

Senate Bill 437

By: Senators Beach of the 21st, Mullis of the 53rd, Brass of the 28th and Seay of the 34th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 14 of the Official Code of Georgia Annotated, relating to corporations,  
2 partnerships, and associations, so as to provide for the formation of general cooperative  
3 associations under the laws of this state; to provide for duties of the Secretary of State; to  
4 provide for procedures and requirements for membership in and the formation, governance,  
5 management, meetings, voting, and dissolution of general cooperative associations; to  
6 provide for exceptions for applicability; to provide for definitions; to provide for a short title;  
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,  
11 and associations, is amended by adding a new chapter to read as follows:

12 "CHAPTER 12  
13 ARTICLE 1  
14 Part 1

15 14-12-101.

16 This chapter shall be known and may be cited as the 'Georgia Cooperative Associations  
17 Code.'

18 14-12-102.

19 The General Assembly has power to amend or repeal all or part of this chapter at any time,  
20 and all domestic and foreign cooperative associations subject to this chapter are governed  
21 by the amendment or repeal.

22 14-12-103.

23 This chapter shall not apply to a corporation or association organized on a cooperative  
 24 basis:

25 (1) Under a chapter other than this chapter unless that other chapter specifically states  
 26 that this chapter does apply; or

27 (2) To operate a bona fide coin operated amusement machine business under Article 3  
 28 of Chapter 27 of Title 50.

29 Part 2

30 14-12-120.

31 (a) A document must satisfy the requirements of this Code section and of any other Code  
 32 section that adds to or varies these requirements to be entitled to filing by the Secretary of  
 33 State.

34 (b) This chapter must require or permit filing the document in the office of the Secretary  
 35 of State.

36 (c) The document must contain the information required by this chapter. It may contain  
 37 other information as well.

38 (d) The document must be typewritten or printed.

39 (e) The document must be in the English language. However, a cooperative association's  
 40 name need not be in English if written in English letters or Arabic or Roman numerals, and  
 41 the certificate of existence required of foreign cooperative associations need not be in  
 42 English if accompanied by a reasonably authenticated English translation.

43 (f) The document must be executed:

44 (1) By the chairperson of the board of directors of a domestic or foreign cooperative  
 45 association, its president, or by another of its officers;

46 (2) If directors have not been selected or the cooperative association has not been  
 47 formed, by the persons desiring to form the cooperative association; or

48 (3) If the cooperative association is in the hands of a receiver, trustee, or other court  
 49 appointed fiduciary, by that fiduciary;

50 provided, however, that the person executing the document may do so as an attorney in  
 51 fact. Powers of attorney relating to the execution of the document do not need to be shown  
 52 to or filed with the Secretary of State.

53 (g) The person executing a document shall sign it and state beneath or opposite the  
 54 signature his or her name and the capacity in which he or she signs; provided, however,  
 55 that if the document is electronically transmitted, the electronic version of such person's  
 56 name may be used in lieu of a signature. The document may, but need not, contain:

- 57 (1) The association seal;
- 58 (2) An attestation by the secretary or an assistant secretary; or
- 59 (3) An acknowledgment, verification, or proof.
- 60 (h) The document must be delivered to the office of the Secretary of State for filing and
- 61 must be accompanied by one exact or conformed copy, the correct filing fee, any certificate
- 62 required by this chapter, and any penalty required by this chapter or other law.
- 63 (i) Notwithstanding the provisions of this chapter, the Secretary of State may authorize the
- 64 filing of documents by electronic transmission, following the provisions of Chapter 12 of
- 65 Title 10, the 'Uniform Electronic Transactions Act,' and the Secretary of State shall be
- 66 authorized to promulgate such rules and regulations as are necessary to implement
- 67 electronic filing procedures.

68 14-12-121.

69 Notwithstanding any other law to the contrary, the Secretary of State may provide for the  
 70 annual registration required under this chapter to be valid for a period up to and including  
 71 three years. The Secretary of State is authorized to adopt the necessary rules and  
 72 regulations to implement such a registration process.

73 14-12-122.

74 The Secretary of State may prescribe and furnish, on request, forms for:

- 75 (1) An application for a certificate of existence;
- 76 (2) A foreign cooperative association's application for a certificate of authority to
- 77 conduct affairs in this state;
- 78 (3) A foreign cooperative association's application for a certificate of withdrawal;
- 79 (4) The annual registration; and
- 80 (5) Such other forms not in conflict with this chapter as may be prescribed by the
- 81 Secretary of State.

82 14-12-123.

83 The Secretary of State shall collect the following fees when the documents described in this  
 84 Code section are delivered for filing:

<u>Document</u>	<u>Fee</u>
86 <u>(1) Certificate of formation .....</u>	<u>\$100.00</u>
87 <u>(2) Application for certificate of authority .....</u>	<u>225.00</u>
88 <u>(3) Annual registration .....</u>	<u>30.00</u>
89 <u>(4) Penalty for late filing of annual registration .....</u>	<u>25.00</u>

90 (5) Agent's statement of resignation . . . . . No fee  
 91 (6) Certificate of judicial dissolution . . . . . No fee  
 92 (7) Articles of dissolution or intent to dissolve . . . . . No fee  
 93 (8) Application of withdrawal . . . . . No fee  
 94 (9) Application for reservation of a cooperative association name . . . . . 25.00  
 95 (10) Statement of change of address of registered agent...\$5.00 per cooperative  
 96 association but not less than . . . . . 20.00  
 97 (11) Application for reinstatement . . . . . 250.00  
 98 (12) Any other document required or permitted to be filed by this chapter . . 20.00

99 14-12-124.

