

FEB 9 2009  
Agriculture

HOUSE FILE 226  
BY DRAKE and MERTZ

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the establishment of a form of business  
2 association referred to as a cooperative, and providing for  
3 fees and tax credits, providing penalties, and providing  
4 effective dates.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

HF 226

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

DIVISION I  
ENACTMENT OF IOWA COOPERATIVE ASSOCIATIONS ACT  
SUBCHAPTER 1  
GENERAL PROVISIONS

Section 1. NEW SECTION. 501A.101 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Cooperative Associations Act".

Sec. 2. NEW SECTION. 501A.102 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Address" means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which shall not be a post office box.

2. "Alternative ballot" means a method of voting for a candidate or issue prescribed by the board in advance of the vote, and may include voting by electronic, telephonic, internet, or other means that reasonably allow members the opportunity to vote.

3. "Articles" means the articles of organization of a cooperative as originally filed or subsequently amended as provided in this chapter.

4. "Association" means a business entity on a cooperative plan and organized under the laws of this state or another state or that is chartered to conduct business under the laws of another state.

5. "Board" means the board of directors of a cooperative.

6. "Business entity" means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative or cooperative association, partnership, limited partnership, limited liability company, limited liability

1 partnership, investment company, joint stock company, joint  
2 stock association, or trust, including but not limited to a  
3 business trust.

4 7. "Cooperative" means a business association organized  
5 under this chapter.

6 8. "Crop" means a plant used for food, animal feed, fiber,  
7 or oil, if the plant is classified as a forage or cereal  
8 plant, including but not limited to alfalfa, barley,  
9 buckwheat, corn, flax, forage, millet, oats, popcorn, rye,  
10 sorghum, soybeans, sunflowers, wheat, and grasses used for  
11 forage or silage.

12 9. "Domestic business entity" means a business entity  
13 organized under the laws of this state, including but not  
14 limited to a corporation organized pursuant to chapter 490; a  
15 nonprofit corporation organized under chapter 504A; a limited  
16 liability company as defined in section 490A.102; a  
17 partnership or limited liability partnership as provided in  
18 chapter 486A, 487, or 488; or cooperative association or other  
19 cooperative organized under this chapter or chapter 497, 498,  
20 499, or 501.

21 10. "Domestic cooperative" means a cooperative association  
22 or other cooperative organized under this chapter or chapter  
23 497, 498, 499, or 501.

24 11. "Foreign business entity" means a business entity that  
25 is not a domestic business entity.

26 12. "Foreign cooperative" means a foreign business entity  
27 organized to conduct business consistent with this chapter or  
28 chapter 497, 498, 499, or 501.

29 13. "Iowa limited liability company" means a limited  
30 liability company governed by chapter 490A.

31 14. "Livestock" means the same as defined in section  
32 717.1.

33 15. "Member" means a person or entity reflected on the  
34 books of a cooperative as the owner of governance rights of a  
35 membership interest of the cooperative and includes patron and

1 nonpatron members.

2 16. "Member control agreement" means an instrument which  
3 controls the investment or governance of nonpatron members,  
4 which may be executed by the board and one or more nonpatron  
5 members and which may provide for their individual or  
6 collective rights to elect directors or to participate in the  
7 distribution or allocation of profits or losses.

8 17. "Membership interest" means a member's interest in a  
9 cooperative consisting of a member's financial rights, a  
10 member's right to assign financial rights, a member's  
11 governance rights, and a member's right to assign governance  
12 rights. "Membership interest" includes patron membership  
13 interests and nonpatron membership interests.

14 18. "Members' meeting" means a regular or special members'  
15 meeting.

16 19. "Nonpatron member" means a member who holds a  
17 nonpatron membership interest.

18 20. "Nonpatron membership interest" means a membership  
19 interest that does not require the holder to conduct patronage  
20 for or with the cooperative to receive financial rights or  
21 distributions.

22 21. "Patron" means a person or entity who conducts  
23 patronage with the cooperative, regardless of whether the  
24 person is a member.

25 22. "Patronage" means business, transactions, or services  
26 done for or with the cooperative as defined by the  
27 cooperative.

28 23. "Patron member" means a member holding a patron  
29 membership interest.

30 24. "Patron membership interest" means the membership  
31 interest requiring the holder to conduct patronage for or with  
32 the cooperative, as specified by the cooperative to receive  
33 financial rights or distributions.

34 25. "Secretary" means the secretary of state.

35 26. "Traditional cooperative" means a cooperative or

1 cooperative association organized under chapter 497, 498, 499,  
2 or 501.

3 Sec. 3. NEW SECTION. 501A.103 REQUIREMENTS FOR DOCUMENTS  
4 -- FILING AND SIGNATURES.

5 A document is signed when a person has written on a  
6 document. A person authorized to do so by this chapter, the  
7 articles or bylaws, or by a resolution approved by the  
8 directors or the members must sign the document. A signature  
9 on a document may be a facsimile affixed, engraved, printed,  
10 placed, stamped with indelible ink, transmitted by facsimile  
11 or electronically, or in any other manner reproduced on the  
12 document.

13 SUBCHAPTER 2

14 FILING

15 PART A

16 GENERAL REQUIREMENTS

17 Sec. 4. NEW SECTION. 501A.201 GENERAL FILING  
18 REQUIREMENTS.

19 1. A document must satisfy the requirements of this  
20 section, and of any other section that adds to or varies these  
21 requirements, to be entitled to filing.

