

## CHAPTER 185

### COOPERATIVES

185.01	Definitions.	185.41	Cooperative contracts.
185.02	Purposes.	185.42	Recording of cooperative contracts; effect thereof.
185.03	General powers.	185.43	Relief against breach or threatened breach.
185.031	Refunds after forfeiture.	185.44	Application of ss. 185.41 to 185.43; venue of action.
185.033	Restriction on changes to articles.	185.45	Apportionment and distribution of proceeds.
185.034	Definitions applicable to indemnification and insurance provisions.	185.47	Books and records; penalty for refusal to produce.
185.035	Mandatory indemnification.	185.48	Annual reports; filing thereof.
185.036	Determination of right to indemnification.	185.49	Omission of seal.
185.037	Allowance of expenses as incurred.	185.50	Income or franchise tax returns.
185.038	Additional rights to indemnification and allowance of expenses.	185.51	Amendments to articles.
185.039	Court-ordered indemnification.	185.52	Stockholder voting on amendments to articles.
185.04	Indemnification and allowance of expenses of employees and agents.	185.53	Filing and recording amendments; effect thereof.
185.041	Insurance.	185.54	Restated articles.
185.042	Indemnification and insurance against securities law claims.	185.55	Amendments by bankruptcy court.
185.043	Incorporators.	185.61	Merger and consolidation.
185.045	Reserved or registered name.	185.62	Articles of merger or consolidation; effect thereof.
185.05	Articles.	185.63	Division of a cooperative.
185.06	Organization meetings.	185.64	Conversion of corporation.
185.07	Bylaws.	185.71	Voluntary dissolution.
185.08	Principal office; registered agent; service of process.	185.72	Involuntary dissolution.
185.09	Promotion expense; limitation.	185.73	Liquidation under court supervision.
185.11	Membership.	185.74	Property not distributed prior to dissolution.
185.12	Voting.	185.75	Unclaimed assets.
185.13	Member meetings.	185.76	Survival of remedy after dissolution.
185.14	Quorum.	185.81	Admission of foreign cooperatives.
185.15	Notice to members, stockholders or other persons; waiver.	185.815	Recording change of principal office or registered agent.
185.21	Stock; authorization, issuance, control, use, rights.	185.82	Procedure on filing and recording of documents.
185.22	Subscriptions for stock; liability therefor.	185.825	Penalty for false document.
185.23	Missing securities or records.	185.83	Fees for filing.
185.24	Liability of cooperative for wrongful transfers of its securities.	185.84	Fees or penalty due state.
185.25	Applicability of ch. 408 to cooperative securities.	185.85	Forms to be furnished by department of financial institutions.
185.31	Directors; number, election, removal and vacancies.	185.91	Voting requirements of articles.
185.32	Directors; meetings, quorum and waiver of notice.	185.92	Effect of unauthorized acts.
185.33	Executive committee.	185.93	Member or stockholder derivative actions.
185.34	Action without meeting by directors or members.	185.94	Use of term “cooperative”; penalty for improper use.
185.35	Officers.	185.95	Discrimination against association.
185.36	Compensation and benefits to directors, officers and employees.	185.96	Application of chapter.
185.363	Reliance by directors or officers.	185.97	Title.
185.365	Consideration of interests in addition to members’ and stockholders’ interests.	185.981	Cooperative sickness care.
185.367	Limited liability of directors and officers.	185.982	Manner of practicing medicine, chiropractic and dentistry; payment; promotional expense.
185.37	Liability of directors and members.	185.983	Requirements of plan.
185.38	Disposition of assets; right to secure debts.	185.985	Inconsistent provisions of the statutes.

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

(1) “Articles” means the articles of incorporation of a cooperative unless the context otherwise requires.

(1g) “Association” includes both cooperatives and foreign cooperatives.

(1m) “Board” means the board of directors of a cooperative.

(1r) “Bylaws” means the bylaws of a cooperative.

(2) “Cooperative” means an association incorporated under this chapter.

(3) “Corporation” means all corporations not associations.

(3m) “Department”, except in s. 185.45 (3) (c) and (4) (b), means the department of financial institutions.

(4) “Foreign cooperative” means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative basis:

(a) Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of 8% per year; and

(b) The foreign cooperative 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 cooperative distributes its proceeds according to either s. 185.45 or the law of the state of the foreign cooperative’s incorporation.

(5) “Member” means a person who has been qualified and accepted for membership in an association. If a cooperative has one or more classes of members not entitled to vote, “member” or “members”, as used in this chapter with respect to the right of a member to vote, voting procedure, the required proportion of member votes, actions that must or may be taken by members, the number of members required for a quorum and the eligibility of directors, means a member or members entitled to vote, unless the bylaws provide otherwise.

(6) “Membership stock” means any class of stock, continuous ownership of which is required for membership in a cooperative.

(6m) “Patronage” means business done by a patron with a cooperative and, if the bylaws provide, labor performed for a cooperative by a patron.

(7) “Security” as used in ss. 185.23 and 185.24 means any indebtedness, capital stock or other equity interest in a cooperative’s assets.

**History:** 1979 c. 110 s. 60 (13); 1983 a. 189; 1985 a. 30; 1993 a. 482; 1995 a. 27, 417.

**185.02 Purposes.** Cooperatives may be organized under this chapter for any lawful purpose except banking and insurance, but subject to statutes relating to the organization of specified kinds of corporations.

**History:** 1977 c. 29.

**185.03 General powers.** Unless otherwise provided by its articles, a cooperative 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) Effect the forfeiture to the cooperative of unclaimed funds, including all forms of distributions or credits under s. 185.45 (2) (b) and (c), (3) (a) and (b) and (4) (b) and unclaimed stock, membership fees and deposits, if all of the following conditions are met:
  - (a) No earlier than 3 years and no later than 5 years after the funds are first made available to their owners, the board declares the funds forfeited to the cooperative unless claimed by the date specified in par. (b).
  - (b) After the declaration under par. (a), the cooperative gives notice that states that the funds shall be forfeited if not claimed by a specified date.
  - (c) The date specified in the notice under par. (b) is a business day at least 60 days after the date of mailing of the notice.
  - (d) The notice under par. (b) is mailed to the last-known address of each owner and is published as a class 1 notice under ch. 985 on or before the date of mailing in a newspaper published in the municipality containing the service area of the cooperative.
  - (e) The cooperative dedicates any funds remaining unclaimed after the date specified in par. (b) to educational purposes, limited to providing scholarships or loans to students, or to charitable purposes, as the board determines, within one year after the date the funds are declared forfeited under par. (a). In this paragraph, educational purposes does not include political purposes as defined in s. 11.01 (16).
- (11) Cease its activities and surrender its franchise.
- (12) Exercise all powers necessary or convenient to effect its purposes.

**History:** 1985 a. 30, 332.

**185.031 Refunds after forfeiture.** Subsequent to a forfeiture under s. 185.03 (10), the owner of the forfeited funds may submit a claim to the board. If the board determines that the person owned the funds at the time of the forfeiture, it shall refund the funds to the person.