100 (a) Except as provided in subsection (b) of this Code section and subsection (c) of Code  
 101 Section 14-12-125, a document is effective:

102 (1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's  
 103 endorsement on the original document; or

104 (2) At any later time specified in the document as its effective time on the date it is filed.

105 (b) A document may specify a delayed effective time and date, and if it does so the  
 106 document becomes effective at the time and date specified. If a delayed effective date but  
 107 no time is specified, the document is effective at the close of business on that date. A  
 108 delayed effective date for a document may not be later than the ninetieth day after the date  
 109 filed.

110 (c) If a document is determined by the Secretary of State to be incomplete and  
 111 inappropriate for filing, the Secretary of State may return the document to the person or  
 112 corporation filing it, together with a brief written explanation of the reason for the refusal  
 113 to file, in accordance with subsection (c) of Code Section 14-12-126 and, if the applicant  
 114 returns the document with corrections in accordance with the rules and regulations of the  
 115 Secretary of State, the filing date of the document will be the filing date that would have  
 116 been applied had the original document not been deficient.

117 14-12-125.

118 (a) A domestic or foreign cooperative association may correct a document filed by the  
 119 Secretary of State if the document:

120 (1) Contains an incorrect statement; or

121 (2) Was defectively executed, attested, sealed, verified, or acknowledged.

122 (b) A document is corrected:

123 (1) By preparing articles of correction that:

- 124 (A) Describe the document, including its filing date;  
 125 (B) Specify the incorrect statement and the reason it is incorrect or the manner in  
 126 which the execution was defective; and  
 127 (C) Correct the incorrect statement or defective execution; and  
 128 (2) By delivering the articles of correction to the Secretary of State for filing.  
 129 (c) Articles of correction are effective on the effective date of the document they correct  
 130 except as to persons relying on the uncorrected document and adversely affected by the  
 131 correction. As to those persons, articles of correction are effective when filed.

132 14-12-126.

- 133 (a) If a document delivered to the office of the Secretary of State for filing satisfies the  
 134 requirements of Code Section 14-12-120, the Secretary of State shall file it.  
 135 (b) The Secretary of State files a document by stamping or otherwise endorsing his or her  
 136 official title and the date and time of receipt on both the original and the document copy.  
 137 After filing a document, the Secretary of State shall deliver the document copy to the  
 138 domestic or foreign corporation or its representative.  
 139 (c) If the Secretary of State refuses to file a document, he or she shall return it to the  
 140 domestic or foreign corporation or its representative within ten days after the document was  
 141 delivered, together with a brief, written explanation of the reason for his or her refusal.  
 142 (d) The Secretary of State's duty to file documents under this Code section is ministerial.  
 143 Filing or refusing to file a document does not:  
 144 (1) Affect the validity or invalidity of the document in whole or in part;  
 145 (2) Relate to the correctness or incorrectness of information contained in the document;  
 146 or  
 147 (3) Create a presumption that the document is valid or invalid or that information  
 148 contained in the document is correct or incorrect.

149 14-12-127.

- 150 (a) If the Secretary of State refuses to file a document delivered to his or her office for  
 151 filing, the domestic or foreign cooperative association may appeal the refusal within 30  
 152 days after the return of the document to the superior court. The appeal is commenced by  
 153 petitioning the court to compel filing of the document and by attaching to the petition the  
 154 document and the Secretary of State's explanation of his or her refusal to file.  
 155 (b) The matter shall promptly be tried de novo by the court without a jury. The court may  
 156 summarily order the Secretary of State to file the document or take other action the court  
 157 considers appropriate.  
 158 (c) The court's final decision may be appealed as in other civil proceedings.

159 14-12-128.

160 A certificate attached to a copy of a document or electronic transmission filed by the  
161 Secretary of State, bearing his or her signature, which may be in facsimile, and the printed  
162 or embossed seal of this state, or its electronic equivalent, is prima-facie evidence that the  
163 original document has been filed with the Secretary of State.

164 14-12-129.

165 (a) Any person may apply to the Secretary of State to furnish a certificate of existence for  
166 a domestic cooperative association or a certificate of authorization for a foreign cooperative  
167 association.

168 (b) A certificate of existence or authorization sets forth:

169 (1) The domestic cooperative association's name or the foreign cooperative association's  
170 name used in this state;

171 (2) That the domestic cooperative association is duly established under the law of this  
172 state and the date of its establishment, or that the foreign cooperative association is  
173 authorized to transact business in this state;

174 (3) That its most recent annual registration required by Code Section 14-12-121 has been  
175 delivered to the Secretary of State; and

176 (4) That articles of dissolution have not been filed.

177 (c) Subject to any qualification stated in the certificate, a certificate of existence or  
178 authorization issued by the Secretary of State may be relied upon as prima-facie evidence  
179 that the domestic or foreign cooperative association is in existence or is authorized to  
180 transact business in this state.

181 14-12-130.

182 A person who signs a document he or she knows is false in any material respect with intent  
183 that the document be delivered to the Secretary of State for filing shall be guilty of a  
184 misdemeanor and, upon conviction thereof, shall be punished by a fine not to  
185 exceed \$500.00.

