



Jill Rowland

Bill Analysis
Legislative Service Commission

Am. H.B. 288

125th General Assembly

(As Reported by H. Agriculture and Natural Resources)

Reps. Faber, McGregor, Seitz, Willamowski, Latta, Gibbs, Aslanides, Carmichael, Distel, Domenick, Driehaus, C. Evans, Niehaus, Perry, Reinhard, Schlichter, Seaver, Setzer, Walcher, Widener, Book

BILL SUMMARY

The bill makes various changes in the law governing cooperatives, which generally may be described as nonprofit corporations that often are organized so that their members, who control the cooperatives, may benefit from economies of scale by banding together. The changes are summarized below.

Please note that the term "association" is used to refer to a cooperative organized under Ohio law, "foreign association" refers to a cooperative organized under the laws of another state, the District of Columbia, or the United States, and "cooperative," unless otherwise indicated, refers to both cooperatives organized under Ohio law and foreign cooperatives (sec. 1729.01(C), (F), and (H)).

Expansion of applicability of statutes to foreign cooperatives

(secs. 1729.01(H), (L), (M), and (O), 1729.18, 1729.35, 1729.36(C)(3), 1729.69(A)(1), and 1729.85)

- Through replacement of the term "association" with "cooperative," expands the applicability of certain statutory provisions that currently govern cooperatives organized under Ohio law to also include foreign cooperatives that are organized under the laws of another state, the District of Columbia, or the United States, including the definitions of "member," "membership stock," and "patronage stock" together with provisions governing the minimum number of members that a cooperative can have, the merger or consolidation of a cooperative, unfair marketing practices in which a cooperative is prohibited from engaging,

and the exemption of membership stock and patronage stock from Ohio law governing securities.

Indemnification of person acting on behalf of association

(secs. 1729.01(N), 1729.031, and 1729.23)

- Authorizes an association to indemnify or agree to indemnify any person that was or is a party, or is threatened to be made a party, to any threatened, pending, or complete civil, criminal, administrative, or investigative action, suit, or proceeding because the person was authorized to act on behalf of the association or was attempting to procure a judgment in its favor, provided that the person was acting lawfully and in good faith for the best interests of the association.
- Specifies that the indemnification is for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding.
- Identifies criteria in current law that must be considered in determining whether a person acted in the best interests of the association, establishes a new criterion concerning the interests of the members as patrons of the association, and defines "patron."
- Establishes other criteria, requirements, and procedures for the making of indemnification by an association.
- Authorizes an association to purchase and maintain insurance or similar protection on behalf of officials and other persons serving at the request of an association.

Principal place of business

Authorization of out-of-state principal place of business

(secs. 1729.07(A)(3), 1729.47, 1729.55(F)(3), 1729.58(H), 1729.59(B), and 1729.61(A) and (D))

- Specifies that the principal place of business of an association need not be located within Ohio.

- Specifies that the court of common pleas in the Ohio county in which an association's statutory agent resides is the appropriate venue for certain matters involving an association that has no principal place of business in this state.

Elimination of term "principal office"

(secs. 1729.55(F)(3), 1729.56, 1729.58(H), 1729.59(A), and 1729.61(A) and (D))

- With respect to several provisions in current law in which "principal place of business" and "principal office" are used interchangeably, replaces the term "principal office" with "principal place of business."

Clarification that associations are corporations

(secs. 1729.01(G) and (H), 1729.02(B), 1729.04(B), 1729.06, 1729.11, 1729.36, 1729.38(C), and 1729.42)

- Eliminates the definition of "corporation," and clarifies that associations are corporations, that the law governing cooperatives and not the law that generally governs nonprofit corporations must govern associations, that certain provisions that otherwise refer to corporations do not apply to associations, and that certain forms that are required to be used under Ohio law governing cooperatives and prescribed by the Secretary of State are to be prescribed specifically for the administration of that law.

Documents governing associations

Restatement of articles of incorporation

(sec. 1729.08)

- With respect to current law that authorizes the board of directors of an association to adopt a restatement of its articles of incorporation to include previously approved amendments, specifies that such a restatement may be adopted without a member vote.