**History:** 1985 a. 332.

**185.033 Restriction on changes to articles.** (1) If the articles contain a prohibition on changes to the provision establishing the basis of distribution as provided in s. 185.05 (1) (j), no changes may be made to the provision including by amendment

under s. 185.51 or 185.52, approval of a plan of division under s. 185.63, adoption of restated articles under s. 185.54, approval of a plan of merger or consolidation under s. 185.61 and conversion to a nonstock corporation under s. 181.1150.

(2) If, upon dissolution of a cooperative with articles containing a prohibition on changes in the basis of distribution, the distributions required are wholly or partly impossible of execution, the whole or part of the net proceeds shall be distributed as provided in s. 185.71 (3).

**History:** 1985 a. 30; 1997 a. 79.

**185.034 Definitions applicable to indemnification and insurance provisions.** In ss. 185.034 to 185.042:

(1) “Cooperative” means a domestic cooperative and any domestic or foreign predecessor of a domestic cooperative where the predecessor cooperative’s existence ceased upon the consummation of a merger or other transaction.

(2) “Director or officer” means any of the following:

(a) A natural person who is or was a director or officer of a cooperative.

(b) A natural person who, while a director or officer of a cooperative, is or was serving at the cooperative’s request as a director, officer, partner, trustee, member of any governing or decision-making committee, manager, employee or agent of an association, corporation, limited liability company, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a cooperative, is or was serving an employee benefit plan because his or her duties to the cooperative also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) A natural person who is or was the chief executive, managerial employee of a cooperative, regardless of the person’s title.

(e) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) “Expenses” include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) “Liability” includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employee benefit plan, and reasonable expenses.

(5) “Party” means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) “Proceeding” means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the cooperative or by any other person.

**History:** 1987 a. 13; 1993 a. 112.

**185.035 Mandatory indemnification.** (1) A cooperative shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the cooperative.

(2) (a) In cases not included under sub. (1), a cooperative shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the cooperative, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the cooperative and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the cooperative, its members or stockholders in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 185.036.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the cooperative.

(4) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the cooperative, in connection with the same proceeding.

**History:** 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.

### 185.036 Determination of right to indemnification.

Unless otherwise provided by the articles or bylaws or by written agreement between the director or officer and the cooperative, the director or officer seeking indemnification under s. 185.035 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By a majority vote of a quorum of the members. Members who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not vote in making the determination.

(5) By a court under s. 185.039.

(6) By any other method provided for in any additional right to indemnification permitted under s. 185.038.

**History:** 1987 a. 13.

**185.037 Allowance of expenses as incurred.** Upon written request by a director or officer who is a party to a proceeding, a cooperative may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the cooperative with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the cooperative.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the cooperative, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 185.036 that indemnification

under s. 185.035 (2) is not required and that indemnification is not ordered by a court under s. 185.039 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

**History:** 1987 a. 13.

### 185.038 Additional rights to indemnification and allowance of expenses. (1)

Except as provided in sub. (2), ss. 185.035 and 185.037 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles or bylaws.

(b) A written agreement between the director or officer and the cooperative.

(c) A resolution of the board.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the cooperative may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the cooperative that the director or officer did not breach or fail to perform a duty he or she owes to the cooperative which constitutes conduct under s. 185.035 (2) (a) 1., 2., 3. or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 185.034 to 185.042 do not affect a cooperative's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employee, agent, director or officer of the cooperative.

**History:** 1987 a. 13.

### 185.039 Court-ordered indemnification. (1)

Except as provided otherwise by written agreement between the director or officer and the cooperative, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 185.036 (5) or for review by the court of an adverse determination under s. 185.036 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 185.035 (1) or (2). If the court also determines that the cooperative unreasonably refused the director's or officer's request for indemnification, the court shall order the cooperative to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 185.035 (2).

**History:** 1987 a. 13.

### 185.04 Indemnification and allowance of expenses of employees and agents.

A cooperative may indemnify and allow reasonable expenses of an employee or agent who is not a director or officer to the extent provided by the articles or bylaws, by general or specific action of the board or by contract.

**History:** 1987 a. 13.

**185.041 Insurance.** A cooperative may purchase and maintain insurance on behalf of an individual who is an employee,

agent, director or officer of the cooperative against liability asserted against and incurred by the individual in his or her capacity as an employee, agent, director or officer, or arising from his or her status as an employee, agent, director or officer, regardless of whether the cooperative is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 185.035, 185.037, 185.038 and 185.04.

**History:** 1987 a. 13.

**185.042 Indemnification and insurance against securities law claims.** (1) It is the public policy of this state to require or permit indemnification, allowance of expenses and insurance for any liability incurred in connection with a proceeding involving securities regulation described under sub. (2) to the extent required or permitted under ss. 185.034 to 185.041.

(2) Sections 185.034 to 185.041 apply, to the extent applicable to any other proceeding, to any proceeding involving a federal or state statute, rule or regulation regulating the offer, sale or purchase of securities, securities brokers or dealers, or investment companies or investment advisers.

**History:** 1987 a. 13.

**185.043 Incorporators.** Five or more adults, one of whom must be a resident, may form a cooperative by signing, acknowledging and filing articles.

**History:** 1981 c. 337; 1985 a. 30 s. 42; 1987 a. 13 s. 23; Stats. 1987 s. 185.043.

**185.045 Reserved or registered name.** Sections 180.0122 (1) (c) to (i), 180.0402 and 180.0403 (2), (3), (3m) and (4) (b) apply to cooperatives, with the word “cooperative” substituted for the words “corporate” and “corporation”.

**History:** 1985 a. 338; 1989 a. 303; 1993 a. 331.

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

- (a) The name of the cooperative.
- (b) The period of existence, unless perpetual.
- (c) The purposes for which organized. It is sufficient to state that the cooperative may engage in any activity within the purposes for which cooperatives may be organized, and all such activities shall then be deemed within its purposes, subject to express limitations.
- (d) Whether the cooperative 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 upon liquidation and, if changes in the basis of distribution are to be prohibited, a statement that this provision may not be changed and a reference to the restriction under s. 185.033.
- (k) The complete address, including street number, city, town or village, county and zip code of its principal office or the name and complete address, including street number, city, town or village, county and zip code 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 cooperative begins when the articles are filed. Upon the filing of the articles, the department shall issue a certificate of incorporation. The department shall forward within 5 days a duplicate original of the articles to the register of deeds of the county of the cooperative’s principal office or registered agent for recording.

(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:** 1981 c. 337; 1985 a. 30 ss. 9, 10, 42; 1985 a. 274; 1995 a. 27.

**Cross-reference:** See s. 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter’s name.

**185.06 Organization meetings.** (1) After articles have been filed, 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 filing the articles. Failure to hold such meeting within the time specified does not affect the validity of organization.

**History:** 1981 c. 337.

**185.07 Bylaws.** (1) The initial bylaws 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.

(2) 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.

(3) Unless the bylaws provide otherwise, any bylaw may be adopted, amended or repealed by a majority of the member votes cast at a meeting.

**History:** 1985 a. 30.

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

(2) (a) 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 cooperative, and the mailing address and county of its principal office or the name and address, including the county, of the registered agent as established or changed.