22 2. The document must be one that this chapter requires or  
23 permits to be filed with the secretary.

24 3. The document must contain the information required by  
25 this chapter. The document may contain other information as  
26 well.

27 4. The document must be typewritten or printed. The  
28 typewritten or printed portion shall be in black ink.  
29 Manually signed photocopies, or other reproduced copies,  
30 including facsimiles and other electronically or computer-  
31 generated copies of typewritten or printed documents may be  
32 filed.

33 5. The document must be in the English language. A  
34 cooperative's name need not be in English if written in  
35 English letters or Arabic or Roman numerals. The articles,

1 duly authenticated by the official having custody of the  
2 applicable records in the state or country under whose law the  
3 cooperative is formed, which are required of cooperatives,  
4 need not be in English if accompanied by a reasonably  
5 authenticated English translation.

6 6. The document must be executed by one of the following  
7 persons:

8 a. An officer of the cooperative, or if no officer has  
9 been selected, by any patron member of the cooperative.

10 b. If the cooperative has not been organized, by the  
11 organizers of the cooperative as provided in subchapter 5.

12 c. If the cooperative is in the hands of a receiver,  
13 trustee, or other court-appointed fiduciary, that fiduciary.

14 7. The person executing the document shall sign the  
15 document and state beneath or opposite the person's signature,  
16 the person's name, and the capacity in which the person signs.

17 8. If, pursuant to any provision of this chapter, the  
18 secretary has prescribed a mandatory form for the document,  
19 the document shall be in or on the prescribed form.

20 9. The document must be delivered to the secretary for  
21 filing and must be accompanied by the correct filing fee as  
22 provided in this subchapter.

23 Sec. 5. NEW SECTION. 501A.202 FILING DUTY OF SECRETARY  
24 OF STATE.

25 1. If a document delivered to the secretary for filing  
26 satisfies the requirements of section 501A.201, the secretary  
27 shall file it and issue any necessary certificate.

28 2. The secretary files a document by stamping or otherwise  
29 endorsing "filed", together with the secretary's name and  
30 official title and the date and time of receipt, on both the  
31 document and the receipt for the filing fee, and recording the  
32 document in the records of the secretary. After filing a  
33 document, and except as provided in section 501A.204, the  
34 secretary shall deliver the document, with the filing fee  
35 receipt, or acknowledgment of receipt if no fee is required,

1 attached to the domestic cooperative or foreign cooperative or  
2 its representative.

3 3. If the secretary refuses to file a document, the  
4 secretary shall return it to the domestic cooperative or  
5 foreign cooperative or its representative within ten days  
6 after the document was received by the secretary, together  
7 with a brief, written explanation of the reason for the  
8 refusal.

9 4. The secretary's duty to file documents under this  
10 section is ministerial. Filing or refusing to file a document  
11 does not do any of the following:

12 a. Affect the validity or invalidity of the document in  
13 whole or in part.

14 b. Relate to the correctness or incorrectness of  
15 information contained in the document.

16 c. Create a presumption that the document is valid or  
17 invalid or that information contained in the document is  
18 correct or incorrect.

19 Sec. 6. NEW SECTION. 501A.203 EFFECTIVE TIME AND DATE OF  
20 DOCUMENTS.

21 1. Except as provided in subsection 2 and section  
22 501A.204, subsection 3, a document accepted for filing is  
23 effective at the later of the following times:

24 a. At the time of filing on the date the document is  
25 filed, as evidenced by the secretary's date and time  
26 endorsement on the original document.

27 b. At the time specified in the document as its effective  
28 time on the date the document is filed.

29 2. A document may specify a delayed effective time and  
30 date, and if the document does so, the document becomes  
31 effective at the time and date specified. If a delayed  
32 effective date but no time is specified, the document is  
33 effective at the close of business on that date. A delayed  
34 effective date for a document shall not be later than the  
35 ninetieth day after the date the document is filed.

1     Sec. 7. NEW SECTION. 501A.204 CORRECTING FILED  
2 DOCUMENTS.

3     1. A domestic cooperative or foreign cooperative may  
4 correct a document filed by the secretary if the document  
5 satisfies any of the following requirements:

- 6     a. Contains an incorrect statement.
- 7     b. Was defectively executed, attested, sealed, verified,  
8 or acknowledged.

9     2. A document is corrected by complying with all of the  
10 following:

11     a. By preparing articles of correction that satisfy all of  
12 the following requirements:

13         (1) Describe the document, including its filing date, or  
14 attach a copy of the document to the articles.

15         (2) Specify the incorrect statement and the reason the  
16 statement is incorrect or the manner in which the execution  
17 was defective.

18         (3) Correct the incorrect statement or defective  
19 execution.

20     b. By delivering the articles of correction to the  
21 secretary for filing.

22     3. Articles of correction are effective on the effective  
23 date of the document the articles correct, except as to  
24 persons relying on the uncorrected document and adversely  
25 affected by the correction. As to those persons, articles of  
26 correction are effective when filed.

