



Center for Cooperatives
UNIVERSITY OF WISCONSIN-MADISON

SUMMARY: 2017 CHANGES TO WISCONSIN'S COOPERATIVE LAW
CHAPTER 185
COOPERATIVE CORPORATIONS

Revisions to Chapter 185, the cooperative incorporation statute for Wisconsin, were passed by the Wisconsin legislature in November, 2017.

Business statutes provide basic legal requirements for the organization and operation of different types of entities incorporated in a state. An organization incorporated under Wisconsin Chapter 185 is required to include “cooperative” in its legal name, and must follow certain statutory requirements that differentiate a cooperative from other types of business entities. The term “cooperative” cannot be used in the name of entities incorporated under other types of business statutes.

Cooperatives differ from other business entities in their ownership and operational structure. Cooperatives are owned and controlled by their members. Members use the cooperative to meet their own needs for goods and services, as opposed to generating a return to non-patron investors, and share the financial risks and rewards that accompany ownership.

Members exercise control of their cooperative by voting for a board of directors. The board is responsible for the strategic direction of the cooperative, which must deliver the benefits desired by membership while maintaining financial viability.

Chapter 185 provides general structural requirements that support member ownership and control, while allowing for some flexibility for the cooperative business to adapt to changing member needs and marketplace conditions.

The recent changes to Chapter 185 address provisions regarding:

- Outside non-member voting directors
- Voting rights based on patronage activity, equity, or combination allowed for members of a cooperative holding company and its subsidiaries
- Dividends on a cooperative's capital stock
- Requirements of cooperatives incorporated in another state

- Member's right to examine a cooperative's financial records
- Board authority to dispose of cooperative assets
- Notice requirements regarding unclaimed assets
- Extension of credit by an electric cooperative

A brief summary memo of the act, issued by the Wisconsin Legislative Council, is included on the following pages. It can also be accessed here:

docs.legis.wisconsin.gov/document/lcactmemos/2017/REG/Act%2076.pdf

Link to the Act 76, which revises provisions in Chapter 185:

<http://docs.legis.wisconsin.gov/2017/related/acts/76>



WISCONSIN LEGISLATIVE COUNCIL ACT
MEMO

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| 2017 Wisconsin Act 76 [2017 Assembly Bill 353] | Organization and Operation of Cooperatives and Extensions of Credit by Electric Cooperatives |
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2017 Wisconsin Act 76 makes changes regarding the organization and operation of a cooperative, and it creates a process by which an electric cooperative may be exempt from the requirements of the Wisconsin Consumer Act in extending credit for certain purposes.

ORGANIZATION AND OPERATION OF A COOPERATIVE

Requirements Regarding Directors of a Cooperative

Under **prior law**, there were no exceptions to the requirement that a director of a cooperative must be a member of the cooperative, or, in the case of an organization that is a member of a cooperative, a representative of that organization.

The Act creates an exception to this requirement that allows a cooperative to have a specified number of “outside directors,” which are defined as directors who are neither members nor representatives of an organization that is a member of the cooperative. Specifically, the Act provides that, if authorized by a cooperative’s bylaws, a cooperative may have up to two outside directors, as long as the number of outside directors does not comprise more than 20% of all directors.

Under the Act, no person may serve as an outside director unless a majority of the members or delegates voting, or a majority of directors who are not outside directors votes to, approve the person as a director.

Voting Power for a Cooperative Holding Company

Wisconsin law, unchanged by the Act, generally requires that each member of a cooperative must be entitled to one vote at a member meeting, regardless of the member’s degree of financial interest in the cooperative.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

The Act authorizes a “cooperative holding company,” which is defined as a cooperative that owns or controls subsidiaries cooperating on a cooperative basis, and the cooperative subsidiaries of a cooperative holding company to permit members to base voting power in whole or in part on members’ current or recent patronage activity, or on members’ patronage equity in the cooperative, or on a combination of both.

Dividends on the Capital Stock of a Cooperative

The Act repeals a provision of prior law that prohibited any dividends on the stock of a cooperative from exceeding 8% of its par value for any year.

Requirements Regarding a Cooperative Incorporated in Another State

Wisconsin law provides that a cooperative incorporated under another state’s cooperative law and which has members residing in Wisconsin is entitled to all rights, exemptions, and privileges of a cooperative organized in Wisconsin, if it qualifies as a “foreign cooperative” and is otherwise authorized to do business in Wisconsin.

