

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1920

Session of  
1985

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NOVEMBER 25, 1985

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REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 25, 1985

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AN ACT

1 Providing for incorporation of productive and distributive  
2 workers' cooperatives, for a certain tax exemption and for  
3 penalties.

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20 The General Assembly of the Commonwealth of Pennsylvania  
21 hereby enacts as follows:

22 Section 1. Short title.

23 This act shall be known and may be cited as the Workers'  
24 Cooperative Corporation Act.

25 Section 2. Definitions.

26 The following words and phrases when used in this act shall  
27 have the meanings given to them in this section unless the  
28 context clearly indicates otherwise:

29 "Corporation." A corporation organized for profit which has  
30 elected to be governed by this act.

1 "Department." The Department of State of the Commonwealth.

2 "Member." A natural person who patronizes a corporation by  
3 the contribution of his labor and who has been accepted for  
4 membership in and owns a membership share issued by the  
5 corporation.

6 "Patronage." The number of hours of work performed as a  
7 member of a corporation.

8 "Patronage allocation." The share of net earnings or losses  
9 with respect to a period of time paid or credited to a member on  
10 the basis of the ratio which the member's patronage during the  
11 period involved bears to total patronage by all members during  
12 that period.

13 "Written notice of allocation." A written instrument which  
14 discloses to a member the stated dollar amount of the member's  
15 patronage allocation and the terms of payment of that amount by  
16 the corporation.

### 17 Section 3. Corporations.

18 (a) Members and purpose.--Corporations, productive and  
19 distributive, may be incorporated under this act, upon  
20 compliance with its requirements, by any five or more farmers,  
21 mechanics, laborers or other persons, who shall have  
22 incorporated themselves together by written articles under  
23 section 4, for the purpose of carrying on agricultural,  
24 horticultural, mining, quarrying, building, mechanical,  
25 manufacturing or commercial business; for the purpose of  
26 manufacturing, cultivating, raising, trading or dealing in  
27 goods, wares, merchandise, chattels, grains, vegetables, roots,  
28 fruits and other produce or animals; or for the purpose of  
29 buying, selling, holding, leasing or improving lands, tenements  
30 or buildings.

1 (b) Name.--

2 (1) The corporation may adopt any corporate name to  
3 indicate its cooperative character as long as the name has  
4 not been previously adopted.

5 (2) The two last words of the name shall be "cooperative  
6 corporation"; but it shall be unlawful to use in the name  
7 either the words "society" or "company." A violation of this  
8 paragraph by a corporation formed under this act renders each  
9 member personally liable for all debts of the corporation.

10 (c) Business office.--A corporation shall have a regular  
11 business office.

12 Section 4. Articles of incorporation.

13 (a) Advertisement.--The incorporators shall advertise their  
14 intention to file or the corporation shall advertise the filing  
15 of articles of incorporation with the department one time in two  
16 newspapers of general circulation, one of which shall be a  
17 newspaper, if any, designated by the rules of court for the  
18 publication of legal notices or in two newspapers of general  
19 circulation published in the county in which the initial  
20 registered office of the corporation is to be located. When  
21 there is but one newspaper of general circulation published in a  
22 county, advertisements in that newspaper shall be sufficient.  
23 Advertisements may appear prior to or after the day the articles  
24 of incorporation are filed with the department and shall set  
25 forth briefly:

26 (1) The name of the proposed corporation.

27 (2) A statement that the corporation is to be or has  
28 been organized under this act.

29 (3) The purpose of the corporation.

30 (4) The time when the articles will be or were filed

1 with the department.

2 (b) Approval of articles.--The articles of incorporation,  
3 signed by each of the incorporators, together with any filing  
4 fee required to be paid, shall be delivered to the department.  
5 If the department finds that the articles comply with section 5  
6 and that all required fees have been paid, it shall approve the  
7 articles of incorporation; and a copy of the articles shall be  
8 recorded in the Corporation Bureau of the Department of State.  
9 Upon the approval of the articles of incorporation, the  
10 corporation's existence begins.

11 (c) Evidence of incorporation.--The articles of  
12 incorporation as approved are conclusive evidence of the fact  
13 that the corporation has been organized; but proceedings may be  
14 instituted by the Commonwealth to dissolve, wind up and  
15 terminate a corporation which should not have been incorporated  
16 or which has been incorporated by means of fraud or  
17 misrepresentation or without substantial good faith compliance  
18 with the conditions prescribed by this act as precedent to  
19 incorporation.

#### 20 Section 5. Content of articles.

21 The articles of incorporation shall be signed by the persons  
22 originally associating themselves together and shall state  
23 distinctly:

24 (1) The name by which the corporation shall be known,  
25 which name shall not be the same as or confusingly similar  
26 to, the name of an association or corporation existing under  
27 the law of the Commonwealth; the name of a foreign or alien  
28 association or corporation authorized to transact business in  
29 this Commonwealth; or a corporate name reserved or registered  
30 as provided by law.