27     Sec. 8. NEW SECTION. 501A.205 FEES.

28     1. The secretary shall collect the following fees when  
29 documents described in this subsection are delivered to the  
30 secretary's office for filing:

- 31     a. Articles of organization ..... \$50
- 32     b. Application for use of indistinguishable name ..... \$10
- 33     c. Application for reserved name ..... \$10
- 34     d. Notice of transfer of reserved name ..... \$10
- 35     e. Application for registered name per month

- 1 or part thereof ..... \$ 2
- 2 f. Application for renewal of registered name ..... \$20
- 3 g. Statement of change of registered agent or
- 4 registered office or both ..... No fee
- 5 h. Agent's statement of change of registered
- 6 office for each affected cooperative ..... No fee
- 7 i. Agent's statement of resignation ..... No fee
- 8 j. Amendment of articles of organization ..... \$ 50
- 9 k. Restatement of articles of organization with
- 10 amendment of articles ..... \$ 50
- 11 l. Articles of merger ..... \$ 50
- 12 m. Articles of dissolution ..... \$ 5
- 13 n. Articles of revocation of dissolution ..... \$ 5
- 14 o. Certificate of administrative dissolution ..... No fee
- 15 p. Application for reinstatement following
- 16 administrative dissolution ..... \$ 5
- 17 q. Certificate of reinstatement ..... No fee
- 18 r. Certificate of judicial dissolution ..... No fee
- 19 s. Application for certificate of authority ..... \$100
- 20 t. Application for amended certificate of authority .... \$100
- 21 u. Application for certificate of cancellation ..... \$ 10
- 22 v. Certificate of revocation of authority to transact
- 23 business ..... No fee
- 24 w. Articles of correction ..... \$ 5
- 25 x. Application for certificate of existence or
- 26 authorization ..... \$ 5
- 27 y. Any other document required or permitted to
- 28 be filed by this chapter ..... \$ 5
- 29 2. The secretary shall collect a fee of five dollars each
- 30 time process is served on the secretary under this chapter.
- 31 The party to a proceeding causing service of process is
- 32 entitled to recover this fee as costs if the party prevails in
- 33 the proceeding.
- 34 3. The secretary shall collect the following fees for
- 35 copying and certifying the copy of any filed document relating

1 to a domestic cooperative or foreign cooperative:

2 a. One dollar a page for copying.

3 b. Five dollars for the certificate.

4 Sec. 9. NEW SECTION. 501A.206 FORMS.

5 1. The secretary may prescribe and furnish on request  
6 forms, including but not limited to the following:

7 a. An application for a certificate of existence.

8 b. A foreign cooperative's application for a certificate  
9 of authority to transact business in this state.

10 c. A foreign cooperative's application for a certificate  
11 of withdrawal.

12 If the secretary so requires, use of these listed forms  
13 prescribed by the secretary is mandatory.

14 2. The secretary may prescribe and furnish on request  
15 forms, for other documents required or permitted to be filed  
16 by this chapter but their use is not mandatory.

17 Sec. 10. NEW SECTION. 501A.207 APPEAL FROM SECRETARY OF  
18 STATE'S REFUSAL TO FILE DOCUMENT.

19 1. If the secretary refuses to file a document delivered  
20 to the secretary's office for filing, the domestic cooperative  
21 or foreign cooperative may appeal the refusal, within thirty  
22 days after the return of the document, to the district court  
23 for the county in which the cooperative's principal office or,  
24 if none in this state, where its registered office is or will  
25 be located. The appeal is commenced by petitioning the court  
26 to compel filing the document and by attaching to the petition  
27 the document and the secretary's explanation of the refusal to  
28 file.

29 2. The court may summarily order the secretary to file the  
30 document or take other action the court considers appropriate.

31 3. The court's final decision may be appealed as in other  
32 civil proceedings.

33 Sec. 11. NEW SECTION. 501A.208 EVIDENTIARY EFFECT OF  
34 COPY OF FILED DOCUMENT.

35 A certificate attached to a copy of a document filed by the

1 secretary, bearing the secretary's signature, which may be in  
2 facsimile, and the seal of the secretary, is conclusive  
3 evidence that the original document is on file with the  
4 secretary.

5 Sec. 12. NEW SECTION. 501A.209 CERTIFICATE OF EXISTENCE.

6 1. Anyone may apply to the secretary to furnish a  
7 certificate of existence for a domestic cooperative or a  
8 certificate of authorization for a foreign cooperative.

9 2. A certificate of existence or certificate of  
10 authorization must set forth all of the following:

11 a. The domestic cooperative's name or the foreign  
12 cooperative's name used in this state.

13 b. That one of the following applies:

14 (1) If it is a domestic cooperative, that it is duly  
15 organized under the law of this state, the date of its  
16 organization, and the period of its duration.

17 (2) If it is a foreign cooperative, that it is authorized  
18 to transact business in this state.

19 c. That all fees required by this subchapter have been  
20 paid.

21 d. That articles of dissolution have not been filed.

22 e. Other facts of record in the office of the secretary  
23 that may be requested by the applicant.

24 3. Subject to any qualification stated in the certificate,  
25 a certificate of existence or certificate of authorization  
26 issued by the secretary may be relied upon as conclusive  
27 evidence that the domestic cooperative or foreign cooperative  
28 is in existence or is authorized to transact business in this  
29 state.

30 Sec. 13. NEW SECTION. 501A.210 PENALTY FOR SIGNING FALSE  
31 DOCUMENT.

32 1. A person commits an offense if that person signs a  
33 document the person knows is false in any material respect  
34 with intent that the document be delivered to the secretary  
35 for filing.

1 2. An offense under this section is a serious misdemeanor  
2 punishable by a fine of not to exceed one thousand dollars.