186 Part 3

187 14-12-135.

188 The Secretary of State has the power reasonably necessary to perform the duties required  
189 of him or her by this chapter.

190 Part 4191 14-12-140.192 As used in this chapter, the term:

193 (1) 'Cooperative basis' means that net savings, after payment of any investment dividends  
 194 or after provision for separate funds has been made as required or authorized by law, the  
 195 certificate of formation, or bylaws, are:

196 (A) Allocated or distributed to a member patron or to each patron in proportion to  
 197 patronage; or

198 (B) Retained by the entity for:

199 (i) Actual or potential expansion of the entity's services;

200 (ii) The reduction of charges to patrons; or

201 (iii) Any other purpose consistent with the entity's nonprofit character.

202 (2) 'Invested capital' means funds invested in a cooperative association by an investor  
 203 with the expectation of receiving an investment dividend.

204 (3) 'Investment dividend' means the return on invested capital or on membership capital  
 205 derived from the net savings of the cooperative association.

206 (4) 'Membership capital' means the funds of a cooperative association derived from  
 207 members of the cooperative association generally as a requirement of membership or in  
 208 lieu of patronage dividends. Such term shall not include deposits or loans from members.

209 (5) 'Net savings' means the total income of a cooperative association less the costs of  
 210 operation.

211 (6) 'Patronage dividend' means a share of the net savings distributed among members of  
 212 the cooperative association on the basis of patronage, as provided by the certificate of  
 213 formation.

214 (7) 'Savings returns' means the amount returned by a cooperative association to patrons  
 215 of a cooperative association in proportion to patronage or otherwise.

216 14-12-141.

217 (a) Notice under this chapter shall be in writing or by electronic transmission unless oral  
 218 notice is reasonable under the circumstances.

219 (b) Notice may be communicated in person; by telephone, electronic transmission, or other  
 220 form of wire or wireless communication; or by mail or private carrier. If these forms of  
 221 personal notice are impracticable, notice may be communicated by a newspaper of general  
 222 circulation in the area where published or by radio, television, or other form of public  
 223 broadcast communication. Unless otherwise provided in the bylaws, or this chapter, notice

224 by electronic transmission shall be deemed to be notice in writing for purposes of this  
225 chapter.

226 (c) Written notice by a domestic or foreign cooperative association to its members, if in  
227 a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid  
228 and correctly addressed to the member's address shown in the cooperative association's  
229 current record of members. If the cooperative association has more than 500 members of  
230 record entitled to vote at a meeting, it may utilize a class of mail other than first class if the  
231 notice of the meeting is mailed, with adequate postage prepaid, not less than 30 days before  
232 the date of the meeting.

233 (d) Written notice to a cooperative association authorized to transact business in this state  
234 may be addressed to its registered agent at its registered office or to the cooperative  
235 association or its secretary at its principal office shown in its most recent annual  
236 registration or, in the case of a foreign cooperative association that has not yet delivered  
237 an annual registration, in its application for a certificate of authority.

238 (e) Except as provided in subsections (c) and (h) of this Code section or in the bylaws,  
239 written notice, if in a comprehensible form, is effective at the earliest of the following:

240 (1) When received or when delivered, properly addressed, to the addressee's last known  
241 principal place of business or residence;

242 (2) Five days after its deposit in the mail, as evidenced by the postmark, if mailed with  
243 first-class postage prepaid and correctly addressed; or

244 (3) On the date shown on the return receipt, if sent by registered or certified mail or  
245 statutory overnight delivery, return receipt requested, and the receipt is signed by or on  
246 behalf of the addressee.

247 (f) Oral notice is effective when communicated if communicated in a comprehensible  
248 manner.

249 (g) In calculating time periods for notice under this chapter, when a period of time  
250 measured in days, weeks, months, years, or other measurement of time is prescribed for the  
251 exercise of any privilege or the discharge of any duty, the first day shall not be counted but  
252 the last day shall be counted.

253 (h)(1) Without limiting the manner by which notice otherwise may be given effectively  
254 to members, any notice to members given by the cooperative association under any  
255 provision of this chapter or the bylaws shall be effective if given by a form of electronic  
256 transmission consented to by the member to whom the notice is given. Any such consent  
257 shall be revocable by the member by written notice to the cooperative association. Any  
258 such consent shall be deemed revoked if:

259 (A) The cooperative association is unable to deliver by electronic transmission two  
260 consecutive notices given by the corporation in accordance with such consent; and



261 (B) Such inability becomes known to the secretary or an assistant secretary of the  
262 cooperative association or to the transfer agent or other person responsible for the  
263 giving of notice; provided, however, that the inadvertent failure to treat such inability  
264 as a revocation shall not invalidate any meeting or other action.

265 (2) Notice given pursuant to this subsection shall be deemed effective:

266 (A) If by facsimile telecommunication, when transmitted to a number at which the  
267 member has consented to receive notice;

268 (B) If by email, when transmitted to an email address at which the member has  
269 consented to receive notice;

270 (C) If by a posting on an electronic network together with separate notice to the  
271 member of such specific posting, upon the later of (i) such posting or (ii) the giving of  
272 such separate notice; and

273 (D) If by any other form of electronic transmission, when transmitted to the member.