1           (2) The place in this Commonwealth where its principal  
2 office is to be located.

3           (3) A brief statement:

4               (i) of the purpose or purposes for which the  
5 corporation is incorporated, which may consist of a  
6 statement that the corporation has unlimited powers to  
7 engage in any lawful act concerning any business for  
8 which corporations may be incorporated under this act;  
9 and

10               (ii) that the corporation is incorporated under this  
11 act.

12           (4) A description of the capital stock of each class  
13 which is to be issued; a statement of the preferences,  
14 qualifications, limitations, restrictions and special or  
15 relative rights granted to or imposed upon the shares of each  
16 class of capital stock; the total authorized capital stock;  
17 the number of shares into which the capital stock is divided;  
18 and the par value of each share of capital stock.

19           (5) The amount of capital that will be actually paid in  
20 before commencing business.

21           (6) The terms on which persons may become members.

22           (7) The number of directors, not less than five,  
23 constituting the initial board of directors and the names and  
24 addresses of the persons who are to serve as directors until  
25 the first annual meeting of the members or until their  
26 successors are elected and take office.

27           (8) Other matters as may be deemed proper and necessary.

28           (9) The term of its existence, which shall be either  
29 perpetual or for a fixed term of years.

30           (10) The name and post office address of each of the

1       incorporators; a statement of the number of shares subscribed  
2       to by each, which number shall be at least one; and the class  
3       of shares to which each subscribes.

4   Section 6.   Capital stock.

5       (a)   Issuance and redemption.--A corporation shall issue as  
6   capital stock a class of voting common stock designated as  
7   membership shares only to those individuals who fulfill all  
8   requirements for member status upon terms and conditions  
9   provided in the articles of incorporation. Each member shall own  
10   only one membership share, and only members may own membership  
11   shares. A member is entitled to one vote per membership share on  
12   each question that may be presented at any meeting of the  
13   members, regardless of the number of shares of stock or  
14   membership capital owned by the member. Membership shares shall  
15   be issued for a fee determined by the board of directors. A  
16   membership share entitles a member to the rights and obligations  
17   of a stockholder of a corporation organized under the act of May  
18   5, 1933 (P.L.364, No.106), known as the Business Corporation  
19   Law, except as otherwise provided in this act. Upon voluntary or  
20   involuntary termination of a member's work in the corporation,  
21   the membership share shall be transferred back to the  
22   corporation at the time of the termination. The redemption price  
23   of a membership share shall be determined solely by reference to  
24   the member's internal capital account under section 7.

25       (b)   Voting power.--No capital stock other than membership  
26   shares shall be granted voting power in a corporation except as  
27   provided in section 21 and the articles of incorporation.

28       (c)   Preferred stock.--A corporation may issue as capital  
29   stock a class of nonvoting preferred stock upon terms and  
30   conditions provided in the articles of incorporation. Preferred

1 stock shall be freely transferable.

2 (d) Payment for stock.--No corporation may issue a  
3 membership share and no certificate of stock may be issued until  
4 fully paid for; except that promissory notes may be accepted by  
5 the corporation as full or partial payment if the promissory  
6 note requires payment by regular payroll deductions commencing  
7 on the date of the member's acceptance for membership in the  
8 corporation. The corporation shall hold the membership share or  
9 stock as security for the payment of the note, but retention as  
10 security does not affect the member's right to vote and hold  
11 office.

12 (e) Fractional shares and scrip.--Fractional shares of and  
13 scrip for common and preferred stock may not be issued by the  
14 corporation.

15 (f) Form of certificates.--Certificates representing shares,  
16 membership shares and evidences of a person's equity in a fund,  
17 capital investment or other asset of the corporation, shall be  
18 signed by the president, vice president, treasurer or assistant  
19 treasurer and the secretary or an assistant secretary of the  
20 corporation. Facsimiles of signatures are acceptable. These  
21 certificates may be sealed with the seal of the corporation or a  
22 facsimile thereof.

23 (g) Dividend and lien.--Dividends may be paid on preferred  
24 stock and may be cumulative if so provided in the articles of  
25 incorporation. A corporation shall have a lien on all of its  
26 outstanding preferred stock and dividends declared or accrued  
27 thereon for all indebtedness of the holders to the corporation  
28 if provision for a lien is stated on the face of the certificate  
29 of stock.

30 (h) Status of membership.--A membership is not a security as



1 defined in section 102 of the act of December 5, 1972 (P.L.1280,  
2 No.284), known as the Pennsylvania Securities Act of 1972. Sale,  
3 redemption and other transactions with respect to membership  
4 shares are not governed by the Pennsylvania Securities Act of  
5 1972; except that Part IV of that act, relating to fraudulent  
6 and prohibited practices, applies.

7 (i) Sale, transfer and redemption of stock.--The sale,  
8 transfer and redemption of stock in the corporation other than  
9 membership shares is subject to the Pennsylvania Securities Act  
10 of 1972.