Bylaws

(sec. 1729.16)

- Eliminates current law specifying that after initial bylaws are adopted by an association, bylaws may be adopted and amended thereafter only by

the members of the association unless the members adopt a bylaw that permits the board of directors to make and amend them, and instead specifies that after the initial bylaws are adopted, bylaws may be adopted and amended thereafter only by the members unless the articles of incorporation or bylaws provide that the board of directors, by a two-thirds vote of the entire board, may adopt or amend the bylaws or any specified bylaw.

- Prohibits any bylaw adopted or amended by the board from conflicting with the association's articles of incorporation or with Ohio law governing cooperatives.

Certificate of merger or consolidation

(sec. 1729.38(A))

- Clarifies that such a certificate, which must be filed with the Secretary of State when an association has adopted an agreement of merger or consolidation, may be signed by a representative of each constituent entity rather than solely by an authorized officer of each constituent entity as under current law.

Certificate of dissolution

(sec. 1729.56)

- Clarifies that if an association's certificate of dissolution is filed by the members of the cooperative, it is the responsibility of those members to cause public notice of the voluntary dissolution to be published in a newspaper.

Authority of association

(sec. 1729.03)

- Authorizes an association to establish, secure, own, and develop service marks and other intellectual property in addition to securing, owning, and developing patents, trademarks, and copyrights as authorized under current law.
- Replaces current law authorizing an association to issue capital stock and certificates representing equity interests or indebtedness with a provision

authorizing an association to issue capital stock and other equity interests and to issue certificates for them.

- Authorizes an association to act as the agent or representative of any patrons in any activities authorized by Ohio law governing cooperatives.
- Makes conforming changes in provisions governing the forfeiture of any unclaimed stock or other equity interests for which the owner cannot be found after a period of three years.

Board of directors

(secs. 1729.22 and 1729.28)

- Clarifies that current law requiring the remaining directors to fill a vacancy on a board of directors that occurs other than by expiration of term does not apply if the association's bylaws provide for a different means of filling the vacancy, as may be the case when directors are elected by the members of the association in a district or grouping.
- Makes a clarification in current law that governs the removal of a director who was elected under bylaws providing for the election of directors by the association's members in a district or other grouping.

Vice chairpersons

(sec. 1729.26)

- Specifies that the officers of an association may include one or more vice chairpersons of the board of directors.

Meetings

(secs. 1729.07(A)(6), 1729.16(A), and 1729.19)

- Replaces references to members of an association who are to serve as directors until the first *annual* meeting with references to such members who are to serve until the first *member* meeting.
- Eliminates a requirement that actions taken without a meeting by the members or affected stockholders of an association be in writing and signed by a specified percentage of those members or affected

stockholders who would be entitled to vote on the action at a meeting for that purpose.

Winding up of voluntarily dissolved association's affairs

(sec. 1729.58)

- With respect to an association that is dissolved voluntarily, establishes the order in which the directors or an authorized liquidator must apply the assets of the association in the course of winding up its affairs.
- Adds that such a liquidator may be appointed rather than employed.

Names

(sec. 1729.04)

- Modifies the list of criteria, only one of which must be satisfied by a corporation or person wishing to do business in Ohio under the name "cooperative" or "co-op," by revising one of those criteria to require the corporation or person to be organized under the Ohio law governing cooperatives rather than to be in compliance with that law as under current law.
- Also authorizes a state or federally chartered credit union to do business in Ohio under the name of "cooperative" or "co-op."

Definition of "producer"

(sec. 1729.01(R))

- Modifies the definition of "producer" to include a lessor of real or personal property used for production of agricultural products for the market that receives as rent part of the agricultural product rather than a lessor of land who receives such rent.

Municipal power agencies

(secs. 1729.02(C) and 3734.058 (not in the bill))

- Clarifies that a municipal power agency is not an association for the purposes of the law governing cooperatives, and, through a cross-reference to current law, defines "municipal power agency" as any Ohio

nonprofit corporation, the members of which are municipal corporations that own and operate electric utility systems, that sells electricity to its members for resale.

Technical changes

(secs. 1729.46 and 1729.49 and various other sections)

- Makes corrective and other technical changes.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-25-03	p. 1087
Reported, H. Agriculture & Natural Resources	12-10-03	p. 1275

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