3 Sec. 14. NEW SECTION. 501A.211 SECRETARY OF STATE --  
4 POWERS.

5 The secretary has the power reasonably necessary to perform  
6 the duties required of the secretary by this chapter.

7

PART B

8

FOREIGN COOPERATIVES

9 Sec. 15. NEW SECTION. 501A.221 CERTIFICATE OF AUTHORITY.

10 A foreign cooperative may apply for a certificate of  
11 authority to transact business in this state by delivering an  
12 application to the secretary for filing. An application for  
13 registration as a foreign cooperative shall set forth all of  
14 the following:

15 1. The name of the foreign cooperative and, if different,  
16 the name under which the foreign cooperative proposes to  
17 register and transact business in this state.

18 2. The state or other jurisdiction in which the foreign  
19 cooperative was formed and the date of its formation.

20 3. The street address of the registered office of the  
21 foreign cooperative in this state, the name of the registered  
22 agent at the office, and a statement that the registered  
23 office and registered agent comply with the requirements of  
24 section 501A.401.

25 4. The address of the office required to be maintained in  
26 the state or other jurisdiction of its formation by the law of  
27 that state or jurisdiction or, if not so required, of the  
28 principal office of the foreign cooperative.

29 5. A copy of the articles of organization filed in the  
30 foreign cooperative's state or other jurisdiction of formation  
31 authorizing the foreign cooperative to do business in that  
32 state or other jurisdiction, duly authenticated by the proper  
33 officer of the state or other jurisdiction of its formation.

34 Sec. 16. NEW SECTION. 501A.222 CANCELLATION OF  
35 CERTIFICATE OF AUTHORITY.

1 1. A foreign cooperative may cancel its certificate of  
2 authority by delivering to the secretary for filing a  
3 certificate of cancellation which shall set forth all of the  
4 following:

5 a. The name of the foreign cooperative and the name of the  
6 state or other jurisdiction under whose jurisdiction the  
7 foreign cooperative was formed.

8 b. That the foreign cooperative is not transacting  
9 business in this state and that the foreign cooperative  
10 surrenders its registration to transact business in this  
11 state.

12 c. That the foreign cooperative revokes the authority of  
13 its registered agent to accept service on its behalf and  
14 appoints the secretary as its agent for service of process in  
15 any proceeding based on a cause of action arising during the  
16 time the foreign cooperative was authorized to transact  
17 business in this state.

18 d. A mailing address to which the secretary may mail a  
19 copy of any process served on the secretary under paragraph  
20 "c".

21 e. A commitment to notify the secretary in the future of  
22 any change in the mailing address of the foreign cooperative.

23 2. The certificate of registration shall be canceled upon  
24 the filing of the certificate of cancellation by the  
25 secretary.

26 SUBCHAPTER 3

27 NAMES

28 Sec. 17. NEW SECTION. 501A.301 NAME.

29 1. A cooperative name must contain the word "cooperative",  
30 "coop", or the abbreviation "CP".

31 2. Except as authorized by subsections 3 and 4, a  
32 cooperative name must be distinguishable upon the records of  
33 the secretary from all of the following:

34 a. The name of a domestic cooperative, limited liability  
35 company, limited partnership, or corporation organized under

1 the laws of this state or registered as a foreign cooperative,  
2 foreign limited liability company, foreign limited  
3 partnership, or foreign corporation in this state.

4 b. A name reserved in the manner provided under the laws  
5 of this state.

6 c. The fictitious name adopted by a foreign cooperative,  
7 foreign limited liability company, foreign limited  
8 partnership, or foreign corporation authorized to transact  
9 business in this state because its real name is unavailable.

10 d. The corporate name of a nonprofit corporation  
11 incorporated or authorized to transact business in this state.

12 3. A cooperative may apply to the secretary for  
13 authorization to use a name that is not distinguishable upon  
14 the secretary's records from one or more of the names  
15 described in subsection 2. The secretary shall authorize use  
16 of the name applied for if one of the following conditions  
17 applies:

18 a. The other entity consents to the use in writing and  
19 submits an undertaking in a form satisfactory to the secretary  
20 to change the entity's name to a name that is distinguishable  
21 upon the records of the secretary from the name of the  
22 applying cooperative.

23 b. The applicant delivers to the secretary a certified  
24 copy of the final judgment of a court of competent  
25 jurisdiction establishing the applicant's right to use the  
26 name applied for in this state.

27 4. A cooperative may use the name, including the  
28 fictitious name, of another business entity that is used in  
29 this state if the other business entity is formed under the  
30 laws of this state or is authorized to transact business in  
31 this state and the proposed user cooperative meets one of the  
32 following conditions:

33 a. Has merged with the other business entity.

34 b. Has been formed by reorganization of the other business  
35 entity.

1 c. Has acquired all or substantially all of the assets,  
2 including the name, of the other business entity.

3 5. This chapter does not control the use of fictitious  
4 names; however, if a cooperative uses a fictitious name in  
5 this state, the cooperative shall deliver to the secretary for  
6 filing a certified copy of the resolution of the cooperative  
7 adopting the fictitious name.

8 Sec. 18. NEW SECTION. 501A.302 RESERVED NAME.

9 1. A person may reserve the exclusive use of a cooperative  
10 name, including a fictitious name for a foreign cooperative  
11 whose cooperative name is not available, by delivering an  
12 application to the secretary for filing. The application must  
13 set forth the name and address of the applicant and the name  
14 proposed to be reserved. If the secretary finds that the  
15 cooperative name applied for is available, the secretary shall  
16 reserve the name for the applicant's exclusive use for a  
17 nonrenewable one-hundred-twenty-day period.

18 2. The owner of a reserved cooperative name may transfer  
19 the reservation to another person by delivering to the  
20 secretary a signed notice of the transfer that states the name  
21 and address of the transferee.