274 (i) An affidavit, certificate, or other written confirmation of the secretary or an assistant  
275 secretary or of the transfer agent or other agent of the cooperative association that the  
276 notice has been given under this Code section shall, in the absence of fraud, be prima-facie  
277 evidence of the facts stated therein.

278 (j) The cooperative association may be obligated to accept from a member consents,  
279 requests, demands, or notices given and delivered under this chapter to the principal place  
280 of business of the cooperative association or to an officer or agent of the cooperative  
281 association having custody of the books in which proceedings of meetings of members are  
282 recorded by electronic transmission only as provided by resolution of the board of directors  
283 of the cooperative association or in the certificate of formation.

284 (k) Unless the registered agent of the corporation shall provide written consent to the  
285 cooperative association to the receipt of a member's consent, request, demand, or notice by  
286 electronic transmission under this chapter, delivery made to a cooperative association's  
287 registered office shall be made by hand or by certified or registered mail or statutory  
288 overnight delivery, return receipt requested.

289 (l) If this chapter prescribes notice requirements for particular circumstances, those  
290 requirements govern. If certificates of formation or bylaws prescribe notice requirements,  
291 not inconsistent with this Code section or other provisions of this chapter, those  
292 requirements govern.

293

Part 5294 14-12-160.

295 (a) If for any reason it is impractical or impossible for any cooperative association to call  
296 or conduct a meeting of its members or directors, or otherwise obtain their consent, in the  
297 manner prescribed by its certificate of formation, bylaws, or this chapter, then upon petition  
298 of a director, officer, member, or the Attorney General, the superior court may order that  
299 such a meeting be called or that a ballot in writing or by electronic transmission or other  
300 form of obtaining the vote of members or directors be authorized, in such a manner as the  
301 court finds fair and equitable under the circumstances.

302 (b) The court shall, in an order issued pursuant to this Code section, provide for a method  
303 of notice reasonably designed to give actual notice to all persons who would be entitled to  
304 notice of a meeting held pursuant to the certificate of formation, bylaws, or this chapter,  
305 whether or not the method results in actual notice to all such persons or conforms to the  
306 notice requirements that would otherwise apply. In a proceeding under this Code section,  
307 the court may determine who the members or directors are.

308 (c) The order issued pursuant to this Code section may dispense with any requirement  
309 relating to the holding of or voting at meetings or obtaining votes, including any  
310 requirement as to quorums or as to the number or percentage of votes needed for approval,  
311 that would otherwise be imposed by the certificate of formation, bylaws, or this chapter.

312 (d) Whenever practical, any order issued pursuant to this Code section shall limit the  
313 subject matter of meetings or other forms of consent authorized to items, including  
314 amendments to the certificate of formation, the resolution of which will or may enable the  
315 cooperative association to continue managing its affairs without further resort to this Code  
316 section; provided, however, that an order under this Code section may also authorize the  
317 obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale  
318 of assets.

319 (e) Any meeting or other method of obtaining the vote of members or directors conducted  
320 pursuant to an order issued under this Code section, and that complies with all the  
321 provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and  
322 shall have the same force and effect as if it complied with every requirement imposed by  
323 the certificate of formation, bylaws, and this chapter.

324

ARTICLE 2325 14-12-201.

326 (a) After a cooperative association's certificate of formation is filed, the cooperative  
327 association shall hold an organization meeting in accordance with subsection (b) of this  
328 Code section.

329 (b) After the certificate of formation is filed, the board of directors named in the certificate  
330 of formation of a cooperative association shall hold an organization meeting of the board,  
331 either in or out of this state, at the call of the organizers or a majority of the directors to  
332 adopt bylaws and elect officers and for other purposes determined by the board at the  
333 meeting. The organizers or directors calling the meeting shall send notice of the time and  
334 place of the meeting to each director named in the certificate of formation not later than the  
335 third day before the date of the meeting.

336 (c) A first meeting of the members may be held at the call of the majority of the directors  
337 on notice provided not later than the third day before the date of the meeting. The notice  
338 must state the purposes of the meeting.

339 (d) If the management of a cooperative association is vested in the cooperative  
340 association's members, the members shall hold the organization meeting on the call of an  
341 organizer. An organizer who calls the meeting shall:

342 (1) Send notice of the time and place of the meeting to each member not later than the  
343 third day before the date of the meeting; or

344 (2) Send notice of the meeting in the manner provided by the certificate of formation.

345 14-12-202.

346 (a) The board of directors of a cooperative association may propose an amendment to the  
347 cooperative association's certificate of formation by a two-thirds' vote of the board  
348 members. The members of a cooperative association may petition to amend the certificate  
349 of formation as provided by the bylaws.

350 (b) Not later than 31 days before the date of the meeting, the secretary shall:

351 (1) Send notice of a meeting to consider a proposed amendment to each member of the  
352 cooperative association at the member's last known address; or

353 (2) Post notice of a meeting to consider a proposed amendment in a conspicuous place  
354 in all principal places of activity of the cooperative association.

355 (c) The notice required by subsection (b) of this Code section shall include the full text of  
356 the proposed amendment and the text of the part of the certificate of formation to be  
357 amended.

358 (d) To be approved, an amendment shall be adopted by the affirmative vote of two-thirds  
 359 of the members voting on the amendment.

360 (e) Not later than 30 days after the date an amendment is adopted by the members of a  
 361 cooperative association, the cooperative association shall file a certificate of amendment  
 362 with the Secretary of State. The certificate of amendment shall be:

363 (1) Signed by an authorized officer of the cooperative association; and

364 (2) In the form required by the Secretary of State and this chapter.