11 (j) Issuance without other first offer.--Unless otherwise  
12 provided in the articles of incorporation, a corporation may  
13 issue shares without first offering them to shareholders of any  
14 class.

15 Section 7. Internal capital accounts and net worth.

16 (a) Purpose of accounts.--A corporation shall establish  
17 through its bylaws a system of internal capital accounts to  
18 reflect the book value of the corporation and to determine the  
19 redemption price of membership shares and written notices of  
20 allocation.

21 (b) Types of accounts.--Internal capital accounts shall be  
22 of two types: individual internal capital accounts, one for each  
23 member, and a nonindividuated, collective internal capital  
24 account, which shall be called the collective reserve account.

25 (c) Net worth.--The net worth of the corporation shall be  
26 reflected in:

27 (1) The internal capital accounts.

28 (2) The sum of the par value of all outstanding stock  
29 with par value, other than membership shares.

30 (3) The stated value of evidences of equity in a fund,

capital investment or other asset of the corporation.

(d) Procedure.--A corporation shall credit the paid-in membership fee and additional paid-in capital of a member to the member's individual internal capital account and shall also record the apportionment of retained net earnings or net losses to the member's account in accordance with patronage, by appropriately crediting or debiting the member's account. The collective reserve account shall reflect any paid-in capital, retained net earnings and net losses not allocated to the capital accounts or members or not attributable to funds as under subsection (c)(1) and (3).

(e) Adjustment of balance.--The balances in all of the individual internal capital accounts and the collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of these balances and of the amounts under subsection (c)(2) and (3) is equal to the net worth of the corporation.

(f) Use of funds.--Moneys allocated to the internal capital accounts may be used for corporate purposes as determined by the board of directors.

## Section 8. Voting.

No stockholder or member may vote by proxy or by mail.

## Section 9. Acceptance and termination of membership.

The articles of incorporation shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the corporation on a full-time or part-time basis.

## Section 10. Power to buy, sell or trade.

A corporation may buy from, sell to and trade or deal with its members or other persons.

1 Section 11. Individual liability of members.

2 The members of a corporation and the estates of members shall  
3 not be individually liable for the debts of the corporation.

4 Section 12. Corporate powers.

5 Each corporation shall have the following powers:

6 (1) To exist for the limited period of time set forth in  
7 its articles of incorporation and, if no period is set forth,  
8 to exist perpetually unless sooner dissolved by operation of  
9 law or under this act.

10 (2) To maintain and defend judicial proceedings by the  
11 name specified in the articles of incorporation.

12 (3) To adopt and use a common seal and alter the same.

13 (4) To hold, purchase, lease and transfer such real and  
14 personal property as is necessary or proper to effect the  
15 purposes of the corporation.

16 (5) To elect a board of directors, which board shall  
17 have the power to appoint such officers, agents and employees  
18 as may be deemed necessary; to prescribe their duties; to  
19 require bonds of them; and to dismiss them in accordance with  
20 the bylaws.

21 (6) To make bylaws.

22 (7) To make contracts and to assist or join with persons  
23 to effect the activities authorized by its articles of  
24 incorporation and conducive to or expedient for the interest  
25 or benefit of the corporation and to exercise powers  
26 necessary or proper for the accomplishment of the purposes of  
27 the corporation.

28 (8) To borrow money necessary to the conduct of its  
29 operations; to issue notes, bonds and other evidence of  
30 indebtedness; and to give security in the form of mortgage or

1 otherwise.

2 (9) In furtherance of corporation purposes, to make  
3 loans or advances to its members and patrons or to subsidiary  
4 and affiliated persons or their members and to purchase or  
5 otherwise acquire, endorse, discount or sell evidence of  
6 debts, obligation or security.

7 (10) To establish and accumulate a collective reserve  
8 account, surplus of capital and other funds authorized by the  
9 articles of incorporation or the bylaws.

10 (11) To foster membership in the corporation and to  
11 solicit patrons by advertising or by educational or other  
12 means.

13 (12) To issue and to sell common and preferred stock.

14 (13) To own shares of the capital stock of, to hold  
15 membership in and to hold bonds or other obligations of other  
16 workers' corporations, and, while the owner thereof, to  
17 exercise all the rights of ownership, including the right to  
18 vote.

19 (14) To pay pensions and to establish pension plans,  
20 pension trusts and other incentive plans for its directors,  
21 officers and employees.

22 (15) To indemnify, under section 19, a director or  
23 officer or former director or officer of the corporation or a  
24 person who may have served at its request as a director or  
25 officer of another corporation in which it holds membership  
26 or owns shares of capital stock or of which it is a creditor.

27 (16) To make contributions and donations for the public  
28 welfare or for religious, charitable, scientific or  
29 educational purposes.

30 (17) To merge or consolidate with other workers'

1 cooperative corporations.

2 (18) To dissolve and wind up.

3 (19) To exercise incidental powers as may be necessary  
4 or proper in the conduct of its operations.