(b) If a statement under par. (a) results from the action of a governmental agency in changing the address of the principal office or registered agent and there is no corresponding change in physical location, these facts shall be contained in the statement.

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

(4) Service of any process, notice or demand upon a cooperative may be made as provided in s. 180.0504 or ch. 801.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1981 c. 337; 1983 a. 134; 1989 a. 303; 1995 a. 27.

**185.09 Promotion expense; limitation.** No cooperative 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.

**185.11 Membership.** (1) All cooperatives shall be organized on a membership basis with no capital stock, or shall be organized on a membership basis with capital stock.

(2) A cooperative 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, limited liability company, corporation, or body politic, may become a member in accordance with the bylaws.

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

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

*History:* 1985 a. 30 ss. 12, 42; 1993 a. 112, 482.

**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 a membership may not vote except as expressly permitted in the bylaws. If the cooperative 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 cooperative 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 cooperative.

(4) (a) The bylaws may provide for representation of members by delegates apportioned territorially or by other districts or units. The bylaws shall specify either that a delegate may cast only one vote or that a delegate may cast one vote for each member represented by the delegate.

(b) The procedures set forth in this chapter for voting by members apply to voting by delegates, except as provided in all of the following:

1. If any delegate who may cast only one vote is permitted to vote on a matter, only delegates may vote on that matter.

2. If delegates may cast only one vote, in calculating the required proportion of votes on a matter, the number of delegate votes shall be used, but the number of delegates required for a quorum shall be as specified in the bylaws.

3. If the bylaws provide for representation of members by delegates who may cast one vote for each member represented by the delegate, in calculating the required proportion of votes on a matter and the number of delegates required for a quorum, the number of members represented by each delegate shall be used.

(5) (a) Members entitled to vote on a motion but absent from the meeting at which the vote is taken may vote only as follows:

1. If a cooperative provides ballots for the vote on the motion to the members together with notice of the meeting at which the vote will be taken and exact copies of the motion and any resolution to which it pertains, an absent member may vote on the motion by submitting a signed ballot. If a signed ballot has been submitted on a motion under this subdivision, neither the motion nor any resolution to which it pertains may be amended.

2. If a cooperative makes available ballots for the vote on the motion together with exact copies of the motion and any resolution to which it pertains to any member entitled to vote on the motion, but does not comply fully with the requirements of subd. 1., an absent member may vote on the motion by submitting a signed ballot. However, the motion and any resolution to which it pertains may be amended at the meeting, and, if the motion or

resolution is amended, the ballot is void. The ballot may not be counted on any motion to amend or adopt as amended the motion or resolution.

(b) The bylaws may provide for voting on the election or removal of directors by signed ballots. Signed ballots may not be used for this purpose unless the bylaws authorize and prescribe the procedure for their use.

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

*History:* 1985 a. 30 ss. 13, 14, 42; 1993 a. 482.

**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. Notice need be given only to members entitled to vote. Notice shall be given to members having limited voting rights if they have or may have the right to vote at 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:* 1985 a. 30.

**185.14 Quorum.** (1) A quorum at a member meeting shall be 10% of the first 100 members plus 5% of additional members.

(2) Unless the bylaws fix a larger number of members to constitute a quorum and except as provided in the bylaws in accordance with s. 185.12 (4) (b) 2., 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 ballots may be counted in computing a quorum only on those motions for which the signed ballots were submitted.

*History:* 1985 a. 30.

**185.15 Notice to members, stockholders or other persons; waiver.** (1) Whenever notice is required by this chapter to be given to any person, the notice shall be given either personally or by mail. If mailed, the notice is given when it is deposited or a newsletter or other publication of a cooperative or of an affiliated organization which includes the notice is deposited in the United States mail, with postage prepaid thereon, addressed to such person at his or her address as it appears on the records of the cooperative.

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

*History:* 1985 a. 30.

**185.21 Stock; authorization, issuance, control, use, rights.** (1) A cooperative may be organized with or without capital stock.

(2) A cooperative 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 8% of its par value for any year, but dividends may be cumulative.

(3) (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.

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

(a) The name of the cooperative, 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. (3) (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 cooperative will, upon request, furnish the information required by this subsection.

(5) 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.

(6) Unless the articles provide otherwise, a cooperative may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the cooperative 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 cooperative 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 cooperative 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.

(7) When stock is acquired, recalled, exchanged, or redeemed by the cooperative, such stock is restored to the status of authorized but unissued stock.

(8) Stockholders as such have no preemptive right to purchase additional stock.

**History:** 1975 c. 34; 1985 a. 30 ss. 18, 19, 42, 44.

**185.22 Subscriptions for stock; liability therefor.** (1) A subscription for stock of a cooperative 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 the stockholder's or subscriber's stock or subscription other than the obligation to pay to the cooperative the full consideration for which such stock was to be issued.

**History:** 1985 a. 30 s. 42; 1993 a. 482.

**185.23 Missing securities or records.** (1) When a security issued by a cooperative, which is not a "security" as defined in s. 408.102, is missing, the cooperative shall issue a duplicate security if the owner so requests and furnishes an indemnity acceptable to the cooperative.

(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 cooperative may give notice and redeem as follows:

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

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

(c) If there are interests, the ownership of which is unknown to the cooperative, it shall publish notice of the redemption at least once a month for 4 months in a publication circulated among members of cooperatives in the area, and also publish a class 3 notice, under ch. 985.

**History:** 1985 a. 30 s. 42.

**185.24 Liability of cooperative for wrongful transfers of its securities.** (1) A cooperative is not liable for acting upon wrongful transfers of its securities which are not "securities" as defined in s. 408.102, 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 or her authorized agent, legal representative or successor to his or her 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:** 1985 a. 30 s. 42; 1993 a. 482.

**185.25 Applicability of ch. 408 to cooperative securities.** Chapter 408 applies to those securities of a cooperative which fall within the definition of a "security" in s. 408.102, except that s. 185.21 applies to all stock of a cooperative and s. 185.23 (2) applies to all securities of a cooperative regardless of any provisions of ch. 408 which are inconsistent therewith or contrary thereto.

**185.31 Directors; number, election, removal and vacancies.** (1) All powers of the cooperative shall be exercised by or under authority of, and the business and affairs of a cooperative shall be managed under the direction of, the board, except as otherwise provided in this chapter. 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 districts.

(2) The number of directors shall not be less than 5, provided that, in a cooperative 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 districts, the articles may limit voting for any director to members from within the district from which the 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 a 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 cooperative shall file within 20 days with the department 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, including any vacancy created by an increase in the number of directors, may be filled until the next annual meeting by appointment by a majority vote of the directors then in office.

**History:** 1985 a. 30 ss. 20, 42; 1995 a. 27.

**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 thereto 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.

(5) (a) Unless the articles or bylaws provide otherwise, the board may permit any or all directors to participate in a regular or special meeting or in a committee meeting, including an executive committee meeting, of the board by, or to conduct the meeting through the use of, any means of communication by which any of the following occurs:

1. All participating directors may simultaneously hear each other during the meeting.

2. All communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.

(b) If a meeting will be conducted through the use of any means described in par. (a), all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in par. (a) is deemed to be present in person at the meeting. If requested by a director, minutes of the meeting shall be prepared and distributed to each director.