365 14-12-203.

366 (a) Unless the certificate of formation or bylaws of a cooperative association require a  
 367 greater majority, the bylaws shall be adopted, amended, or repealed by a majority vote of  
 368 the cooperative association's members voting on the matter.

369 (b) Except as provided by this chapter, the bylaws may contain:

370 (1) Requirements for admission to membership;

371 (2) Requirements for disposal of a member's interest on cessation of membership;

372 (3) The time, place, and manner of calling and conducting meetings;

373 (4) The number or percentage of the members constituting a quorum;

374 (5) The number, qualifications, powers, duties, and term of directors and officers;

375 (6) The method of electing, removing, and filling a vacancy of directors and officers;

376 (7) The division or classification, if any, of directors to provide for staggered terms;

377 (8) The compensation, if any, of the directors;

378 (9) The number of directors necessary to constitute a quorum;

379 (10) The method for distributing the net savings;

380 (11) A requirement that each officer or employee of the cooperative association who  
 381 handles funds or securities be bonded; and

382 (12) Any other provision incident to a purpose or activity of the cooperative association.

383 14-12-204.

384 The board of directors of a cooperative association may adopt a restated certificate of  
 385 formation by following the procedure to amend the association's certificate of formation  
 386 provided for in Code Section 14-12-202, except that member approval is required if the  
 387 restated certificate of formation contains an amendment.

388 ARTICLE 3

389 14-12-301.

390 (a) A cooperative association shall be managed by a board of directors.

391 (b) The board of directors shall contain at least five directors elected by and from the  
392 cooperative association's members. A director shall:

393 (1) Serve a term not to exceed three years as provided by the bylaws; and

394 (2) Hold office until the director is removed or the director's successor is elected.

395 (c) The bylaws of a cooperative association may:

396 (1) Apportion the number of directors among the units into which the cooperative  
397 association may be divided; and

398 (2) Provide for the election of the directors by the respective units to which the directors  
399 are apportioned.

400 (d) An executive committee of the board of directors may be elected in the manner and  
401 with the powers and duties specified by the certificate of formation or bylaws.

402 14-12-302.

403 (a) The directors of a cooperative association shall annually elect, unless otherwise  
404 provided for by the bylaws, the following officers for the cooperative association:

405 (1) A president;

406 (2) One or more vice presidents; and

407 (3) A secretary and treasurer or a secretary-treasurer.

408 (b) Any two or more offices, other than the offices of president and secretary, may be held  
409 by the same person.

410 (c) The officers of a cooperative association may be designated by other titles as provided  
411 by the certificate of formation or the bylaws of the cooperative association.

412 (d) A committee duly designated by the board of directors may perform the functions of  
413 any office, and the functions of any two or more officers may be performed by a single  
414 committee, including the functions of both president and secretary.

415 14-12-303.

416 (a) A director or officer of a cooperative association may be removed from office in the  
417 manner provided by the certificate of formation or bylaws of the cooperative association.

418 (b) If the certificate of formation or bylaws do not provide for the person's removal, a  
419 director or officer may be removed with cause by a vote of a majority of the members  
420 voting at a regular or special meeting. The director or officer who is to be removed is  
421 entitled to be heard at the meeting.

422 (c) Except as provided by the certificate of formation or bylaws, a vacancy on the board  
423 of directors caused by removal shall be filled by a director elected in the same manner  
424 provided by the bylaws for the election of directors.

425 14-12-304.

426 (a) The certificate of formation or bylaws of a cooperative association may provide for a  
 427 referendum on any action undertaken by the cooperative association's board of directors  
 428 if the referendum is:

429 (1) Requested by petition of 10 percent or more of all of the members of the cooperative  
 430 association; or

431 (2) Requested and approved by the vote of at least a majority of the directors of the  
 432 cooperative association.

433 (b) The proposition to be voted on in a referendum authorized under subsection (a) of this  
 434 Code section shall be submitted to the members of the cooperative association for  
 435 consideration within the time specified in the document authorizing the referendum.

436 (c) A right of a third party that has vested between the time of the action and the time of  
 437 the referendum shall not be impaired by the referendum results.

438 ARTICLE 4

439 14-12-401.

440 A person or an unincorporated group or other person organized on a cooperative basis or  
 441 a nonprofit group may be admitted to membership in a cooperative association only if the  
 442 person meets the qualifications for eligibility stated in the certificate of formation or bylaws  
 443 of the cooperative association.

444 14-12-402.

445 (a) A member of a cooperative association may be expelled by the vote of a majority of  
 446 the cooperative association's members voting at a regular or special meeting.

447 (b) Not later than 11 days before the date of the meeting at which the member is proposed  
 448 to be expelled, the cooperative association shall give such member written notice of the  
 449 charges. Such member shall be entitled to be heard at the meeting in person or by counsel.

450 (c) If the cooperative association votes to expel a member, the cooperative association's  
 451 board of directors shall cause the cooperative association to purchase the member's capital  
 452 holdings at par value if the purchase does not jeopardize the cooperative association's  
 453 solvency.

454 14-12-403.