5 Section 13. Investment of capital stock in other corporations.

6 If the articles permit, a corporation may, by a majority vote  
7 of its members at a meeting specially convened, authorize the  
8 directors to invest, in the name of the corporation, an amount  
9 of its internal capital accounts, including both individual  
10 capital accounts and the collective reserve accounts, on terms  
11 set at the meeting, in the capital stock of any other workers'  
12 cooperative corporations, domestic, foreign or alien. The  
13 corporation may, by a like vote, permit an investment in the  
14 nonvoting preferred stock of the corporation by any other  
15 workers' cooperative corporation, domestic, foreign or alien.

16 Section 14. Meetings.

17 After the organization of a corporation, the incorporators  
18 shall hold an organizational meeting at a time and place fixed  
19 by the board of directors named in the articles of incorporation  
20 and shall adopt a set of bylaws. Not less than ten days' written  
21 notice of the meeting shall be given to each incorporator.

22 Thereafter, there shall be at least one meeting of members each  
23 year. Annual and special membership meetings shall be governed  
24 by the corporation's bylaws. The bylaws shall provide for the  
25 giving of notice to members of each meeting of the corporation.  
26 For all meetings of the corporation, notice as provided in this  
27 section need not be given to members or other stockholders to  
28 whom the notice may be required by this act if a written waiver  
29 of the notice is executed before or after the meeting by each  
30 individual and is filed with the records of the meeting.

1 Section 15. Records.

2 (a) Records requirement.--A corporation shall keep at its  
3 registered office or principal place of business a record of the  
4 proceedings of the members and of the directors and the original  
5 or a copy of its bylaws, including amendments to date, certified  
6 by the secretary of the corporation, and shall keep at its  
7 registered office or principal place of business or at the  
8 office of its transfer agent or registrar a share register,  
9 giving the names of the members, their respective addresses and  
10 the number and classes of shares held by each. A corporation  
11 shall keep at its registered office or principal place of  
12 business appropriate, complete and accurate books or records of  
13 account, including a record of all salaries, per diem payments  
14 or other remunerations paid to each officer and director by the  
15 corporation and remuneration received for the corporation's  
16 business transactions.

17 (b) Examination and copies.--A member, upon written demand,  
18 has a right to examine in person or by agent or attorney, during  
19 the usual hours for business for any proper purpose, the share  
20 register, books or records of account and records of the  
21 proceedings of the members and directors and to make copies or  
22 extracts. A proper purpose is a purpose reasonably related to  
23 such person's interest as a stockholder. If an attorney or other  
24 agent is the person who seeks the right of inspection, the  
25 demand shall be accompanied by a power of attorney or other  
26 writing which authorizes the attorney or other agent to act on  
27 behalf of the member. The demand shall be directed to the  
28 corporation at its registered office in this Commonwealth or at  
29 its principal place of business.

30 (c) Remedy to compel inspection.--

1           (1) If the corporation refuses to permit an inspection  
2 sought by a member or attorney or other agent acting for the  
3 member under subsection (b) or does not reply to the demand  
4 within five business days after the demand has been made, the  
5 member may apply to the court of common pleas of the county  
6 in which the registered office of the corporation is located  
7 for an order to compel inspection. The court of common pleas  
8 has exclusive original jurisdiction to determine whether or  
9 not the person seeking inspection is entitled to the  
10 inspection sought. The court may summarily order the  
11 corporation to permit the member to inspect the material and  
12 to make copies or extracts. The court may order the  
13 corporation to furnish to the member a list of its members as  
14 of a specific date on condition that the member first pay to  
15 the corporation the reasonable cost of obtaining and  
16 furnishing the list and on other conditions as the court  
17 deems appropriate.

18           (2) If the member seeks to inspect the books and records  
19 of the corporation, other than its register or list of  
20 members, the member must first establish both of the  
21 following:

22               (i) That the member has complied with the provisions  
23 of this section respecting the form and manner of making  
24 demand for inspection of the document.

25               (ii) That the inspection sought is for a proper  
26 purpose.

27           (3) If the member seeks to inspect the share register or  
28 list of members of the corporation and the member has  
29 complied with the provisions of this subsection respecting  
30 the form and manner of making demand for inspection of the

documents, the burden of proof is on the corporation to establish that the inspection the member seeks is for an improper purpose. The court may, at its discretion, prescribe limitations or conditions with reference to the inspection or award other relief as the court may deem just and proper. The court may order books, documents and records, pertinent extracts or authenticated copies to be brought within this Commonwealth and kept in this Commonwealth upon terms and conditions as it prescribes.

Section 16. Audit.

(a) Procedure.--At the close of each fiscal year, a complete certified audit of the operations of the corporation shall be made by a qualified certified public accountant employed by the board of directors, a written report of which shall include the balance sheet, operating statement, commissions, salaries and other remunerations of directors, officers and employees and other proper information. The audit shall be submitted to the members at the next regular meeting. The annual audit of a corporation with annual gross sales of \$100,000 or less may be performed by an audit committee or three or more members of the corporation appointed by the board of directors; however, one of the three members must be a member of the board of directors. The members of the committee need not be certified public accountants or public accountants.