**History:** 1989 a. 308; 1991 a. 16.

**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.

**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 cooperative 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:** 1985 a. 30 s. 42.

**185.35 Officers.** (1) Unless the articles of incorporation provide otherwise, the principal officers of a cooperative 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 the officers, the cooperative shall file with the department, 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 cooperative. The offices of secretary and treasurer may be combined in one person.

(1m) Any principal officer of a cooperative may be designated by a title other than those designated under sub. (1), as provided in the articles of incorporation of the cooperative. The provisions of this chapter applicable to a principal officer as designated under sub. (1) apply to the principal officer as designated according to the provisions of the articles of incorporation. Any document required or permitted by this chapter to be signed by the president, vice president, secretary or assistant secretary may be signed by such officer as may be stated in such document to correspond to the officer so required or permitted to sign.

(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 cooperative will be served thereby. Election or appointment shall not of itself create contract rights.

**History:** 1985 a. 30 ss. 21, 22, 42; 1995 a. 27.

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

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

**History:** 1985 a. 30 s. 42; 1993 a. 482.

**185.363 Reliance by directors or officers.** Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the cooperative, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employee of the cooperative whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of which the director is not a member if the director believes in good faith that the committee merits confidence.

**History:** 1987 a. 13.

**185.365 Consideration of interests in addition to members' and stockholders' interests.** In discharging his or her duties to the cooperative and in determining what he or she believes to be in the best interests of the cooperative, a director or officer may, in addition to considering the effects of any action on members and stockholders, consider the following:

(1) The effects of the action on employees, suppliers and customers of the cooperative.

(2) The effects of the action on communities in which the cooperative operates.



(3) Any other factors the director or officer considers pertinent.

**History:** 1987 a. 13.

**185.367 Limited liability of directors and officers.**

(1) Except as provided in subs. (2) and (3), a director or officer is not liable to the cooperative, its members, stockholders or creditors, or any person asserting rights on behalf of the cooperative, its members, stockholders or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the cooperative, its members or stockholders in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(c) The liability of a director under s. 185.37 (1).

(3) Subsection (2) (a) and (b) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

**History:** 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.

**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 cooperative for the value of assets distributed in excess of the amount which could have been distributed without violating this chapter or the articles. Section 185.367 does not apply to the liability of directors under this subsection.

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

**History:** 1985 a. 30 s. 42; 1987 a. 13.

**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 cooperative's fixed assets. At any meeting the members may authorize the disposition of all or substantially all of a cooperative'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 cooperative's debts by mortgaging the cooperative's rights, privileges, authority and franchises, revenues and other property.

**History:** 1985 a. 30 s. 42.

**185.41 Cooperative 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 the member or under the member's 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 the member in any manner with respect to all or any specified part of such products and any services to be furnished by the member.

(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 the member 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 the member-maker's contract, and on the member-maker's request at any time shall promptly furnish the member-maker information as to the member-maker's 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 the member 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:** 1985 a. 30 s. 42; 1993 a. 482.

**185.42 Recording of cooperative contracts; effect thereof.**

(1) The association may record 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 the fee specified under s. 59.43 (2) (e), shall number each contract consecutively and shall record 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 or she shall place members and cooperatives under a separate head and shall state in separate col-



umns, 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 recording constitutes notice to all persons of the association's rights under the contract. The recording 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 recording 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 record such statement in the office of the register of deeds where the contract was originally filed or recorded. At least once each year the association shall record in the office of the register of deeds where the contract was originally filed or recorded, 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). For any recording under this subsection the register of deeds shall receive the fee specified under s. 59.43 (2) (ag).

**History:** 1981 c. 245; 1985 a. 30 s. 42; 1993 a. 301; 1995 a. 201, 225.

#### 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 the member's 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:** 1993 a. 482.

It is not necessary to have demonstrated intent to induce a cooperative member to breach or repudiate his contract with his association, because injury is presumed from violation of the statute. *Pure Milk Products Coop. v. NFO*, 64 Wis. 2d 241, 219 N.W.2d 564.

**185.44 Application of ss. 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.

**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 cooperative organization or principles. Such funds shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative.

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

- (c) In a cooperative 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 cooperative 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 cooperative.

- (b) None of the remainder shall constitute income to the cooperative, but all of it shall be distributed and paid in accordance with the ratio which individual patronage bears to total patronage, either to member patrons only, to member patrons only with one or more classes receiving a lower proportion than others or to all patrons with nonmembers receiving a lower proportion than members, as the bylaws 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.

(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 cooperative or of other associations, limited liability companies 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:** 1985 a. 30 ss. 23, 42; 1993 a. 112.

In action to enforce security interest in certificates of deposit, in absence of article or bylaw provision crediting net proceeds to surplus or reserves, proceeds from cooperative business in excess of actual expenses and compensation of employees belongs to patrons, not cooperative. *Barron 1st Nat. Bk. v. Barron Co. Coop*, DCBSA, 77 Wis. 2d 1, 252 N.W.2d 57.

**185.47 Books and records; penalty for refusal to produce.** (1) A cooperative 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 cooperative 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 or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the cooperative at least one week in advance, may examine for a proper purpose any books or records pertinent to the purpose specified in the notice. The board may deny a request to examine books and records if the board determines that the purpose is not directly related to the business or affairs of the cooperative and is contrary to the best interests of the cooperative.

(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 cooperative'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 cooperative failing to comply with the order is subject to dissolution, and its directors and officers are liable for contempt of court.

(3) Subject to the time, notice and purpose requirements of sub. (1), a member or stockholder of a cooperative may examine the books and records of any other cooperative or other person that is a wholly owned subsidiary of the cooperative or in which the cooperative owns a controlling interest.

**History:** 1985 a. 30 ss. 24, 25, 42.

**185.48 Annual reports; filing thereof.** (1) A cooperative 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 12 months preceding the date of the report.

(2) The annual report shall be made on forms furnished by the department, and the information therein contained shall be given as of the date of the execution of the report. The department shall forward by 1st class mail report blanks to each cooperative in good standing not later than 60 days prior to the date on which the cooperative is required to file an annual report under this chapter.

(3) The annual report shall be delivered to the department in each year following the year in which the cooperative's articles are filed by the department, during the calendar year quarter in which the anniversary of the filing occurs. If the report does not conform to requirements, it shall be returned to the cooperative 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 not filed as required by sub. (3) may be filed only upon payment to the department of \$26.

(5) If the report is not filed within a year from the first day of the quarter calendar year in which the report is required, under sub. (3), to be delivered, the cooperative is not in good standing. Within the next 6 months the department shall mail to the cooperative a notice that it is no longer in good standing. If a cooperative has been out of good standing for more than 3 consecutive years immediately prior to January 1, 1978, the department shall provide only the notice required under s. 185.72 (3). Until restored to good standing, the department shall not accept for filing any document respecting such cooperative except those incident to its dissolution.

(6) The cooperative may be restored to good standing by delivering to the department a current annual report and by paying the \$26 late filing fee plus \$15 for each calendar year or part thereof during which it was not in good standing, not exceeding a total of \$176.