455 (a) A person is a subscriber of a cooperative association only if the person is:

456 (1) Eligible for membership in the cooperative association under Code  
 457 Section 14-12-401; and

458 (2) Legally obligated to purchase a share or membership in the cooperative association.  
 459 (b) The certificate of formation or bylaws of a cooperative association may state whether  
 460 and the conditions under which voting rights or other membership rights are granted to a  
 461 subscriber of the cooperative association.

462 14-12-404.

463 (a) Except as provided by subsection (b) of this Code section, a member or subscriber of  
 464 a cooperative association shall not be jointly or severally liable for a debt of the cooperative  
 465 association. A subscriber shall be liable for any unpaid amount on the subscriber's  
 466 membership certificates or invested capital certificates.

467 (b) A subscriber who assigns the subscriber's interest in membership certificates or  
 468 invested capital certificates is jointly and severally liable with the assignee until the  
 469 appropriate certificates are fully paid.

470 ARTICLE 5

471 14-12-501.

472 (a) A cooperative association shall not issue a certificate for membership capital or for  
 473 invested capital until any par value of the certificate has been paid in full.

474 (b) Each certificate for membership capital issued by a cooperative association shall  
 475 contain a statement of the requirements of subsections (a) and (b) of Code  
 476 Section 14-12-502.

477 (c) Each certificate for invested capital issued by a cooperative association shall contain  
 478 a statement of the restrictions on transferability as provided for by the cooperative  
 479 association's bylaws.

480 14-12-502.

481 (a) A member who decides to withdraw from a cooperative association shall make a  
 482 written offer to sell the member's membership certificates to the cooperative association's  
 483 board of directors.

484 (b) Not later than 90 days after the date the directors receive an offer under subsection (a)  
 485 of this Code section, the directors may cause the cooperative association to purchase the  
 486 holdings by paying such member the par value of the certificates and the directors shall  
 487 cause the cooperative association to reissue or cancel the shares after purchasing the  
 488 holdings. The directors shall cause the cooperative association to purchase the shares if a  
 489 majority of the cooperative association's members voting at a regular or special meeting  
 490 vote to require the purchase.

491 (c) An investor owning investor certificates shall sell, assign, or convey the certificates in  
492 accordance with the cooperative association's bylaws. If an investor fails to sell, assign,  
493 or convey investor certificates in accordance with the bylaws, the cooperative association  
494 on written notice to its directors shall repurchase the certificates by paying the investor the  
495 par value of the certificate plus all accrued investment dividends. The certificates shall be  
496 repurchased not later than 90 days after the date the cooperative association receives notice  
497 of the failure.

498 14-12-503.

499 (a) The bylaws of a cooperative association may authorize the cooperative association's  
500 board of directors to recall during a specified time and in accordance with the bylaws the  
501 membership certificates of a member who fails to patronize the cooperative association.  
502 The board may use the reserve funds to recall, at par value, the membership certificates of  
503 any member in excess of the amount required for membership.

504 (b) After the board of directors of a cooperative association recalls a membership  
505 certificate under subsection (a) of this Code section, membership in the cooperative  
506 association shall be terminated and the board shall cause the cooperative association to  
507 reissue or cancel the certificate. The board of directors shall not recall membership  
508 certificates if recalling the certificates would jeopardize the cooperative association's  
509 solvency.

510 (c) The board of directors may use the reserve funds to recall and repurchase the  
511 investment certificates of an investor at par value plus any investment dividends due.

512 (d) The bylaws of a cooperative association may establish specific procedures, terms, and  
513 conditions for recalls and repurchases of investment certificates.

514 14-12-504.

515 The minimum amount necessary for membership in a cooperative association, not to  
516 exceed \$50.00, shall be exempt from attachment, execution, or garnishment for the debts  
517 of a member of a cooperative association. If a member's holdings are subject to  
518 attachment, execution, or garnishment, the directors of the cooperative association shall  
519 admit the purchaser to membership or purchase the holdings at par value.

520

## ARTICLE 6

521 14-12-601.

522 (a) Regular meetings of members of a cooperative association shall be held at least once  
523 a year as prescribed by the cooperative association's bylaws.



524 (b) A special meeting of the members of a cooperative association may be requested by  
525 a majority vote of the directors or by written petition of at least one-tenth of the  
526 membership of the cooperative association. The secretary shall call a special meeting to  
527 be held 30 days after receipt of the request for a special meeting.

528 14-12-602.

529 The notice of a special meeting of the members of a cooperative association shall state the  
530 purpose of the meeting.

531 14-12-603.

532 (a) The certificate of formation or bylaws of a cooperative association may provide for the  
533 holding of meetings by units of the membership of the cooperative association and may  
534 provide for:

535 (1) A method of transmitting the votes cast at unit meetings to the central meeting;

536 (2) A method of representation of units of the membership by the election of delegates  
537 to the central meeting; or

538 (3) A combination of both methods.

539 (b) Except as otherwise provided for by the certificate of formation or bylaws, a meeting  
540 by a unit of the membership shall be called and held in the same manner as a regular  
541 meeting of the members.

542 14-12-604.

543 (a) Except as provided for by subsection (b) of this Code section, a member of a  
544 cooperative association has one vote.

545 (b) If a cooperative association includes among its membership another cooperative  
546 association or a group that is organized on a cooperative basis, the voting rights of the  
547 cooperative association member or group member shall be prescribed by the certificate of  
548 formation or bylaws of the cooperative association.