(b) Withdrawal of audit and improper audits.--A certified audit may not be withdrawn without approval of the board of directors. The board of directors may seek legal recourse if the audit is conducted improperly.

Section 17. Directors and officers.

(a) Directors.--



1           (1) The business of the corporation shall be managed by  
2           a board of not less than five directors, who shall be natural  
3           persons. At least a majority of the board shall be members.  
4           The first directors shall serve until the first annual  
5           meeting of the corporation, at which time their successors  
6           shall be elected by the members of the corporation.  
7           Thereafter, a director shall hold office for a term of not  
8           less than one year nor more than three years and until a  
9           successor is elected and qualified. In an election for  
10          directors, a member has the right to cast the number of votes  
11          equal to the number of directors to be elected, and the  
12          member may cast the whole number of votes for one director or  
13          may distribute them among several candidates. An election for  
14          a director shall be by secret ballot. A director may be  
15          elected to successive terms.

16          (2) Except as otherwise provided in the bylaws:

17               (i) A director shall be elected for a term of at  
18               least one year, except that the first directors shall  
19               serve only until the first annual meeting.

20               (ii) Vacancies in the board of directors, including  
21               vacancies resulting from an increase in the number of  
22               directors, shall be filled by a majority of the remaining  
23               members of the board, though less than a quorum. A person  
24               so elected shall be a director until a successor is  
25               elected by the members, who shall make such an election  
26               at the next annual meeting of the members or at a special  
27               meeting for that purpose.

28               (iii) The meetings of the board of directors may be  
29               held at a place determined by a majority of the  
30               directors.

1 (iv) A quorum for the transaction of business  
2 consists of a majority of the directors in office; and,  
3 of those present, at least a majority must be members of  
4 the corporation. The acts of a majority of the directors  
5 present at a meeting at which a quorum is present are the  
6 acts of the board of directors.

7 (v) The board of directors may, by resolution  
8 adopted by a majority of the board, delegate two or more  
9 of its number to constitute an executive committee,  
10 which, to the extent provided in the resolution, shall  
11 have and exercise the authority of the board of  
12 directors.

13 (vi) An action taken at a meeting of the directors  
14 or members of the executive committee may be taken  
15 without a meeting, if consent in writing setting forth  
16 the action taken is signed by all of the directors or all  
17 of the members of the executive committee, as the case  
18 may be, and shall be filed with the secretary of the  
19 corporation.

20 (vii) Each director shall be provided with an  
21 updated copy of the articles of the corporation along  
22 with proposed amendments.

23 (3) If the bylaws so provide, the directors of a  
24 corporation may be classified in respect to the time for  
25 which they shall hold office. In this case, each class shall  
26 be as nearly equal in number as possible; the term of office  
27 of at least one class shall expire in each year; and the  
28 members of a class shall not be elected for a shorter period  
29 than one year or for a longer period than three years. If, at  
30 a meeting, directors of more than one class are to be

1       elected, each class of directors to be elected shall be  
2       elected in a separate election.

3           (4) A director may be removed from office by the  
4       affirmative vote of not less than a majority of the members  
5       present and voting at a regular meeting or a special meeting  
6       called for that purpose. A director may be removed from  
7       office for cause by a vote of not less than a majority of the  
8       directors then in office, but this removal may be reversed by  
9       a vote by a majority of the members present and voting at a  
10      special meeting called for that purpose. The bylaws shall  
11      provide for the filing of charges of cause, the giving of  
12      notice thereof, an opportunity to be heard and the procedures  
13      under which a director may be removed.

14      (b) Officers.--

15           (1) The board shall elect a president, a secretary and a  
16      treasurer, and may elect one or more vice presidents, and  
17      other officers as authorized in the bylaws. Officers must be  
18      members. Any two of the offices of vice president, secretary  
19      and treasurer may be held by one person.

20           (2) An officer may be removed by the affirmative vote of  
21      a majority of the directors whenever, in their judgment, the  
22      best interest of the corporation will be served thereby.

23      Section 18. Patronage distributions.

24           (a) Procedure.--Net earnings of a corporation may be  
25      apportioned, distributed and paid periodically on the basis of  
26      patronage to those persons entitled to receive them, at a time  
27      and in a manner as the bylaws provide. Such distributions shall  
28      be designated as patronage allocations.

29           (b) Method of payment.--The apportionment, distribution and  
30      payment of net earnings required in subsection (a) may be in

1 cash or written notices of allocation issued by the corporation.

2 (c) Minimum transaction amount.--A corporation may provide  
3 in its bylaws the minimum amount of a single patronage  
4 transaction, which shall be taken into account for the purpose  
5 of participation in allocation and distribution of net earnings  
6 under this section.

7 (d) Periodic redemption.--The bylaws of a workers'  
8 cooperative corporation shall provide for periodic redemption of  
9 written notices of allocation.

