

February 19, 1969

SENATE FILE 270

Passed on File

Agriculture 2-19, Pass 3-12
See " 1-13, Pass 1-26

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Passed Senate, Date *1-12-70* Passed House, Date *1-29-70*

Vote: Ayes *57* Nays *0* Vote: Ayes *108* Nays *0*

Approved *2-5-70*

A BILL FOR

1 An Act relating to merger and consolidation of cooperative
2 associations.

3 *Be It Enacted by the General Assembly of the State of Iowa:*

4 Section 1. Chapter four hundred ninety-nine (499), Code
5 1966, is hereby amended by adding sections two (2) through
6 twelve (12), inclusive, of this Act.

7 Sec. 2. When used in this Act, unless the context other-
8 wise requires:

9 1. "Merger" means the uniting of two or more cooperative
10 associations into one cooperative association, in such manner
11 that one of the merging associations retains its corporate
12 existence and absorbs the others, which cease to exist as cor-
13 porate entities. "Merger" does not include the mere acquisi-
14 tion, by purchase or otherwise, of the assets of one cooper-
15 ative association by another.

1 2. "Consolidation" means the uniting of two or more co-
2 operative associations into one cooperative association, in
3 such manner that a new cooperative association is formed, and
4 the new cooperative association absorbs the others, which
5 cease to exist as separate entities.

6 3. "Surviving association" is the cooperative association
7 resulting from the merger of two or more cooperative associa-
8 tions.

9 4. "New association" is the cooperative association re-
10 sulting from the consolidation of two or more cooperative
11 associations.

12 Sec. 3. Any two or more cooperative associations may merge
13 into one cooperative association in the following manner:

14 The board of directors of each cooperative association
15 shall, by resolution adopted by a majority vote of all members
16 of each board, approve a plan of merger which shall set forth:

17 1. The names of the cooperative associations proposing to
18 merge and the name of the surviving association.

19 2. The terms and conditions of the proposed merger.

20 3. A statement of any changes in the articles of incorpor-
21 ation of the surviving association.

22 4. Other provisions deemed necessary or desirable.

23 Sec. 4. Any two or more cooperative associations may be
24 consolidated into a new cooperative association in the follow-
25 ing manner:

26 The board of directors of each cooperative association
27 shall, by resolution adopted by a majority vote of all members
28 of each board, approve a plan of consolidation setting forth:

29 1. The names of the cooperative associations proposing to
30 consolidate and the name of the new association.

31 2. The terms and conditions of the proposed consolidation.

32 3. With respect to the new association, all of the state-
33 ments required to be set forth in articles of incorporation
34 for cooperative associations.

35 4. Other provisions deemed necessary or desirable.

1 Sec. 5. The board of directors of each cooperative associ-
2 ation, upon approving a plan of merger or consolidation, shall,
3 by motion or resolution, direct that the plan be submitted to
4 a vote at a meeting of members, which may be either an annual
5 or special meeting. Written notice shall be given not less
6 than twenty days prior to the meeting, either personally or
7 by mail to each member and shareholder of record. The notice
8 shall state the time, place, and purpose of the meeting, and
9 a summary of the plan of merger or consolidation shall be in-
10 cluded in or enclosed with the notice.

11 At the meeting, a ballot of the members who are entitled to
12 vote in the affairs of the association shall be taken on the
13 proposed plan of merger or consolidation. The plan of merger
14 or consolidation shall be approved if two-thirds of the mem-
15 bers vote affirmatively on a ballot in which a majority of all
16 voting members participate. Voting may be by mail ballot not-
17 withstanding any contrary provision in the articles of incor-
18 poration or bylaws.

19 Sec. 6. If a member or shareholder of a cooperative assoc-
20 iation which is a party to a merger or consolidation files with
21 the cooperative association, prior to or at the meeting of mem-
22 bers at which the plan is submitted to a vote, a written objec-
23 tion to the plan of merger or consolidation, and does not vote
24 in favor of the plan, and such member or shareholder, within
25 twenty days after the merger or consolidation is approved by
26 the other members, makes written demand on the surviving or
27 new association for payment of the fair value of his interest
28 as of the day prior to the date on which the vote was taken
29 approving the merger or consolidation, the surviving or new
30 association shall pay to such member or shareholder, upon sur-
31 render of his certificate of membership or shares of stock,
32 the fair value of his interest. Any member or shareholder
33 failing to make demand within the twenty-day period shall be
34 conclusively presumed to have consented to the merger or con-
35 solidation and shall be bound by its terms.