**History:** 1977 c. 29; 1979 c. 221; 1985 a. 29; 1985 a. 30 s. 42; 1985 a. 338; 1989 a. 123; 1995 a. 27.

**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 cooperative has no seal.

**History:** 1985 a. 30 s. 42.

**185.50 Income or franchise tax returns.** Any cooperative association, society, company, corporation, exchange or union organized under the provisions of this chapter shall not be obliged to file a state income or franchise tax return unless such association, society, company, corporation, exchange or union is at the time subject to a state income or franchise tax.

**History:** 1981 c. 390 s. 252; 1985 a. 30 s. 42; 1991 a. 39.

**185.51 Amendments to articles.** (1) At any member meeting a cooperative 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 two-thirds of the member votes cast thereon.

**History:** 1985 a. 30 ss. 26, 42.

**185.52 Stockholder voting on amendments to articles.**

(1) (a) 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 the amendment regardless of the dollar amount of stock, the number of shares or the number of affected classes of stock he or she holds.

(b) 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 the holder 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.

(g) Require only a majority of member votes and a majority of the votes of any stockholders entitled to vote under s. 185.61 (3) (a) for approval of a plan of merger or consolidation under s. 185.61 (2) (b) as provided in s. 185.61 (4).

(3) If stockholders are entitled to vote on an amendment, the amendment is adopted only if all of the following conditions are met:

(a) Notice of the meeting, an exact copy of the proposed amendment and a ballot thereon have been sent to each member and each affected stockholder.

(b) Two-thirds of the member votes cast thereon approve.

(c) Two-thirds of the votes of affected stockholders cast thereon approve.

(4) This section shall not apply to stock issued prior to June 30, 1956, unless the cooperative 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:** 1985 a. 30 s. 27, 28, 42; 1993 a. 482.

**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 cooperative's seal, and shall set forth:

(a) The name of the cooperative, and the county of the cooperative's principal office or of its registered agent.

(b) The amendment and date of adoption.

(c) The number of members.

(d) The number of member votes cast for and against the amendment.

(e) If affected stockholders have the right to vote under s. 185.52, the number of votes of affected stockholders cast for and against the amendment.

(2) The amendment shall be filed and recorded as provided in s. 185.82. The amendment becomes effective upon filing, and the department may then issue a certificate of amendment.

(3) No amendment may affect any existing cause of action or proceeding to which the cooperative 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 filing.

**History:** 1981 c. 337; 1985 a. 30 ss. 29, 42; 1995 a. 27.

**Cross-reference:** See s. 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

**185.54 Restated articles.** A cooperative may, by action taken in the manner required for an amendment, adopt restated articles. When filed 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) In lieu of the name of the cooperative and complete address of the cooperative's principal office or name and complete address of its registered agent at the time of incorporation, the restated articles shall set forth the name of the cooperative and the complete address, including street number, city, town or village, county and zip code of its principal office or name and complete address including street number, city, town or village, county and zip code of its registered agent at the time of adoption of the restated articles.

**History:** 1981 c. 337; 1985 a. 30.

**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 cooperative shall cause each order to be promptly filed and recorded after it becomes final.

**History:** 1985 a. 30 s. 42.

**185.61 Merger and consolidation.** (1) 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 cooperative 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. The plan shall set forth all the terms of the merger or consolidation, including any provisions for abandonment of the plan, and the proposed

effect of the plan on all members and stockholders of the cooperative. In case of consolidation, the plan shall also contain the articles of the new association.

(2) Except as provided in sub. (4), the plan is approved if all of the following conditions are met:

(a) Notice of the meeting to vote on the plan, an exact copy of the plan and a ballot thereon have been given, in accordance with s. 185.15 (1), to all members and all stockholders entitled to vote under sub. (3) (a).

(b) Two-thirds of all member votes cast thereon approve and two-thirds of the votes of all stockholders entitled to vote under sub. (3) (a) cast thereon approve.

(3) (a) 1. Whether or not permitted to vote by the articles, each holder of stock, other than membership stock, of all consolidating cooperatives is entitled to cast one vote on the plan regardless of the dollar amount of stock, the number of shares or the number of classes of stock he or she holds.

2. Whether or not permitted to vote by the articles, each holder of stock, other than membership stock, of all cooperatives that will not be surviving cooperatives of a merger is entitled to cast one vote on the plan regardless of the dollar amount of stock, the number of shares or the number of classes of stock he or she holds.

3. Whether or not permitted to vote by the articles, each holder of stock, other than membership stock, of the cooperative that will be the surviving cooperative of a merger, is entitled to cast one vote on the plan regardless of the dollar amount of stock, the number of shares or the number of classes of stock he or she holds, only if both of the following conditions are met:

a. The articles of the surviving cooperative will be amended by the plan.

b. The holder of stock is affected by any amendment under subd. 3. a. as provided in s. 185.52 (2).

(b) A member who is a holder of stock entitled to vote under par. (a) may vote both as a member and a stockholder.

(4) (a) Except as provided in par. (b) a cooperative may approve the plan as provided in subs. (2) and (3), except that a majority of member votes and a majority of the votes of any stockholders under sub. (3) (a) rather than two-thirds of those votes shall be required under sub. (2) (b) if the cooperative amends its articles or adopts restated articles to include a provision therefor.

(b) A cooperative primarily engaged in producing or furnishing electric power or energy to its members may approve a plan for merger or consolidation with a cooperative that is organized for the same purpose, as provided in par. (a). However, a plan for merger or consolidation of a cooperative primarily engaged in producing or furnishing electric power or energy to its members with a cooperative, other than a cooperative organized for the same purpose, shall require approval by two-thirds of the member votes and two-thirds of the votes of any stockholders, under sub. (3) (a), and these proportions may not be changed by amendment or restatement of the articles.

(5) After approval of a plan under this section, but before the merger or consolidation is effective, the merger or consolidation may be abandoned in accordance with any provisions for abandonment set forth in the plan of merger or consolidation.

**History:** 1985 a. 30.

**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 cooperatives have their principal office or registered agent. Unless otherwise specified in the plan, the merger or consolidation is effective when the articles are so filed.

(1m) If after the filing of the articles under sub. (1), but before the merger or consolidation is effective, the merger or consolida-



tion is abandoned, as provided in s. 185.61 (5), 2 principal officers of each merging or consolidating cooperative shall sign a certificate of abandonment stating that the merger or consolidation is abandoned and the date of abandonment, and shall seal the certificate with the seal of each cooperative. The certificate of abandonment shall be filed and recorded prior to the date the merger or consolidation would otherwise be effective, with the department and in each county where the cooperatives have their principal offices or registered agents, in the manner provided in s. 185.82.

(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 the creditor's consent.

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

**History:** 1981 c. 337; 1985 a. 30; 1993 a. 482; 1995 a. 27.

**Cross-reference:** See s. 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

**185.63 Division of a cooperative.** (1) Any cooperative may divide itself into 2 or more cooperatives 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 cooperative. The plan shall also contain the articles of each new cooperative being formed and any amendments to the articles of the remaining cooperative.

(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 other information 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 cooperative shall be separately filed and recorded as articles for the new cooperative.