10 (e) Interest.--The bylaws may provide for the corporation to  
11 pay or credit interest on the balance of each member's internal  
12 capital account.

13 (f) Termination redemption.--The articles of incorporation  
14 shall provide for the recall and redemption of the membership  
15 share upon the voluntary or involuntary termination of  
16 membership in the cooperative corporation. The price of the  
17 redemption shall be equal to the sum of the membership fee and  
18 any other capital paid in by the member, adjusted by the amount  
19 of interest accrued and by distributions of net earnings as  
20 provided in the bylaws. No redemption may be made which would  
21 render the corporation insolvent.

22 (g) Net earnings.--For purposes of this section, net  
23 earnings shall be computed in accordance with generally accepted  
24 accounting principles.

## 25 Section 19. Indemnity.

26 (a) Mandatory.--A corporation shall indemnify a person  
27 acting as a director, officer, employee or agent of the  
28 corporation or acting at the request of the corporation as a  
29 director, officer, employee or agent of another person against  
30 legal expenses, including attorney fees, reasonably incurred in

1 a civil or criminal action in which the person to be indemnified  
2 is successful.

3 (b) Discretionary.--A corporation may indemnify a person  
4 acting as a director, officer, employee or agent of the  
5 corporation or acting at the request of the corporation as a  
6 director, officer, employee or agent of another person against  
7 liability and legal expenses, including attorney fees,  
8 judgments, fines and settlements, reasonably incurred in a civil  
9 or criminal action if the person to be indemnified was  
10 unsuccessful but acted in good faith and in a manner that the  
11 person reasonably believed to be in or not opposed to the best  
12 interests of the corporation and, in a criminal action, had no  
13 reasonable cause to believe the conduct was unlawful. The  
14 adverse determination of an action does not, of itself, create a  
15 presumption that the person to be indemnified did not act in  
16 good faith; did not act in a manner that the person reasonably  
17 believed to be in or not opposed to the best interest of the  
18 corporation; or had reasonable cause to believe the conduct was  
19 unlawful.

20 (c) Interest of corporation.--This section applies even if  
21 the action is on behalf of or inures to the benefit of the  
22 corporation unless the liability for which indemnification is  
23 sought is based on negligence in the performance of a duty owed  
24 to the corporation.

25 Section 20. Unlawful dividends.

26 (a) Insolvency.--For shares of the corporation other than  
27 membership shares, the board of directors may declare and the  
28 corporation may pay dividends on its outstanding shares except  
29 when the corporation is insolvent or the payment would render  
30 the corporation insolvent. If such dividend is paid, the

1 directors under whose administration the payment was made,  
2 except those who shall have caused their dissent to be entered  
3 on the minutes of the meeting at which such action was  
4 authorized or those who, being absent at the time, have promptly  
5 filed their written objection with the secretary of the  
6 corporation upon learning of the action, shall be jointly and  
7 severally liable to the corporation in an amount equal to the  
8 amount of the unlawful dividend.

9 (b) Reliance on financial statements.--A director is not  
10 liable under this section if the director relied and acted in  
11 good faith upon financial statements of the corporation  
12 represented to be correct by the president of the corporation or  
13 by the officer having charge of the corporation's books of  
14 account or upon written reports issued by an independent public  
15 or certified public accountant which reports fairly purported to  
16 reflect the financial condition of the corporation.

17 (c) Liability to corporation.--If an unlawful dividend is  
18 paid, each stockholder is liable to the corporation in an amount  
19 equal to the amount of the unlawful dividend to the stockholder.  
20 An action to enforce this liability must be brought within two  
21 years from the date of the receipt of the dividend.

22 Section 21. Amendments of articles.

23 (a) Purpose and voting.--A corporation may amend its  
24 articles of incorporation for any purpose authorized by this  
25 act, including an increase in the amount of its authorized  
26 capital stock, by the affirmative vote of two-thirds of its  
27 members voting thereon at a general meeting or at the special  
28 meeting called for that purpose. No amendment affecting the  
29 priority or preferential rights of outstanding stock may be  
30 adopted until the consent of the holders of that stock is

1 obtained by a vote at a special meeting called for that purpose.  
2 In such a vote each stockholder whose rights are affected shall  
3 have only one vote per share, and the margin necessary for the  
4 adoption of the amendment is a majority of the outstanding  
5 shares in that class of stock unless a greater vote is required  
6 by the articles of incorporation. If an amendment affects the  
7 right of more than one class of stock, then the consent of each  
8 class of stockholder so affected shall be obtained by voting in  
9 the manner described in this subsection.

10 (b) Delivery and recordation.--Amendments to the articles of  
11 incorporation, signed by two authorized officers of the  
12 corporation, together with a required filing fee, shall be  
13 delivered to the department. If the department finds that the  
14 amendments to the articles comply with the law and that all the  
15 required fees have been paid, it shall approve the amendments to  
16 the articles of incorporation; and a copy of the amended  
17 articles shall be recorded in the Corporation Bureau of the  
18 Department of State. Upon approval of amendments to the  
19 articles, they shall become effective.