1 In the event any dissenting member or shareholder shall
2 apply for membership in the surviving or new association,
3 before payment has been made for his membership or stock,
4 the dissenting member or shareholder shall be deemed to have
5 consented to the merger or consolidation and to have waived
6 all further rights as a dissenting member or shareholder.

7 Sec. 7. The fair value of the interest of a member or
8 shareholder shall include the issue price of his membership
9 or capital stock, his deferred patronage dividends, his por-
10 tion of patronage dividends not previously allocated and
11 available for allocation on the day preceding the vote on
12 merger or consolidation, deferred dividends on his common or
13 preferred stock, and his proportionate share based upon unpaid
14 deferred patronage dividends of any surplus and educational
15 fund reserve of the cooperative association. Payment shall be
16 made as follows:

17 1. The issue price of his membership or capital stock
18 shall be paid within ninety days from date of demand.

19 2. Deferred patronage dividends not otherwise paid in
20 cash, and however evidenced, shall be paid at the same time
21 and proportioned the same as the deferred patronage dividends
22 and current dividends of nondissenting members or share-
23 holders, but in any event within seven years from date of
24 demand.

25 3. At least twenty percent of his proportionate share in
26 the surplus and educational fund reserve shall be paid within
27 one year after date of merger or consolidation, and at least
28 twenty percent each year thereafter until fully paid.

29 Each dissenting member, promptly following the vote on
30 merger or consolidation, shall be furnished a balance sheet
31 of the cooperative association, a profit and loss statement
32 covering the period since the close of the last fiscal year,
33 and a list of his deferred dividends.

34 Sec. 8. Upon approval, articles of merger or articles of
35 consolidation shall be executed by each cooperative associa-

1 tion by its president or a vice-president and by its secretary
2 or an assistant secretary, and acknowledged by one of the offi-
3 cers of each cooperative association signing the articles, and
4 shall set forth:

- 5 1. The plan of merger or the plan of consolidation.
- 6 2. As to each cooperative association, the number of indi-
7 viduals or cooperative associations entitled to vote.
- 8 3. As to each cooperative association, the number of indi-
9 viduals or cooperative associations who voted for and against
10 the plan at the meeting called for that purpose.

11 The articles of merger or articles of consolidation shall
12 be delivered to the secretary of state for filing and record-
13 ing in his office, and shall be filed and recorded in the
14 office of the county recorder.

15 The secretary of state, upon the filing of articles of mer-
16 ger or articles of consolidation, shall issue a certificate of
17 merger or a certificate of consolidation, and send the certif-
18 icate to the surviving or new association, or to its represen-
19 tative.

20 Sec. 9. Upon the issuance of the certificate of merger or
21 the certificate of consolidation by the secretary of state, the
22 merger or consolidation shall become effective.

23 When a merger or consolidation has become effective:

24 1. The several cooperative associations which are parties
25 to the plan of merger or consolidation shall be a single
26 cooperative association, which, in the case of a merger, shall
27 be that cooperative association designated in the plan of mer-
28 ger as the surviving association, and, in the case of consoli-
29 dation, shall be that cooperative association designated in
30 the plan of consolidation as the new association.

31 2. The separate existence of all cooperative associations
32 which are parties to the plan of merger or consolidation, ex -
33 cept the surviving or new association, shall cease.

34 3. The surviving or new association shall have all the
35 rights, privileges, immunities, and powers and shall be subject

1 to all the duties and liabilities of a cooperative association
2 organized under the laws of this state.

3 4. The surviving or new association shall possess all the
4 rights, privileges, immunities, and franchises, public as well
5 as private, of each of the merging or consolidating coopera-
6 tive associations.

7 5. All property, real, personal, and mixed, and all debts
8 due on whatever account, including subscriptions to shares,
9 and all other choses in action, and all and every other inter-
10 est, of or belonging to or due to each of the cooperative as-
11 sociations merged or consolidated, shall be transferred to and
12 vested in the surviving or new association without further act
13 or deed. The title to any real estate, or any interest in real
14 estate vested in any of the cooperative associations merged or
15 consolidated, shall not revert or be in any way impaired by
16 reason of the merger or consolidation.