**History:** 1985 a. 30.

**185.64 Conversion of corporation.** A corporation may convert itself into a cooperative 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:** 1985 a. 30 s. 42.

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

(a) Notice that a resolution for dissolution will be considered and acted upon has been included in the notice of meeting; and

(b) The resolution is approved by 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) Any net proceeds of liquidation not subject to valid claims or owed to persons under sub. (2) shall be distributed to one or more organizations that are either:

(a) Cooperatives with articles containing limitations on distribution of assets or payment of proceeds of liquidation equivalent to limitations in the articles of the liquidating cooperative.

(b) Organizations exempt from federal income taxation under 26 USC 501 (c) (3).

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

(a) The name of the cooperative, and the county of the cooperative's principal office or of its registered agent.

(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 in compliance with law, the articles and the bylaws. If the articles contain a prohibition on changes to the provision establishing the basis of distribution as provided in s. 185.05 (1) (j), the statement shall include an accounting of all funds disbursed under sub. (2) that lists the names and complete addresses, including street address, city, town or village, county, state and zip code, of all persons receiving funds and the amounts disbursed to each.

(5) The articles of dissolution shall be filed and recorded as provided in s. 185.82, and on filing of the articles the existence of the cooperative ceases.

(6) Within 7 years after the date of filing under sub. (5), an action may be brought against any person to whom proceeds were distributed under sub. (2) in violation of law, the articles or the bylaws to recover the proceeds by any person entitled to the funds by law, the articles or the bylaws, in the circuit court of the county where the last principal office of the cooperative was located. If the articles contained a prohibition on changes to the provision establishing the basis of distribution as provided in s. 185.05 (1) (j), the action may be brought by the attorney general, in the name of the state upon his or her information, or, in the discretion of the attorney general, upon complaint of any person, in the Dane County circuit court.

**History:** 1981 c. 337; 1985 a. 30 ss. 35 to 37, 42.

**Cross-reference:** See s. 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

**185.72 Involuntary dissolution.** (1) A cooperative 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 cooperative's certificate of association was procured through fraud; or

(b) The cooperative has continued to exceed or abuse the authority conferred upon it by this chapter; or

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

(2) If the cooperative cures its defaults other than those under sub. (1) (a) and (b) 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.

(3) (a) If it is established by the records in the department that a cooperative failed to file its annual report as required by this chapter for the preceding 3 years, the department may involuntarily dissolve the cooperative in the following manner:

1. The department shall give the cooperative notice of its delinquency by 1st class mail addressed to its situs.

2. If the delinquent cooperative is not restored to good standing under s. 185.48 (6) within 90 days after the notice was mailed, the department shall issue a certificate of involuntary dissolution,

which shall state the fact of involuntary dissolution, the date and cause of the dissolution and the dissolved cooperative's situs.

3. The department shall file the original certificate of involuntary dissolution and mail a copy to the former cooperative at its situs.

(b) Upon the issuance of the certificate of involuntary dissolution, the cooperative shall cease to exist, without any judicial proceedings whatever and thereafter the dissolved cooperative may not transact its ordinary business or exercise cooperative powers except as provided under ss. 185.74 to 185.76.

(bm) The department shall rescind the dissolution of a cooperative involuntarily dissolved under this subsection and issue a certificate stating the rescission if all of the following are met:

1. The cooperative files with the department 2 affidavits, each executed by a different person who is a principal officer of the cooperative, stating that the cooperative did not receive the notice under par. (a) 1.

2. The cooperative pays to the department \$100 in liquidated damages to cover the efforts of the department in rescinding the involuntary dissolution.

(c) In this subsection and in s. 185.74, "situs" means a cooperative or former cooperative's last-known address as shown by the most recently filed annual report, or, if none, its principal office or the address of its registered agent, or, if none, its designated location, or, if none, the last-known address of any known director or incorporator.

**History:** 1977 c. 29; 1977 c. 418 ss. 691 to 695, 929 (44); 1981 c. 314; 1983 a. 408 s. 16; 1983 a. 505; 1985 a. 30 s. 44; 1995 a. 27.

**185.73 Liquidation under court supervision.** (1) The circuit court of the county where the principal office or registered agent of the cooperative is located may liquidate the assets and business of such cooperative 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 cooperative 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 cooperative 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 cooperative 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 cooperative's liquidation. A receiver appointed in such proceeding has authority to sue and be sued as receiver for the cooperative.

(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 cooperative'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 cooperative 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:** 1985 a. 30 s. 42.

**185.74 Property not distributed prior to dissolution.**

(1) Upon filing the articles or decree of dissolution or upon the issuance of a certificate of involuntary dissolution, title to any property omitted from the final distribution or the title to any property not distributed prior to the issuance of a certificate of involuntary dissolution vests in the surviving directors or committee members who signed the articles or the last-acting directors in the case of the issuance of a certificate of involuntary dissolution, as trustees. They have all the powers of the cooperative with respect to this 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 cooperative's situs, as defined in s. 185.72 (3) (c), is located has power to appoint trustees upon application of any person having an interest in the property or its disposition.

(3) Any trustee may at any time make application to the circuit court of the county of the cooperative's situs for supervision of liquidation under s. 185.73.

**History:** 1977 c. 418; 1981 c. 337.

**185.75 Unclaimed assets.** (1) Assets distributable in the course of the liquidation of a cooperative that remain unclaimed after 2 years may be forfeited to the cooperative in the manner set forth in s. 185.03 (10), except that the board, a committee designated to liquidate the assets under s. 185.71, a court, trustee or other person authorized to liquidate the assets of the cooperative may declare the funds forfeited, give the notice, determine the purpose or purposes and dedicate the funds under s. 185.03 (10) and except that any of these persons may declare the funds forfeited no earlier than 2 years and no later than 5 years after the funds are first made available to their owners in the course of the liquidation of the cooperative.

(2) Assets distributable in the course of the liquidation of a cooperative that remain unclaimed after one year may be reported and delivered to the state treasurer as provided under ch. 177. Assets distributable in the course of the liquidation of a cooperative that are not forfeited under sub. (1) and that remain unclaimed after 5 years shall be reported and delivered to the state treasurer under ch. 177.

**History:** 1983 a. 408; 1985 a. 30.

**185.76 Survival of remedy after dissolution.** Except as provided in s. 185.73, the dissolution of a cooperative does not impair any remedy available to or against such cooperative, 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 filing the articles or decree of dissolution.

**History:** 1981 c. 337.

**185.81 Admission of foreign cooperatives.** A foreign cooperative is entitled to all rights, exemptions and privileges of a cooperative organized under this chapter, if it is authorized to do business in this state under ch. 180. Such foreign cooperative may qualify under ch. 180 whether or not formed for profit and whether or not formed with stock. Any such foreign cooperative claiming to be subject to s. 71.26 (1) (a) or 71.45 (1) may be required to furnish the department of revenue with such facts as said department shall deem necessary to establish the foreign cooperative's rights thereunder.