20 (c) Notice of vote.--Each member and, if required by the  
21 provisions of subsection (a), each stockholder, shall be  
22 notified by the corporation at least 15 days before a vote is  
23 taken to amend the articles of incorporation under subsection  
24 (a). Notification for proposed amendments to the articles of  
25 incorporation shall include a copy of the proposed amendment; a  
26 statement of its purpose and effect; and the time, date, place  
27 and manner in which the vote will be taken on the proposed  
28 amendment. Notice for all meetings provided for in this  
29 subsection need not be given to members and, if required by  
30 subsection (a), other stockholders if a written waiver of the

1 notice is executed before or after the meeting by each such  
2 individual and is filed with the records of the meeting.

3 (d) Notice of approval.--Whenever an amendment to the  
4 articles of incorporation is approved, the corporation shall  
5 notify each member within 30 days of the approval by sending to  
6 all of the members a copy of the approved amendment to the  
7 articles.

8 (e) Advertisement.--Before or after an amendment has been  
9 adopted by the shareholders, the corporation shall advertise its  
10 intention to file or the filing of amendments to the articles  
11 with the department in a manner similar to that prescribed in  
12 section 4(a). Advertisements may appear prior to or after the  
13 day upon which the articles of amendment are presented to the  
14 department and shall set forth briefly:

15 (1) The name and location of the registered office of  
16 the corporation.

17 (2) A statement that the amendments to the articles are  
18 to be or were filed under this act.

19 (3) The nature and character of the amendments.

20 (4) The time when the amendments to the articles are to  
21 be or were filed under this act.

## 22 Section 22. Bylaws.

23 (a) Adoption, amendment and repeal.--The corporation, before  
24 commencing business, shall adopt bylaws not inconsistent with  
25 law or its articles of incorporation. The bylaws may be amended  
26 in the manner provided by law, in the articles of incorporation  
27 and the bylaws. The power to amend or repeal the bylaws of a  
28 corporation is in the members only, except to the extent that  
29 the articles of incorporation require that both the members and  
30 the board of directors shall approve any such change. The



1 corporation shall notify each member of a proposed change in the  
2 bylaws by sending to each member at least 15 days prior to a  
3 vote on the proposed change, a copy of the proposed bylaw along  
4 with the time, date, place and manner of voting for the proposed  
5 changes. Whenever a proposed bylaw change is approved, the  
6 corporation shall mail each member a copy of the approved bylaw  
7 within 30 days of the approval.

8 (b) Content.--The bylaws may provide for the following  
9 matters:

10 (1) The time, place and manner of calling and conducting  
11 meetings of the members and the number of members that  
12 constitute a quorum, which shall be a majority unless  
13 otherwise provided for in the bylaws.

14 (2) The manner of voting and the conditions upon which  
15 members may vote at general or special meetings.

16 (3) Subject to provision in the articles of  
17 incorporation and in this act, the number, qualifications,  
18 eligibility requirements, manner of nomination, duties and  
19 terms of office of directors and officers; the time of their  
20 election; and mode and manner of giving notice of election.

21 (4) The time, place and manner for calling and holding  
22 meetings of the directors and executive committees and the  
23 number that constitutes a quorum.

24 (5) Rules consistent with law and the articles of  
25 incorporation for the management of the corporation; the  
26 making of contracts; the issuance, redemption and transfer of  
27 stock; the relative rights, duties, interests and preferences  
28 of members and stockholders; and the mode, manner and effect  
29 of termination of a member.

30 (6) Any other provisions deemed necessary or proper to

1 carry out the purposes of the corporation.

2 (7) Penalties for violations of the bylaws.

3 Section 23. Benefits bestowed on associations by compliance  
4 with this act.

5 A cooperative association now in existence in this  
6 Commonwealth, whether incorporated or unincorporated, shall be  
7 entitled to all the benefits of this act by complying with its  
8 provisions; may, by a vote of the majority of the members of the  
9 cooperative association taken according to its existing articles  
10 of association or bylaws, determine to avail itself of the  
11 provisions of this act and to take and assume a corporate name  
12 and the powers thereunder; and may, by a similar vote, transfer  
13 to the corporation so formed under this act all its property.  
14 Upon transfer of the property, the corporation to which the  
15 property is transferred shall take it in the same manner, to the  
16 same extent and with the same effect as the property was  
17 previously owned and held by the by the corporation so  
18 transferring the property, and may, in its corporate name, sue  
19 for and collect debts, subscriptions and other benefits  
20 belonging to the original association. A corporation so taking  
21 property shall take it subject to liens and trusts, both legal  
22 and equitable, to which the property was subject before transfer  
23 and shall be liable for all obligations of the previous  
24 association to the extent of the value of the property at the  
25 time of taking.

