stock shall apportion the net proceeds of the business at least once annually by first setting aside such an amount for a reserve fund as they see fit or none, in their discretion; provided, that any reserve for depreciation, if reasonable in amount, or for any other purpose which may properly constitute an expense, is to be figured before computation of net proceeds. The directors may then declare a dividend upon the paid-up capital stock at a rate per annum not to exceed 8 per cent; provided, that no such dividend upon common stock shall be cumulative. The directors may then set aside not to exceed 5 per cent of the remaining net proceeds as an educational fund to be used in teaching co-operation. The directors may then grant a bonus to employes who are in the employ of the association at the time of the apportionment of proceeds, which bonus shall be based in amount upon the amount of compensation received by said employes during the year at a rate not to exceed the rate of patronage distribution hereinafter described. The directors may then employ a part or all of the remaining net proceeds for the general welfare of the members of the association. The directors may distribute all remaining net proceeds to stockholders in proportion to the business of each with the association, or the remaining net proceeds of each department of its business to those stockholders doing business with such department; provided, that the directors may at their discretion include nonstockholders, at the same or lesser rate than the distribution to stockholders; provided further, that if any such distribution be in the form of capital stock, and the distribution to a nonstockholder is less in amount than the par value of one share, it shall be credited to the nonstockholder's capital stock account during the first year and the second year but may revert to the reserve fund if, after 2 years, an amount less than the par value of one share has accumulated.

(2) All or any part of any bonus to employes, dividend declared, or other distribution made under this section may, in the discretion of the directors, be in the form of capital stock of the association.

(3) The members, at any regular or special meeting, legally called, may instruct the directors what method of apportionment of net proceeds to follow under the provisions of this section, in so far as these provisions confer discretion upon the directors.

(4) The directors in any association organized without capital stock shall apportion the net proceeds of the business as prescribed in subsection (1) of this section, except in so far as that subsection refers to capital stock and dividends upon capital stock. [1935 c. 51; 1943 c. 206]

Note: Where a dividend to patrons of a cooperative association was declared in a resolution approving a plan for consolidation and was made payable in the stock of the new or consolidated corporation, the patrons had no right to insist on being paid in cash, particularly since, by 185.16, it was within the discretion of the directors or the majority of the stockholders whether or not any patronage dividend should be declared. *Pearson v. Clam Falls Coop. Dairy Ass'n*, 243 W 369, 10 NW (2d) 132.

185.165 Dissolution of co-operatives. In case of the dissolution of any such association, or in case the members of such association at any meeting, either heretofore or hereafter held, at which meeting a quorum is present, shall, by a majority vote of the members present, vote to discontinue the operations of the association and to wind up its affairs, or in case the directors of any such association shall, by unanimous vote, decide so to discon-

tinue and wind up the affairs of such association, the directors of any such association may apportion and distribute all surpluses, reserves and other assets of the business, after either paying, or providing for the payment of, all of the known indebtedness of the association and all expenses of winding up the affairs of such association, to the members thereof in accordance with the property rights of members; and the directors may, by petition duly verified by any officer or executive employe of the association, present to the circuit court of the county in which said association has its principal place of business, the proposed apportionment and distribution so authorized by its board of directors, and the said circuit court shall thereupon fix a time and place for hearing said petition, and the said association shall thereupon cause notice of the time and place of hearing on said petition to be given to all its members either (1) by mailing a notice thereof to all of its members at their last known address, or (2) by publishing a notice thereof for at least three successive weeks in at least one newspaper published in each county in Wisconsin in which any of the said members were last known to reside, as shown by the records of said association, or by both such mailing and such publication as the court shall direct. At the time and place so fixed, or at such time and place to which the same may be from time to time adjourned, the said court shall hear the proofs of the petitioners and shall hear any proofs offered in opposition to the said proposed apportionment and distribution, and shall determine what apportionment and distribution shall be made thereof, and shall make and enter its judgment in accordance with such determination; such judgment when so entered shall be conclusive and final unless appealed from within thirty days from the date of the entry thereof, and if no such appeal is taken then the distribution shall be made in accordance with said judgment, and the said association shall upon the making of such distribution be discharged and released from any and all liability to any and all persons for or on account of any and all of such funds. Or in any such case, the directors may file a petition in such court before paying or providing for the payment of the known indebtedness of the association and expenses of winding up the affairs of such association, for the liquidation of the affairs of said association and for the distribution of the assets to such person or persons, whether creditors or members, as are, in such proceedings, held by such court to be entitled to the same. Such court shall, upon the filing of any such petition, acquire exclusive jurisdiction of all matters pertaining to the liquidation of such association and the distribution of its assets either to creditors or to its members and may, in such proceedings, fix, determine and order paid the expense of such liquidation proceedings. Such court in such proceedings shall fix the time within which creditors shall file claims and shall prescribe the notice to be given to interested persons. Creditors who do not file their claims within the time limit shall not participate in any distribution thereafter made. The filing of any such petition shall operate as a stay of all other proceedings and all other actions against any such association, and such court may by order require that all persons refrain from commencing or pursuing any other action or proceedings against any such association. [1935 c. 51]