Under **prior law**, a cooperative could qualify as a foreign cooperative by satisfying one the following conditions: (1) no member of the cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns; or (2) the cooperative does not pay dividends on stock or membership capital in excess of 8% per year.

The Act repeals the second condition listed above. As a result, in order to qualify as a foreign cooperative, a cooperative must satisfy the first condition listed above.

A Member’s Right to Examine a Cooperative’s Financial Records

Records Subject to Examination

Prior law authorized any member or stockholder of a cooperative, upon submitting written notice to the cooperative stating the purpose thereof, to examine for a proper purpose “any books or records” of the cooperative pertinent to the purpose specified in the notice.

The Act instead provides that any cooperative member or stockholder, upon written notice stating the purpose thereof, may examine for a proper purpose: (1) “any of the cooperative’s records” that are pertinent to the purpose specified in the notice; and (2) “any of the cooperative’s financial books covering the current or preceding 5 fiscal years” that are pertinent to the purpose specified in the notice.

Denial of an Examination Requests

Prior law authorized a cooperative’ board of directors to deny a request to examine books and records if the board determined that **both** of the following conditions were met: (1) the requester’s purpose for examining the records was not directly related to the business or affairs of the cooperative; and (2) the purpose was contrary to the best interests of the cooperative.

The Act modifies the reasons for which a board of directors may deny a request. It provides that a board may do so if **either** of the following conditions are met: (1) the requester’s

purpose for examining the records is not directly related to **the requester's interest as a member or stockholder** in the business or affairs of the cooperative; or (2) the purpose is otherwise contrary to the best interests of the cooperative.

The Act also provides that a cooperative member or stockholder is not entitled to examine financial books or records if the cooperative is subject to any legal duty to preserve the confidentiality of the financial books or records.

Reimbursement of the Costs

The Act authorizes a cooperative to condition the examination of financial books or records on the requester reimbursing the cooperative for the reasonable costs to produce or copy the records.

Board Authority to Dispose of Cooperative Assets

Prior law prohibited a cooperative's board of directors from disposing of all or substantially all of a cooperative's **fixed** assets unless the disposition was authorized by two-thirds of the cooperative's members voting on the disposition.

The Act expands the applicability of the prohibition above to all assets of a cooperative, instead of only the fixed assets.

The Act also prohibits a cooperative's board of directors from disposing of a cooperative's assets in any of the following manners unless the disposition is approved by two-thirds of the cooperative's members voting on the disposition: (1) in a manner other than in the ordinary course of business; or (2) in a manner that jeopardizes the purpose or financial vitality of a cooperative.

Notice Requirements Regarding Unclaimed Assets

Wisconsin law, unchanged by the Act, authorizes a cooperative to effect the forfeiture to the cooperative of certain unclaimed property if, among other requirements, the cooperative mails a notice to the last-known address of each owner of such property and publishes a notice in a newspaper.

The Act provides that the notice published in the newspaper may consist of either the name and address of each owner to whom notice was mailed or an Internet site address where this information is posted, together with a brief description of the reason for the notice.

EXTENSION OF CREDIT BY AN ELECTRIC COOPERATIVE

Wisconsin law, unchanged by the Act, authorizes a cooperative to lend money for any of its purposes and hold property as security for repayment. Generally, a party, including a cooperative, that lends \$25,000 or less to a person acquiring credit for personal, family, or household purposes, is subject to the requirements of the Wisconsin Consumer Act.

The Act provides that a cooperative's extension of credit to a member or a member's landlord is generally exempt from the requirements of the Wisconsin Consumer Act if: (1) the credit is extended for expenses relating to energy efficiency or conservation, electric safety, or

emergency backup generation; and (2) the cooperative and the borrower enter into a written agreement that satisfies certain conditions, including that it comply with certain requirements similar to provisions of the Wisconsin Consumer Act.

The Act also provides that a written agreement may require repayments to be recovered as “project electric account charges” which are charges placed on the account of the member associated with the property where the project funded by the credit will be completed. An agreement may provide that the charges will apply to subsequent owners or tenants of a property, and a cooperative may collect such charges from a subsequent owner or tenant, if certain notice requirements are satisfied.

If a property owner fails to provide the required notice before entering into a lease, the subsequent lessee may void the lease and recover any deposits or deduct from the rent the lessee pays to the property owner the amount of the charges for which the lessee is responsible, for up to one-half of the term of the lease. If a property owner fails to provide the notice to a purchaser before entering into an agreement for the sale of the property, the purchaser may void the contract with the property owner and recover any deposits.

Prepared by: Zach Ramirez, Staff Attorney

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