22 SUBCHAPTER 4

23 REGISTERED OFFICE AND AGENT

24 Sec. 19. NEW SECTION. 501A.401 REGISTERED OFFICE AND  
25 REGISTERED AGENT.

26 A cooperative must continuously maintain in this state each  
27 of the following:

28 1. A registered office that may be the same as any of its  
29 places of business.

30 2. A registered agent who may be any of the following:

31 a. An individual who is a resident of this state and whose  
32 business office is identical with the registered office.

33 b. A cooperative, domestic corporation, domestic limited  
34 liability company, or not-for-profit domestic corporation  
35 whose business office is identical with the registered office.

1 c. A foreign cooperative, foreign corporation, foreign  
2 limited liability company, or not-for-profit foreign  
3 corporation authorized to transact business in this state  
4 whose business office is identical with the registered office.

5 Sec. 20. NEW SECTION. 501A.402 CHANGE OF REGISTERED  
6 OFFICE OR REGISTERED AGENT.

7 1. A cooperative may change its registered office or  
8 registered agent by delivering to the secretary for filing a  
9 statement of change that sets forth the following:

10 a. The name of the domestic cooperative or foreign  
11 cooperative.

12 b. If the current registered office is to be changed, the  
13 street address of the new registered office.

14 c. If the current registered agent is to be changed, the  
15 name of the new registered agent and the new agent's written  
16 consent either on the statement or attached to the statement,  
17 to the appointment.

18 d. That after the change or changes are made, the street  
19 address of its registered office and the business office of  
20 its registered agent will be identical.

21 2. A statement of change shall forthwith be filed in the  
22 office of the secretary by a cooperative whenever its  
23 registered agent dies, resigns, or ceases to satisfy the  
24 requirements of section 501A.401.

25 3. If a registered agent changes the registered agent's  
26 business address to another place, the registered agent may  
27 change the business address and the address of the registered  
28 agent by filing a statement as required in subsection 1 for  
29 each cooperative, or a single statement for all cooperatives  
30 named in the notice, except that the statement need be signed  
31 only by the registered agent or agents and need not be  
32 responsive to subsection 1, paragraph "c", and must recite  
33 that a copy of the statement has been mailed to each  
34 cooperative named in the notice.

35 4. The change of address of a registered office or the

1 change of registered agent becomes effective upon the filing  
2 of such statement by the secretary.

3 Sec. 21. NEW SECTION. 501A.403 RESIGNATION OF REGISTERED  
4 AGENT -- DISCONTINUANCE OF REGISTERED OFFICE -- STATEMENT.

5 1. A registered agent may resign the agent's agency  
6 appointment by signing and delivering to the secretary for  
7 filing an original statement of resignation. The statement  
8 may include a statement that the registered office is also  
9 discontinued. The registered agent shall send a copy of the  
10 statement of resignation to the registered office, if not  
11 discontinued, and to the cooperative at its principal office.  
12 The agent shall certify to the secretary that the copy has  
13 been sent to the cooperative, including the date the copy was  
14 sent.

15 2. The agency appointment is terminated, and the  
16 registered office discontinued if so provided, on the date on  
17 which the statement is filed by the secretary.

18 Sec. 22. NEW SECTION. 501A.404 SERVICE ON DOMESTIC  
19 COOPERATIVES.

20 1. A domestic cooperative's registered agent is the  
21 cooperative's agent for service of process, notice, or demand  
22 required or permitted by law to be served on the cooperative.

23 2. If a cooperative has no registered agent, or the agent  
24 cannot with reasonable diligence be served, the cooperative  
25 may be served by certified or restricted certified mail  
26 addressed to the cooperative at its principal office. Service  
27 is perfected under this subsection at the earliest of any of  
28 the following:

29 a. The date the cooperative receives the mail.

30 b. The date shown on the return receipt for the restricted  
31 certified mail, if signed on behalf of the cooperative.

32 c. Five days after its deposit in the United States mail,  
33 as evidenced by the postmark, if mailed postpaid and correctly  
34 addressed.

35 3. This section does not prescribe the only means, or

1 necessarily the required means, of serving a domestic  
2 cooperative or foreign cooperative.

3 Sec. 23. NEW SECTION. 501A.405 SERVICE ON FOREIGN  
4 COOPERATIVE.

5 1. The registered agent of a foreign cooperative  
6 authorized to transact business in this state is the foreign  
7 cooperative's agent for service of process, notice, or demand  
8 required or permitted by law to be served on the foreign  
9 cooperative.

10 2. A foreign cooperative may be served by certified mail  
11 or restricted certified mail addressed to the foreign  
12 cooperative at its principal office shown in its application  
13 for a certificate of authority if the foreign cooperative  
14 meets any of the following conditions:

15 a. Has no registered agent or its registered agent cannot  
16 with reasonable diligence be served.

17 b. Has withdrawn from transacting business in this state.

18 c. Has had its certificate of authority revoked.

19 3. Service is perfected under subsection 2 at the earliest  
20 of any of the following:

21 a. The date the foreign cooperative receives the mail.

22 b. The date shown on the return receipt for the restricted  
23 certified mail, if signed on behalf of the foreign  
24 cooperative.

25 c. Five days after its deposit in the United States mail,  
26 as evidenced by the postmark, if mailed postpaid and correctly  
27 addressed.

28 4. A foreign cooperative may also be served in any other  
29 manner permitted by law.