**History:** 1987 a. 312 s. 17.

**185.815 Recording change of principal office or registered agent.** If a document submitted to the department for filing under this chapter changes the county of the principal office or of the registered agent:

(1) An original of the document or a duplicate original endorsed by the department shall be recorded in each county;

(2) The document shall specify the new county when:

(a) The county of the principal office or registered agent is changed; or

(b) The document makes a change from a principal office in one county to a registered agent's address in another county or vice versa; and

(3) A certificate of the department listing the type and date of filing of recordable documents previously filed by the cooperative shall be recorded in the county of the new principal office or of the registered agent.

**History:** 1981 c. 337; 1995 a. 27.

**185.82 Procedure on filing and recording of documents.** (1) If a document is required to be filed and recorded under this chapter, all of the following shall be included when the document is submitted for filing:

(a) Separate originals of the document for the department and for the register of deeds of each county in which the document is required to be recorded.

(b) A check payable to the department in the amount of the filing fee prescribed under s. 185.83.

(c) Separate checks in the amount of the recording fee prescribed under s. 59.43 (2)(ag) 1. payable to the register of deeds of each county in which the document is required to be recorded.

(2) (a) Unless the document does not conform to law, the department shall endorse on each original "Filed" and the date of filing and shall file one original.

(b) The department shall forward to each register of deeds the check under sub. (1) (c) and an original document or duplicate endorsed by the department, within 5 days of filing.

(c) A register of deeds receiving a check and document forwarded under par. (b) shall record the document. If the document is not articles, the register of deeds shall note on the margin of the record of the articles the volume and page where the document is recorded.

(3) Each week the department shall forward to each register of deeds a listing of all documents received during the preceding week for filing and recording as required under this chapter. For each document, the listing shall specify the type of document, the name of the cooperative, the name of the county of the cooperative's principal office or registered agent, and the date of filing.

(4) A document required to be filed and recorded under this chapter is effective on filing with the department, except as provided in s. 185.62. An error or omission in recording the document or a certificate under s. 185.815 (2) with a register of deeds does not affect its effectiveness.

(5) A document filed with the department under this chapter before May 7, 1982 is effective unless the records of the department show that the document was recognized as ineffective because of a recording defect and the department or the cooperative acted in reliance on the ineffectiveness of the document.

(6) (a) The department may waive any of the following:

1. Submission of more than one original of a document.
2. An omission or defect in a document, if the department determines from the face of the document that the omission or defect is immaterial.

(b) A waiver under par. (a) occurs when the document is filed.

**History:** 1981 c. 337; 1985 a. 30 s. 42; 1995 a. 27, 201.

**Cross-reference:** See s. 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

**185.825 Penalty for false document.** Whoever causes a document to be filed, knowing it to be false in any material respect, may be fined not more than \$1,000 or imprisoned for not more than 4 years and 6 months or both.

**History:** 1981 c. 337; 1997 a. 283.

**185.83 Fees for filing.** (1) The department shall charge and collect for:

(a) Filing articles for a new cooperative, \$1.25 for each \$1,000 of authorized stock, but in no case less than \$25. A cooperative organized without capital stock shall pay a fee of \$25.

(b) Filing an amendment to or restatement of the articles or articles of merger, consolidation or division, \$10, except that no fee may be collected for an amendment showing only a change of address resulting from the action of a governmental agency if there is no corresponding change in physical location and if 2 copies of the notice of the action are submitted to the department; and an additional fee of \$1.25 for each \$1,000 of authorized stock not authorized at the time of amendment, restatement, merger, consolidation or division.

(c) Filing articles or decree of dissolution, \$5.

(d) Receiving services of any process, notice or demand, authorized to be served on the department by this chapter, \$10.

(e) Filing an annual report of a cooperative, \$15.

(f) Answering a request for verification of the existence or status of an association, its name, the address of its principal office or the name and address of its registered agent, or the date of incorporation or issuance of a certificate of authority, the following amounts:

1. If written, \$4.

2. If conveyed by facsimile machine, \$7.

(fm) Answering in writing a request for information specified in par. (f) plus a list of the names and addresses of officers and directors, and the association's principal place of business, \$7; and, if the list of officers and directors exceeds one page, 50 cents for each additional page.

(g) Filing a report of names and addresses of officers or directors, \$3.

(h) Processing a document required or permitted to be filed or recorded under this chapter in an expeditious manner, or preparing the information under par. (f) or (fm) in an expeditious manner, \$25 in addition to the fee required by other provisions of this chapter.

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

**History:** 1977 c. 29; 1979 c. 221; 1983 a. 27 ss. 1587, 1588, 2204 (47); 1983 a. 134; 1985 a. 29; 1985 a. 30 ss. 39m, 42; 1985 a. 338; 1987 a. 27; 1989 a. 123; 1995 a. 27.

**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.

**185.85 Forms to be furnished by department of financial institutions.** The department may provide forms for any document to be filed with the department under this chapter.

**History:** 1993 a. 482; 1995 a. 27.

**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 s. 185.71.

**185.92 Effect of unauthorized acts.** No act and no transfer of property to or by a cooperative is invalid because made in excess of the cooperative's power, except that such lack of power may be asserted in a proceeding by:

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

(2) The cooperative or its legal representative against any present or former officer or director.

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

**History:** 1979 c. 110.

**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 the member or stockholder:



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

(b) Alleges in the complaint with particularity his or her efforts to secure from the board the action he or she desires. He or she shall allege further that he or she has either informed the association or board in writing of the ultimate facts of each cause of action against each director or that he or she has delivered to the association or board a copy of the complaint no fewer than 60 days prior to filing the complaint.

(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:** 1985 a. 30; 1993 a. 482.

**185.94 Use of term "cooperative"; penalty for improper use.** (1) The term "cooperative", 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 "cooperative", or any variation thereof, as part of the person's corporate or other business name or title, nor may any other person in any other manner represent himself or herself to be a cooperative. Whoever violates this subsection may be fined not more than \$100. Each day of improper use constitutes a separate offense.

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

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

**History:** 1985 a. 30 s. 42; 1993 a. 482.

**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.

**History:** 1979 c. 32 s. 92 (6); 1995 a. 400.

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

(2) After January 1, 1956, this chapter applies to all foreign cooperatives.

(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 cooperatives on July 13, 1955.

**History:** 1985 a. 30 s. 42.

**185.97 Title.** This chapter may be cited as the "Wisconsin Cooperative Association Act".

**History:** 1985 a. 30 s. 42.

**185.981 Cooperative sickness care.** (1) Cooperative 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, chiropractors, optometrists, dentists, dental societies, hospitals and others.

(2) Such associations shall operate only on a cooperative nonprofit basis and for the purpose of establishing, maintaining and operating a voluntary nonprofit health, dental or vision care plan or plans or for constructing, operating and maintaining nonprofit hospitals or other facilities whereby sickness care, including hospital, dental or vision care, is provided at the expense of such association, its members or both, 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, chiropractic, vision, dental or hospital care, appliances and supplies, by physicians and surgeons licensed and registered under ch. 448, optometrists licensed under ch. 449, chiropractors licensed under ch. 446 and dentists licensed under ch. 447 in their offices, in hospitals, in other facilities and in the home.