549 (c) Any voting agreement or other device that is made to evade the one-member-one-vote  
550 rule provided for under subsection (a) of this Code section shall not be enforceable.

551 14-12-605.

552 A member is not entitled to vote by proxy.

553 14-12-606.

554 (a) The certificate of formation or bylaws of a cooperative association may contain the  
555 procedures in subsection (b) or (c), or both, of this Code section for voting by mail.

556 (b) With notice of a meeting sent to members of the cooperative association, the secretary  
 557 may include a copy of a proposal to be offered at the meeting. If a mail vote is returned  
 558 to the cooperative association within the specified number of days, the mail vote shall be  
 559 counted with the votes cast at the meeting.

560 (c) The secretary may send to a member of the cooperative association who is absent from  
 561 a meeting an exact copy of the proposal considered at the meeting. If the vote is returned  
 562 to the cooperative association within the specified number of days, the mail vote is counted  
 563 with the votes cast at the meeting.

564 (d) The certificate of formation or bylaws may state whether and to what extent mail votes  
 565 are counted in computing a quorum.

566 14-12-607.

567 (a) If a cooperative association has provided for voting by mail or by delegates, a provision  
 568 of this chapter referring to votes cast by members of the cooperative association applies to  
 569 votes cast by mail or by delegates.

570 (b) A delegate shall not vote by mail.

571 ARTICLE 7

572 14-12-701.

573 (a) Except as otherwise provided by the cooperative association's bylaws, an investment  
 574 dividend of a cooperative association shall not be cumulative and shall not exceed  
 575 8 percent of investment capital.

576 (b) Total investment dividends of a cooperative association distributed for a fiscal year  
 577 shall not exceed 50 percent of the net savings for the period.

578 14-12-702.

579 (a) At least once each year the members or directors of a cooperative association, as  
 580 provided by the certificate of formation or bylaws of the cooperative association, shall  
 581 apportion the net savings of the cooperative association in the following order:

582 (1) Subject to Code Section 14-12-701, investment dividends payable from the surplus  
 583 of the total assets over total liabilities may be paid on invested capital or, if authorized  
 584 by the bylaws, may be paid on the membership certificates;

585 (2) A portion of the remainder, as determined by the certificate of formation or bylaws,  
 586 may be allocated to an educational fund to be used in teaching cooperation;

587 (3) A portion of the remainder may be allocated to funds for the general welfare of the  
 588 members of the cooperative association;

- 589 (4) A portion of the remainder may be allocated to retained earnings; and  
 590 (5) The remainder shall be allocated at the same uniform rate to each patron of the  
 591 cooperative association in proportion to individual patronage as follows:  
 592 (A) For a member patron, the proportionate amount of savings returns distributed to  
 593 the member may be any combination of cash, property, membership certificates, or  
 594 investment certificates; and  
 595 (B) For a subscriber patron, the patron's proportionate amount of savings returns as  
 596 provided by the certificate of formation or bylaws may be distributed to the subscriber  
 597 patron or credited to the subscriber patron's account until the amount of capital  
 598 subscribed for has been fully paid.  
 599 (b) Nothing in this Code section shall be construed to prevent a cooperative association  
 600 engaged in rendering services from disposing of the net savings from the rendering of  
 601 services in a manner that lowers the fees charged for services or furthers the common  
 602 benefit of the members.  
 603 (c) A cooperative association may adopt a system in which:  
 604 (1) The payment of savings returns that would otherwise be distributed are deferred for  
 605 a fixed period; or  
 606 (2) The savings returns distributed are partly in cash or partly in shares, to be retired at  
 607 a fixed future date, in the order of the shares' serial numbers or issuance dates.

608 ARTICLE 8

609 14-12-801.

610 A cooperative association shall keep books and records relating to the cooperative  
 611 association's business operation in accordance with standard accounting practices.

612 14-12-802.

- 613 (a) A cooperative association shall submit a written report to its members at the annual  
 614 meeting of the cooperative association. The annual report shall contain:  
 615 (1) A balance sheet;  
 616 (2) An income and expense statement;  
 617 (3) The amount and nature of the cooperative association's authorized, subscribed, and  
 618 paid-in capital;  
 619 (4) The total number of shareholders;  
 620 (5) The number of shareholders who were admitted to or withdrew from the association  
 621 during the year;  
 622 (6) The par value of the association's shares;

- 623 (7) The rate at which any investment dividends have been paid; and  
 624 (8) If the cooperative association does not issue shares:  
 625 (A) The total number of members;  
 626 (B) The number of members who were admitted to or withdrew from the association  
 627 during the year; and  
 628 (C) The amount of membership fees received.
- 629 (b) The directors shall appoint a committee composed of members who are not principal  
 630 bookkeepers, accountants, or employees of the cooperative association to review the  
 631 cooperative association.
- 632 (c) The committee appointed under subsection (b) of this Code section shall report on the  
 633 quality of the annual report required by this Code section and the bookkeeping system of  
 634 the cooperative association at the annual meeting.
- 635 14-12-803.
- 636 (a) This Code section shall apply only to a cooperative association that has at least 100  
 637 members or at least \$20,000.00 in annual business.
- 638 (b) Not later than 120 days after the date on which the association closes its business each  
 639 year, a cooperative association shall file in the association's registered office a report of the  
 640 association's financial condition stating:
- 641 (1) The name of the association;  
 642 (2) The address of the association's principal office;  
 643 (3) The name, address, occupation, and date of expiration of the term of office of each  
 644 officer and director;  
 645 (4) Any compensation paid by the association to each officer or director of the  
 646 association;  
 647 (5) The amount and nature of the authorized, subscribed, and paid-in capital;  
 648 (6) The total number of shareholders;  
 649 (7) The number of shareholders who were admitted to or withdrew from the association  
 650 during the year;  
 651 (8) The par value of the association's shares;  
 652 (9) The rate at which any investment dividends have been paid; and  
 653 (10) If the association has no shares:  
 654 (A) The total number of members;  
 655 (B) The number of members who were admitted to or withdrew from the association  
 656 during the year; and  
 657 (C) The amount of membership fees received.
- 658 (c) The report required by subsection (b) of this Code section shall:

659 (1) Include a balance sheet and income and expense statement of the cooperative  
 660 association; and

661 (2) Be signed by the president and secretary.

662 (d) A cooperative association that has at least 3,000 members or at least \$750,000.00 in  
 663 annual business shall file a copy of the report required by this Code section with the  
 664 Secretary of State.

665 (e) A person commits a misdemeanor if he or she signs a report that is required by this  
 666 Code section and such report contains a materially false statement that such person knows  
 667 is false. Upon conviction, such person shall be punished by:

668 (1) A fine of not less than \$25.00 or more than \$200.00;

669 (2) Imprisonment for a term of not less than 30 days nor more than one year; or

670 (3) Any combination of paragraphs (1) and (2) of this subsection.

671 14-12-804.

672 (a) If a cooperative association is required by Code Section 14-12-803 to file a copy of a  
 673 report with the Secretary of State and does not file the report within the prescribed time,  
 674 the Secretary of State shall send written notice of the requirement to the cooperative  
 675 association at the cooperative association's principal office not later than 60 days after the  
 676 date that the report becomes due.

677 (b) If a cooperative association is required by Code Section 14-12-803 to file a report at  
 678 the cooperative association's registered office but not with the Secretary of State and fails  
 679 to file the report within the prescribed time, the Secretary of State or any member of the  
 680 cooperative association may send written notice of the requirement to the cooperative  
 681 association's principal office.

682 (c) If the cooperative association does not file the report provided for under subsection (a)  
 683 or (b) of this Code section before the sixty-first day after the date notice is sent under  
 684 subsection (a) or (b) of this Code section, a member of the cooperative association or the  
 685 Attorney General may seek a writ of mandamus in the superior court against the  
 686 cooperative association and the appropriate officer or officers to compel the filing of the  
 687 report. The court shall require the cooperative association or the officer who is determined  
 688 to be at fault to pay the expenses of the proceeding, including attorney's fees.

689 ARTICLE 9

690 14-12-901.

691 (a) A cooperative association may wind up and terminate its affairs for the cause and in  
 692 like manner as provided for under Part 1 of Article 14 of Chapter 2 of this title.

693 (b) If a cooperative association is directed to wind up and liquidate its affairs for the  
 694 grounds and in like manner as provided for under Part 3 or 4 of Article 14 of Chapter 2 of  
 695 this title, three members of the cooperative association elected by a vote of at least a  
 696 majority of the members voting shall be designated as trustees on behalf of the cooperative  
 697 association to:

698 (1) Pay debts;

699 (2) Liquidate the cooperative association's assets within the time set in the trustees'  
 700 designation or any extension of time; and

701 (3) Distribute the cooperative association's assets in the manner provided by Code  
 702 Section 14-12-903.

703 14-12-902.

704 An officer of a cooperative association or one or more of the persons designated as a  
 705 liquidating trustee under Code Section 14-12-901 shall execute the certificate of  
 706 termination on behalf of the cooperative association.

707 14-12-903.

708 The trustees designated under Code Section 14-12-901 shall distribute the cooperative  
 709 association's assets in the following order:

710 (1) By returning the par value of the investors' capital to investors;

711 (2) By returning the amounts paid on subscriptions to subscribers for invested capital;

712 (3) By returning the amount of patronage dividends credited to patrons' accounts to the  
 713 patrons;

714 (4) By returning to members their membership capital; and

715 (5) By distributing any surplus in the manner provided by the certificate of formation:

716 (A) Among the patrons who have been members or subscribers of the cooperative  
 717 association during the six years preceding the date of termination, on the basis of  
 718 patronage during that period;

719 (B) As a gift to any cooperative association or other nonprofit enterprise designated in  
 720 the certificate of formation; or

721 (C) By a combination of both methods of distribution.

722 14-12-904.

723 A suit for involuntary termination of a cooperative association organized under this chapter  
 724 may be instituted for the grounds and prosecuted in the manner provided by Article 14 of  
 725 Chapter 2 of this title. The assets of a cooperative association that is involuntarily  
 726 terminated shall be distributed in accordance with Code Section 14-12-903.

727

ARTICLE 10728 14-12-1001.

729 Only a cooperative association governed by this chapter, a group organized on a  
730 cooperative basis under another law of this state, or a foreign entity operating on a  
731 cooperative basis and authorized to do business in this state may use the term 'cooperative'  
732 or any abbreviation or derivation of the term 'cooperative' as part of its business name or  
733 represent itself, in advertising or otherwise, as conducting business on a cooperative basis."

734

**SECTION 2.**

735 All laws and parts of laws in conflict with this Act are repealed.