30 SUBCHAPTER 5

31 ORGANIZATION

32 Sec. 24. NEW SECTION. 501A.501 ORGANIZATIONAL PURPOSE.

33 A cooperative may be formed and organized for any lawful  
34 purpose for the benefit of its members, including but not  
35 limited to any of the following purposes:

1 1. To store or market agricultural commodities, including  
2 crops and livestock.

3 2. To market, process, or otherwise change the form or  
4 marketability of agricultural commodities. The cooperative  
5 may provide for the manufacturing or processing of those  
6 commodities into products.

7 3. To accomplish other purposes that are necessary or  
8 convenient to facilitate the production or marketing of  
9 agricultural commodities or agricultural products by patron  
10 members, other patrons, and other persons, and for other  
11 purposes that are related to the business of the cooperative.

12 4. To provide products, supplies, and services to its  
13 patron members, other patrons, and others.

14 5. For any other purpose that a cooperative is authorized  
15 by law under chapter 499 or 501.

16 Sec. 25. NEW SECTION. 501A.502 ORGANIZERS.

17 1. QUALIFICATION. A cooperative may be organized by one  
18 or more organizers who shall be adult natural persons, and who  
19 may act for themselves as individuals or as the agents of  
20 other entities. The organizers forming the cooperative need  
21 not be members of the cooperative.

22 2. ROLE OF ORGANIZERS. If the first board of directors is  
23 not named in the articles of organization, the organizers may  
24 elect the first board or may act as directors with all of the  
25 powers, rights, duties, and liabilities of directors, until  
26 directors are elected or until a contribution is accepted,  
27 whichever occurs first.

28 3. MEETING. After the filing of articles of organization,  
29 the organizers or the directors named in the articles of  
30 organization shall either hold an organizational meeting at  
31 the call of a majority of the organizers or of the directors  
32 named in the articles, or take written action for the purposes  
33 of transacting business and taking actions necessary or  
34 appropriate to complete the organization of the cooperative,  
35 including but not limited to all of the following:

- 1 a. Amending the articles.
- 2 b. Electing directors.
- 3 c. Adopting bylaws.
- 4 d. Authorizing or ratifying the purchase, lease, or other
- 5 acquisition of suitable space, furniture, furnishings,
- 6 supplies, or materials.
- 7 e. Adopting a fiscal year.
- 8 f. Contracting to receive and accept contributions.
- 9 g. Making appropriate tax elections.

10 If a meeting is held, the person or persons calling the  
11 meeting shall give at least three days' notice of the meeting  
12 to each organizer or director named, stating the date, time,  
13 and place of the meeting. Organizers and directors may waive  
14 notice of an organizational meeting in the same manner that a  
15 director may waive notice of meetings of the board.

16 Sec. 26. NEW SECTION. 501A.503 ARTICLES OF ORGANIZATION.

17 1. a. The articles of organization for the cooperative  
18 shall include all of the following:

- 19 (1) The name of the cooperative.
- 20 (2) The purpose of the cooperative.
- 21 (3) The name and address of each organizer.
- 22 (4) The period of duration for the cooperative, if the
- 23 duration is not to be perpetual.

24 b. The articles may contain any other lawful provision.

25 2. EFFECT OF FILING. When the articles of organization or  
26 an application for a certificate of authority has been filed  
27 pursuant to subchapter 2, the designation of the cooperative's  
28 registered office and agent under subchapter 4 has been filed  
29 with the secretary and the required fee has been paid to the  
30 secretary under section 501A.205, all of the following shall  
31 be presumed:

- 32 a. All conditions precedent that are required to be
- 33 performed by the organizers have been complied with.
- 34 b. The organization of the cooperative has been organized
- 35 under the laws of this state as a separate legal entity.

1 c. The secretary shall issue a certificate of organization  
2 to the cooperative.

3 Sec. 27. NEW SECTION. 501A.504 AMENDMENT OF ARTICLES.

4 1. a. The articles of organization of a cooperative shall  
5 be amended only as follows:

6 (1) The board, by majority vote, must pass a resolution  
7 stating the text of the proposed amendment. The text of the  
8 proposed amendment and an attached mail or alternative ballot,  
9 if the board has provided for a mail or alternative ballot in  
10 the resolution or alternative method approved by the board and  
11 stated in the resolution, shall be mailed or otherwise  
12 distributed with a regular or special meeting notice to each  
13 member. The notice shall designate the time and place of the  
14 meeting for the proposed amendment to be considered and voted  
15 on.

16 (2) If a quorum of the members is registered as being  
17 present or represented by alternative vote at the meeting, the  
18 proposed amendment is adopted if any of the following occurs:

19 (a) If approved by a majority of the votes cast.

20 (b) For a cooperative with articles or bylaws requiring  
21 more than majority approval or other conditions for approval,  
22 the amendment is approved by a proportion of the votes cast or  
23 a number of total members as required by the articles or  
24 bylaws and the conditions for approval in the articles or  
25 bylaws have been satisfied.

26 b. After an amendment has been adopted by the members, the  
27 amendment must be signed by the chairperson, vice chairperson,  
28 records officer, or assistant records officer and a copy of  
29 the amendment filed in the office of the secretary.

30 2. CERTIFIED STATEMENT.

31 a. The board shall prepare a certified statement affirming  
32 that all of the following are true:

33 (1) The vote and meeting of the board adopting a  
34 resolution of the proposed amendment.

35 (2) The notice given to members of the meeting at which

1 the amendment was adopted.

2 (3) The quorum registered at the meeting.