(3) No cooperative 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 ss. 148.03 and 613.80. No hospital may discriminate against any physician and surgeon, chiropractor or dentist with respect to the use of such hospital's facilities by reason of his or her participation in a sickness care plan of a cooperative.

(4) No contract by or on behalf of any such cooperative association shall provide for the payment of any cash, indemnity or other material benefit by that association to the subscriber or the subscriber's 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, optometrist, chiropractor, dentist or hospital outside of its normal territory for sickness or hospital care rendered any covered member or a member's covered dependent who is in need of the benefits of such plan when he or she 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 extraterritorial benefits.

(4t) A sickness care plan operated by a cooperative association is subject to ss. 252.14, 631.17, 631.89, 631.95, 632.72 (2), 632.745 to 632.749, 632.85, 632.853, 632.855, 632.87 (2m), (3), (4) and (5), 632.895 (10) to (14) and 632.897 (10) and chs. 149 and 155.

**NOTE:** Sub. (4t) is shown as affected by two acts of the 1999 legislature and as merged by the revisor under s. 13.93 (2) (c).

(5) Every such cooperative association is a charitable and benevolent corporation.

(6) Every cooperative sickness care association organized under this section shall provide coverage for newborn infants as required under s. 632.895 (5).

(7) Notwithstanding sub. (4) and s. 185.982 (1), a sickness care plan that is operated by a cooperative association and that qualifies as a health maintenance organization, as defined in s. 609.01 (2), is subject to s. 609.655.

(8) A sickness care plan operated by a cooperative association is subject to s. 632.895 (8). Coverage of mammograms under s.

632.895 (8) may be subject to any requirements that the sickness care plan imposes under s. 609.05 (2) and (3) on the coverage of other health care services obtained by members and their dependents.

(9) Every cooperative sickness care association organized under this section that provides coverage for dependent children of members shall provide coverage for adopted children and children placed for adoption, as required under s. 632.896. Coverage of health care services obtained by adopted children and children placed for adoption may be subject to any requirements that the sickness care plan imposes under s. 609.05 (2) and (3) on the coverage of health care services obtained by other members and their dependents.

**History:** 1971 c. 40 s. 93; 1971 c. 307 s. 118; 1975 c. 98; 1975 c. 223 s. 28; 1975 c. 224 s. 146; 1975 c. 421; 1981 c. 39 s. 22; 1981 c. 205; 1981 c. 391 s. 210; 1985 a. 29; 1985 a. 30 s. 42; 1987 a. 27 ss. 1917e, 3202 (47) (a); 1987 a. 312 s. 17; 1989 a. 121, 129, 200, 201, 336; 1991 a. 39, 123, 269; 1993 a. 27, 450, 481; 1995 a. 27, 118, 289; 1997 a. 27, 155, 237; 1999 a. 95, 115; s. 13.93 (2) (c).

**185.982 Manner of practicing medicine, chiropractic and dentistry; payment; promotional expense.** (1) No sickness care plan or contract issued thereunder by such cooperative association shall interfere with the manner or mode of the practice of medicine, optometry, chiropractic or dentistry, the relationship of physician, chiropractor, optometrist or dentist and patient, nor the responsibility of physician, chiropractor, optometrist or dentist to patient. A plan may require persons covered to utilize health care providers designated by the cooperative association. The cooperative association may provide health care services directly through providers who are employees of the cooperative association or through agreements with individual providers or groups of providers organized on a group practice or individual practice basis. In making such agreements, no plan may refuse to provide coverage for vision care services or procedures provided by an optometrist licensed under ch. 449 within the scope of the practice of optometry, as defined in s. 449.01 (1), if the plan provides coverage for the same services or procedures when provided by another health care provider.

(2) Any cooperative association operating a voluntary sickness care plan under the provisions of this chapter may pay physicians and surgeons, optometrists, chiropractors or dentists on a salary, per person or fee-for-service basis to provide sickness care to members of such association. 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, optometrists 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:** 1981 c. 205; 1987 a. 27.

**185.983 Requirements of plan.** (1) Every such voluntary nonprofit sickness care plan shall be exempt from chs. 600 to 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41, 601.42, 601.43, 601.44, 601.45, 611.67, 619.04, 628.34 (10), 631.17, 631.89, 631.93, 631.95, 632.72 (2), 632.745 to 632.749, 632.775, 632.79, 632.795, 632.85, 632.853, 632.855, 632.87 (2m), (3), (4) and (5), 632.895 (5) and (9) to (14), 632.896 and 632.897 (10) and chs. 609, 630, 635, 645 and 646, but the sponsoring association shall:

**NOTE:** Sub. (1)(intro.) is shown as affected by two acts of the 1999 legislature and as merged by the revisor under s. 13.93 (2) (c).

(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 per-

sons 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 the commissioner, 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.

(1g) A cooperative association that is a small employer insurer, as defined in s. 635.02 (8), is subject to the health insurance mandates, as defined in s. 601.423 (1), to the same extent as any other small employer insurer, as defined in s. 635.02 (8).

(1m) In addition to ss. 601.04, 601.31, 632.79 and 632.895 (5), the commissioner of insurance may by rule subject a medicare supplement policy as defined in s. 600.03 (28r), a medicare replacement policy as defined in s. 600.03 (28p) or a long-term care insurance policy as defined in s. 600.03 (28g) sold by a voluntary nonprofit sickness care plan to other provisions of chs. 600 to 646, except the commissioner may not subject a medicare supplement policy, a medicare replacement policy or a long-term care insurance policy to s. 632.895 (8).

(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.

(3) (a) A plan that provides coverage of pharmaceutical services when performed by one or more pharmacists who are designated by the cooperative association but who are not full-time salaried employees of the cooperative association shall provide an annual period of at least 30 days during which any pharmacist registered under ch. 450 may elect to participate in the plan under its terms as a designated health care provider for at least one year.

(b) Except as provided in par. (c), par. (a) applies to plans on and after May 10, 1984.

(c) If compliance with the requirements of par. (a) during the period specified in par. (b) would impair any provision of a contract between a cooperative association and any other person, and if the contract provision was in existence prior to May 10, 1984, then immediately after the expiration of all such contract provisions the plan operated by the cooperative association shall comply with the requirements of par. (a).

**History:** 1975 c. 98; 1975 c. 224 s. 146; 1975 c. 352; 1975 c. 422 s. 163; 1977 c. 339; 1979 c. 89; 1981 c. 20; 1981 c. 39 s. 22; 1981 c. 82; 1981 c. 391 s. 210; 1983 a. 189 s. 329 (25); 1983 a. 396; 1985 a. 29 ss. 2060d to 2060r, 3202 (30); 1987 a. 27, 325; 1989 a. 23, 31, 129, 200, 201, 336, 359; 1991 a. 39, 189, 250, 269, 315; 1993 a. 450, 481, 482; 1995 a. 289; 1997 a. 27, 155, 237; 1999 a. 95, 115; s. 13.93 (2) (c).

**185.985 Inconsistent provisions of the statutes.** Sickness care or hospital plans operated by cooperative associations organized under this chapter shall be operated exclusively 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 cooperative associations or sickness care plans operated by cooperative associations pursuant to this chapter.

**History:** 1985 a. 30 s. 42.