26 Section 24. Dissolution.

27 (a) General rule.--A corporation may dissolve and wind up;  
28 may merge or consolidate with other domestic workers'  
29 cooperative corporations; and may sell to, lease to or exchange  
30 with other domestic workers' cooperative corporations all or

1 substantially all of its property and assets. Such actions shall  
2 be taken in the manner provided in the act of May 5, 1933  
3 (P.L.364, No. 106), known as the Business Corporation Law,  
4 except as otherwise provided in this act. A workers' cooperative  
5 corporation which has not revoked its election to be governed by  
6 this act may not consolidate or merge with one or more  
7 corporations organized under any law other than this act. If a  
8 member objects to a corporation's merger or consolidation, the  
9 member may terminate membership in the corporation. The price of  
10 redemption of the member's interest shall be the amount in the  
11 member's individual capital account on terms and conditions as  
12 the law, the articles of incorporation and bylaws provide.

13 (b) Distribution of assets.--Upon dissolution, the assets of  
14 a corporation shall be distributed in accordance with the  
15 articles of incorporation or bylaws. The recipients of the  
16 distributed assets shall be limited to the following:

17 (1) Each person who is or was a member of the  
18 corporation or the person's estate on the basis of the ratio  
19 of the member's patronage to the total patronage of all  
20 members during the existence of the corporation.

21 (2) Holders of shares of stock in the corporation other  
22 than membership shares.

23 (3) Other corporations which are incorporated under this  
24 act or which meet the requirements of incorporation under  
25 this act.

26 (4) Charitable institutions in support of the  
27 cooperative movement.

28 (c) Security interests and indebtedness.--A mortgage, pledge  
29 or creation of a security interest is not a sale within the  
30 meaning of this section. Unless otherwise provided in the

1 articles of incorporation or bylaws, a corporation may create or  
2 increase its indebtedness in the manner, to the extent, for the  
3 purpose, upon terms and conditions and upon security as  
4 authorized by resolution adopted by its board of directors. In  
5 this case, no authorization or consent of the members is  
6 required.

7 Section 25. Conversion to a corporation governed by the  
8 Business Corporation Law.

9 (a) Amendment of articles.--A corporation may revoke its  
10 election to be governed by this act and elect to be governed by  
11 the act of May 5, 1933 (P.L.364, No.106), known as the Business  
12 Corporation Law, by filing an adopted amendment to its articles  
13 of incorporation with the department.

14 (b) Conversion of shares and accounts.--When a corporation  
15 revokes its election under subsection (a), the amendment to the  
16 articles of incorporation shall provide for the conversion of  
17 membership shares and internal capital accounts to securities or  
18 other property in a manner consistent with the Business  
19 Corporation Law.

20 Section 26. Exemption from tax on capital stock and  
21 indebtedness.

22 No State or local tax may be levied or placed upon a  
23 corporation's capital stock or upon bonds, certificates or other  
24 evidences of indebtedness issued by a corporation. A corporation  
25 is not required to file with the Secretary of Revenue or with  
26 any other State or local official the reports relative to such  
27 taxes as are required of corporations not exempt from payment of  
28 the taxes.

29 Section 27. Savings provisions.

30 (a) General rule.--In relation to any corporation existing

1 on the effective date of this act, the provisions of this act  
2 does not impair or affect an act done; offense committed; right  
3 accruing or accrued; or liability, penalty, forfeiture or  
4 punishment incurred prior to the time this act takes effect.

5 (b) Contracts.--This act does not impair or affect a  
6 contract entered into by a corporation prior to the effective  
7 date of this act.

#### 8 Section 28. Applicability.

9 (a) General rule.--This act applies to domestic corporations  
10 incorporated hereunder on and after the effective date of this  
11 act.

12 (b) Existing corporations.--This act applies to existing  
13 domestic corporations incorporated under or subject to any prior  
14 law of the Commonwealth concerning incorporation and regulation  
15 of corporations, whether cooperative or noncooperative, by the  
16 filing with the department of a certificate executed under the  
17 seal of the corporation, signed by two authorized officers of  
18 the corporation and setting forth:

19 (1) The name of the corporation.

20 (2) The statute by or under which it was created or  
21 formed.

22 (3) A statement that the members or stockholders of the  
23 corporation have elected, by a majority vote of the members  
24 or stockholders present at a meeting called for such purpose  
25 at which a quorum is present, to accept the provisions of  
26 this act for the government and regulation of the affairs of  
27 the corporation.

28 (c) Election by certain cooperative associations  
29 incorporated under prior law.--An association which was  
30 incorporated under the act of June 7, 1887 (P.L.365, No.252),

1 referred to as the Cooperative Association Act, prior to the  
2 effective date of this act and which does not file a certificate  
3 of election as described in subsection (b) shall be deemed to  
4 have elected to be governed by the provisions of the Cooperative  
5 Association Act effective prior to the effective date of this  
6 act and shall, for the duration of the association, be subject  
7 to such provisions unless the association elects otherwise.

8 Section 29. Effective date.

9 This act shall take effect in six months.