3 (4) The vote cast adopting the amendment.

4 b. The certified statement shall be signed by the  
5 chairperson, vice chairperson, records officer, or financial  
6 officer and filed with the records of the cooperative.

7 3. AMENDMENT BY DIRECTORS. A majority of directors may  
8 amend the articles if the cooperative does not have any  
9 members with voting rights.

10 4. FILING. An amendment of the articles shall be filed  
11 with the secretary as required in section 501A.503. The  
12 amendment is effective as provided in subchapter 2.

13 Sec. 28. NEW SECTION. 501A.505 EXISTENCE.

14 1. COMMENCEMENT. The existence of a cooperative shall  
15 commence on or after the filing of articles of organization as  
16 provided in section 501A.503.

17 2. DURATION. A cooperative shall have a perpetual  
18 duration unless the cooperative provides for a limited period  
19 of duration in the articles or the cooperative is dissolved as  
20 provided in subchapter 12.

21 Sec. 29. NEW SECTION. 501A.506 BYLAWS.

22 1. REQUIRED. A cooperative shall have bylaws governing  
23 the cooperative's business affairs, structure, the  
24 qualifications, classification, rights and obligations of  
25 members, and the classification, allocations, and  
26 distributions of membership interests, which are not otherwise  
27 provided in the articles or by this chapter.

28 2. CONTENTS.

29 a. If not stated in the articles, a cooperative's bylaws  
30 must state all of the following:

31 (1) The purpose of the cooperative.

32 (2) The capital structure of the cooperative to the extent  
33 not stated in the articles, including a statement of the  
34 classes and relative rights, preferences, and restrictions  
35 granted to or imposed upon each class of member interests, the

1 rights to share in profits or distributions of the  
2 cooperative, and the authority to issue membership interests,  
3 which may be designated to be determined by the board.

4 (3) A provision designating the voting and governance  
5 rights, to the extent not stated in the articles, including  
6 which membership interests have voting power and any  
7 limitations or restrictions on the voting power, which shall  
8 be in accordance with the provisions of this chapter.

9 (4) A statement that patron membership interests with  
10 voting power shall be restricted to one vote for each member  
11 regardless of the amount of patron membership interests held  
12 in the affairs of the cooperative or a statement describing  
13 the allocation of voting power allocated as prescribed in this  
14 chapter.

15 (5) A statement that membership interests held by a member  
16 are transferable only with the approval of the board or as  
17 provided in the bylaws.

18 (6) If nonpatron membership interests are authorized, all  
19 of the following:

20 (a) A statement as to how profits and losses will be  
21 allocated and cash will be distributed between patron  
22 membership interests collectively and nonpatron membership  
23 interests collectively to the extent not stated in the  
24 articles.

25 (b) A statement that net income allocated to a patron  
26 membership interest as determined by the board in excess of  
27 dividends and additions to reserves shall be distributed on  
28 the basis of patronage.

29 (c) A statement that the records of the cooperative shall  
30 include patron membership interests and, if authorized,  
31 nonpatron membership interests, which may be further described  
32 in the bylaws of any classes and in the reserves.

33 b. The bylaws may contain any provision relating to the  
34 management or regulation of the affairs of the cooperative  
35 that are not inconsistent with law or the articles, and shall

1 include all of the following:

2 (1) The number of directors and the qualifications, manner  
3 of election, powers, duties, and compensation, if any, of  
4 directors.

5 (2) The qualifications of members and any limitations on  
6 their number.

7 (3) The manner of admission, withdrawal, suspension, and  
8 expulsion of members.

9 (4) Generally, the governance rights, financial rights,  
10 assignability of governance and financial rights, and other  
11 rights, privileges, and obligations of members and their  
12 membership interests, which may be further described in member  
13 control agreements.

14 (5) Any provisions required by the articles to ~~be in the~~  
15 bylaws.

16 3. ADOPTION. ~~\_\_\_\_\_~~

17 a. Bylaws shall be adopted before any distributions to  
18 members, but if the articles or bylaws provide that rights of  
19 contributors to a class of membership interest will be  
20 determined in the bylaws, the bylaws must be adopted before  
21 the acceptance of any contributions to that class.

22 b. Subject to subsections 4, 5, and 6, the bylaws of a  
23 cooperative may be adopted or amended by the directors, or the  
24 members may adopt or amend bylaws at a regular or special  
25 members' meeting if all of the following apply:

26 (1) The notice of the regular or special meeting contains  
27 a statement that the bylaws or restated bylaws will be voted  
28 upon and copies are included with the notice, or copies are  
29 available upon request from the cooperative and a summary  
30 statement of the proposed bylaws or amendment is included with  
31 the notice.

32 (2) A quorum is registered as being present or represented  
33 by mail or alternative voting method if the mail or  
34 alternative voting method is authorized by the board.

35 (3) The bylaws or amendment is approved by a majority vote

1 cast, or for a cooperative with articles or bylaws requiring  
2 more than majority approval or other conditions for approval,  
3 the bylaws or amendment is approved by a proportion of the  
4 vote cast or a number of the total members as required by the  
5 articles or bylaws and the conditions for approval in the  
6 articles or bylaws have been satisfied.

7 c. Until the next annual or special members' meeting, the  
8 majority of directors may adopt and amend bylaws for the  
9 cooperative that are consistent with subsections 4, 5, and 6,  
10 which may be further amended or repealed by the members at an  
11 annual or special members' meeting.