185.17 Operating on nonprofit basis. (1) Any association may operate upon a nonprofit basis by paying to patrons the whole amount of the net proceeds of the business.

(2) Associations desiring to purchase goods or obtain services, within the purposes designated in section 185.02, may organize under the provisions of sections 185.01 to 185.22, inclusive. Such associations may adopt a nonprofit basis in a manner, as far as applicable, similar to that described in subsection (1) of this section.

185.18 Reports to secretary of state. Every association shall annually, on or before the first day of April make a report to the secretary of state; such report shall contain the name of the association, its principal office, and a statement as to its business, amount of capital stock subscribed for and paid in, the authorized rate of dividends on the paid-up capital stock, number of stockholders and latest operating and financial statements. Any association failing to comply with the provisions of this section shall be subject to and governed by the provisions of section 180.08 of the statutes insofar as said section relates to the failure of corporations to file reports and the penalty therefor. [1931 c. 237]

Note: Association which has not completed its organization by filing copy of its articles of incorporation with register of deeds has no legal existence and secretary of state cannot require it to file report as provided by this section. 23 Atty. Gen. 2.

185.19 Conversion from one form to another. Any corporation organized under the general corporation law of this state, if such corporation is doing business upon a co-operative basis, as defined in section 185.01, may convert itself into a co-operative association under sections 185.01 to 185.22, inclusive, by a resolution adopted by a majority vote of its members at any regular or special meeting, legally called. Within thirty days after said meeting, duplicate copies of such resolution adopted, certified by the president and secretary in the manner prescribed by section 180.07 for certification of an amendment of articles of organization, shall be filed with the secretary of state and recorded with the register of deeds in the manner prescribed by section 180.07 for filing and recording of an amendment

of articles of organization; and such conversion shall not be effective until said resolution is so filed, and recorded, after which date the corporation shall be deemed an association organized under sections 185.01 to 185.22, inclusive. The said resolution may contain any amendments of the articles of incorporation necessary or desirable, in which case there shall be paid the fees provided by section 185.04 for filing and recording amendments.

185.20 General corporation law to apply. The general corporation law of this state shall apply to all associations, except where said general corporation law expressly exempts such associations, or where the provisions of said general corporation law are opposed to or inconsistent with the provisions of this chapter.

Note: A co-operative association organized under ch. 185, with capital stock, is fundamentally a "corporation." Under 185.20 the provisions of 180.06 (4), forbidding any corporation to transact business with any others than its members until one-half of its capital stock is subscribed and one-fifth of its authorized capital is actually paid in, and making incorporators and stockholders personally liable for obligations contracted in violation thereof, the purpose of which is to afford a protection to creditors and to some extent to stockholders, are applicable to stock co-operative associations and to their incorporators and stockholders. *Schoenburg v. Klapperich*, 239 W 144, 300 NW 237.

185.21 Promotion expense; limitation. None of the funds of any association shall be used nor shall any stock of any such association be issued for the payment of any promotion expenses, in excess of five per cent of the paid-up capital stock or membership fees.