17 6. A surviving or new association shall be responsible and
18 liable for all obligations and liabilities of each of the co-
19 operative associations merged or consolidated.

20 7. Any claim existing or action or proceeding pending by
21 or against any of the cooperative associations merged or con-
22 solidated may be prosecuted as if the merger or consolidation
23 had not taken place, or the surviving or new association may
24 be substituted for the merged or consolidated association.
25 Neither the rights of creditors nor any liens upon the property
26 of any cooperative association shall be impaired by a merger
27 or consolidation.

28 8. In the case of a merger, the articles of incorporation
29 of the surviving association shall be deemed to be amended to
30 the extent that changes in its articles of incorporation are
31 stated in the plan of merger. In the case of a consolidation,
32 the statements set forth in the articles of consolidation which
33 are required or permitted to be set forth in the articles of
34 incorporation of cooperative associations organized under the
35 laws of the state of Iowa shall be deemed to be the original

1 articles of incorporation of the new cooperative association.

2 9. The aggregate amount of the net assets of the merging
3 or consolidating cooperative associations which was available
4 for the payment of dividends immediately prior to the merger
5 or consolidation, to the extent that the amount is not trans-
6 ferred to stated capital by the issuance of shares or other-
7 wise, shall continue to be available for the payment of divi-
8 dends by the surviving or new association.

9 Sec. 10. One or more foreign cooperative associations and
10 one or more domestic cooperative associations may be merged or
11 consolidated in the following manner, if such merger or con-
12 solidation is permitted by the laws of the state under which
13 each foreign cooperative association is organized:

14 1. Each domestic cooperative association shall comply with
15 the provisions of this Act with respect to the merger or con-
16 solidation of domestic cooperative associations, and each for-
17 eign cooperative association shall comply with the applicable
18 provisions of the laws of the state under which it is organ-
19 ized.

20 2. If the surviving or new association is to be governed
21 by the laws of any state other than this state, it shall comply
22 with the provisions of the laws of this state with respect to
23 the qualification of foreign cooperative associations if it
24 is to transact business in this state, and in every case it
25 shall file with the secretary of state of this state:

26 a. An agreement that it may be served with process in this
27 state in any proceeding for the enforcement of any obligation
28 of any domestic cooperative association which is a party to the
29 merger or consolidation, and in any proceeding for the enforce-
30 ment of the rights of a dissenting shareholder of any such do-
31 mestic cooperative association, against the surviving or new
32 association.

33 b. An irrevocable appointment of the secretary of state of
34 this state as its agent to accept service of process in any
35 proceeding.

1 c. An agreement that it will promptly pay to the dissenting
2 shareholders of any domestic cooperative association the amount
3 to which they are entitled under the provisions of this Act with
4 respect to the rights of dissenters.

5 The effect of such merger or consolidation shall be the same
6 as the effect of the merger or consolidation of domestic co-
7 operative associations, if the surviving or new association is
8 to be governed by the laws of this state. If the surviving or
9 new association is to be governed by the laws of any other
10 state, the effect of merger or consolidation shall be the same
11 as in the case of the merger or consolidation of domestic co-
12 operative associations, except as the laws of the other state
13 otherwise provide.

14 Sec. 11. At any time prior to the filing of the articles
15 of merger or consolidation, the merger or consolidation may be
16 abandoned pursuant to provisions set forth in the plan of mer-
17 ger or consolidation.

18 Sec. 12. The provisions of this Act shall also apply to co-
19 operative associations organized under chapters four hundred
20 ninety-seven (497) and four hundred ninety-eight (498) of the
21 Code.

EXPLANATION OF SENATE FILE 270

This bill provides a method for two or more cooperative associations to merge or consolidate. In the case of merger, one of the merging associations absorbs the others. In the case of consolidation, the consolidating associations form a new association. Provision is made for a proposed merger or consolidation to be submitted to a vote of members, and for protection of the rights of dissenting members. Merged or consolidated associations assume all assets and liabilities of the former associations. The bill also provides a method for foreign and domestic associations to merge or consolidate.