185.22 "Co-operative," who may use term; penalties. (1) No person, partnership, corporation, trust or unincorporated association doing business in this state shall be entitled to use the term "co-operative," or any abbreviation or derivation thereof or any word similar thereto, as part of its corporate or other business name or title; except that any foreign corporation, organized under and complying with the co-operative law of the state of such corporation's creation, shall be entitled to use the term "co-operative" in this state, provided that said corporation has complied with the laws of this state applicable to other foreign corporations, insofar as those laws are applicable to said corporation, and provided, further, that said corporation is doing business upon a co-operative basis, as defined in section 185.01.

(2) Every association shall use the term "co-operative" as part of its corporate name or affixed thereto.

(3) Every corporation or association in existence at the time of the passage of this act, which is required by this section to change its corporate name, may adopt an amendment to its articles of incorporation to this effect by a vote of a majority of its board of directors, in addition to any other method of making such an amendment which may be authorized by law, and the president and secretary of any such corporation or association are hereby empowered and directed to certify the adoption in said manner of any such amendment.

(4) Any person, partnership, corporation, trust or unincorporated association violating any provision of subsection (1) of this section shall be guilty of a misdemeanor and for each and every such offense shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; and any corporation which violates any provision of said subsection shall have its right to do business in this state revoked in a proceeding brought in any circuit court by the attorney-general. Whenever any corporation shall commit any offense, for which punishment is provided by this subsection, such offense shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered or done any of the acts constituting in whole or in part such offense; and such offense shall be deemed a misdemeanor and, upon conviction thereof, any such director, officer or agent shall be punished as provided in this subsection. Any person, partnership, corporation, trust or unincorporated association violating any provision of subsection (1) of this section may, at the instance of the attorney-general or of any private citizen, be enjoined from further violation thereof or from issuing, selling, offering for sale, negotiating, advertising or distributing its stock, bonds, notes, or other certificates or evidences of interest or indebtedness.

(5) Any association which shall violate any provision of said sections or of the general corporation law applicable to such association shall have its right to do business in this state revoked in a proceeding brought in any circuit court by the attorney-general; and any foreign corporation admitted to business in this state upon the conditions specified in this section, which shall commit a breach of any such condition after its admission to business in this state, shall have its license to do business in this state revoked in a proceeding brought in any circuit court by the attorney-general.

(6) The department of agriculture shall, upon request, assist the attorney-general in the enforcement of this section. [1939 c. 513 s. 38]

185.23 Income tax return, filing of, when. Any co-operative association, society, company, corporation, exchange, or union organized under the provisions of sections 185.01 to 185.22, inclusive, shall not be obliged to file a state income tax return unless such associa-

tion, society, company, corporation, exchange or union is at the time subject to a state income tax.

185.24 Nonfarm members of electric co-operative associations. (1) Any co-operative association organized under chapter 185 for the purpose of generating, transmitting, distributing or furnishing electricity to its members in any rural area, and the farms which are generally served by it, may furnish electric service to schoolhouses, town halls and industries of an essentially rural nature which are not receiving central station service, such as gravel pits, creameries, pea viners and rural cold storage lockers.

(2) Any person, firm, corporation, association or co-operative, including any school district or governmental agency, owning or operating any such schoolhouse, town hall or industry in such rural area, may become a member of the co-operative association furnishing such service. [1941 c. 267]

185.25 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 section 147.175, or by dentists licensed under section 152.05 in their offices, in hospitals and in the home.

(3) No co-operative association organized for the purposes provided in sections 185.25 to 185.27 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 section 180.32. 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 sections 70.11, 71.01 (3), 72.04 and 72.75, and its employees shall be excluded from the provisions of chapter 108 as provided in section 108.02. [1947 c. 408; 43.08 (2)]

185.26 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 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 association, including promotional expense for building or investment purposes, shall be limited to 5 per cent as provided in section 185.21. [1947 c. 408]

185.27 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 sections 185.25 to 185.29.

(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. [1947 c. 408]

185.28 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 sections 185.25 to 185.27 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 sections 185.25 to 185.27 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 sections 185.25 to 185.27 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. [1947 c. 408]

185.29 Inconsistent provisions of the statutes. Sickness care or hospital plans operated by co-operative associations organized under this chapter shall be operated exclusively under the provisions of sections 185.25 to 185.29. 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. [1947 c. 408]