12 4. AMENDMENT OF BYLAWS BY BOARD OR MEMBERS.

13 a. The board may amend the bylaws at any time to add,  
14 change, or delete a provision, unless any of the following  
15 applies:

16 (1) This chapter, the articles, or the bylaws reserve the  
17 power exclusively to the members in whole or in part.

18 (2) A particular bylaw expressly prohibits the board from  
19 doing so.

20 b. Any amendment of the bylaws adopted by the board must  
21 be distributed to the members no later than ten days after  
22 adoption and the notice of the annual meeting of the members  
23 must contain a notice and summary or the actual amendments to  
24 the bylaws adopted by the board.

25 c. The members may amend the bylaws even though the bylaws  
26 may also be amended by the board.

27 5. BYLAW CHANGING QUORUM OR VOTING REQUIREMENT FOR  
28 MEMBERS.

29 a. (1) The members may amend the bylaws to fix a greater  
30 quorum or voting requirement for members, or voting groups of  
31 members, than is required under this chapter.

32 (2) An amendment to the bylaws to add, change, or delete a  
33 greater quorum or voting requirement for members shall meet  
34 the same quorum requirement and be adopted by the same vote  
35 and voting groups required to take action under the quorum and

1 voting requirements then in effect or proposed to be adopted,  
2 whichever is greater.

3 b. A bylaw that fixes a greater quorum or voting  
4 requirement for members under paragraph "a" shall not be  
5 adopted and shall not be amended by the board.

6 6. BYLAW CHANGING QUORUM OR VOTING REQUIREMENT FOR  
7 DIRECTORS.

8 a. A bylaw that fixes a greater quorum or voting  
9 requirement for the board may be amended by any of the  
10 following methods:

11 (1) If adopted by the members, only by the members.

12 (2) If adopted by the board, either by the members or by  
13 the board.

14 b. A bylaw adopted or amended by the members that fixes a  
15 greater quorum or voting requirement for the board may provide  
16 that the bylaw may be amended only by a specified vote of  
17 either the members or the board, but if the bylaw is to be  
18 amended by a specified vote of the members, the bylaw must be  
19 adopted by the same specified vote of the members.

20 c. Action by the board under paragraph "a", subparagraph  
21 (2), to adopt or amend a bylaw that changes the quorum or  
22 voting requirement for the board shall meet the same quorum  
23 requirement and be adopted by the same vote required to take  
24 action under the quorum and voting requirement then in effect  
25 or proposed to be adopted, whichever is greater.

26 7. EMERGENCY BYLAWS.

27 a. Unless otherwise provided in the articles or bylaws,  
28 the board may adopt bylaws to be effective only in an  
29 emergency as defined in paragraph "d". The emergency bylaws,  
30 which are subject to amendment or repeal by the members, may  
31 include all provisions necessary for managing the cooperative  
32 during the emergency, including any of the following:

33 (1) Procedures for calling a meeting of the board.

34 (2) Quorum requirements for the meeting.

35 (3) Designation of additional or substitute directors.

1 b. All provisions of the regular bylaws consistent with  
2 the emergency bylaws shall remain in effect during the  
3 emergency. The emergency bylaws shall not be effective after  
4 the emergency ends.

5 c. All of the following shall apply to action taken in  
6 good faith in accordance with the emergency bylaws:

7 (1) The action binds the cooperative.

8 (2) The action shall not be the basis for imposition of  
9 liability on any director, officer, employee, or agent of the  
10 cooperative on the grounds that the action was not authorized  
11 cooperative action.

12 d. An emergency exists for the purposes of this section,  
13 if a quorum of the directors cannot readily be obtained  
14 because of some catastrophic event.

15 Sec. 30. NEW SECTION. 501A.507 COOPERATIVE RECORDS.

16 1. PERMANENT RECORDS REQUIRED TO BE KEPT. A cooperative  
17 shall keep as permanent records minutes of all meetings of its  
18 members and of the board, a record of all actions taken by the  
19 members or the board without a meeting by a written unanimous  
20 consent in lieu of a meeting, and a record of all waivers of  
21 notices of meetings of the members and of the board.

22 2. ACCOUNTING RECORDS. A cooperative shall maintain  
23 appropriate accounting records.

24 3. FORMAT. A cooperative shall maintain its records in  
25 written form or in another form capable of conversion into  
26 written form within a reasonable time.

27 4. COPIES. A cooperative shall keep a copy of each of the  
28 following records at its principal office:

29 a. Its articles and other governing instruments.

30 b. Its bylaws or other similar instruments.

31 c. A record of the names and addresses of its members, in  
32 a form that allows preparation of an alphabetical list of  
33 members with each member's address.

34 d. The minutes of members' meetings, and records of all  
35 actions taken by members without a meeting by unanimous

1 written consent in lieu of a meeting, for the past three  
2 years.

3 e. All written communications within the past three years  
4 to members as a group or to any class of members as a group.

5 f. A list of the names and business addresses of its  
6 current board members and officers.

7 g. All financial statements prepared for periods ending  
8 during the last fiscal year.

9 5. Except as otherwise limited by this chapter, the board  
10 of a cooperative shall have discretion to determine what  
11 records are appropriate for the purposes of the cooperative,  
12 the length of time records are to be retained, and policies  
13 relating to the confidentiality, disclosure, inspection, and  
14 copying of the records of the cooperative.

15 SUBCHAPTER 6

16 POWERS AND AUTHORITIES

17 Sec. 31. NEW SECTION. 501A.601 POWERS.

18 1. GENERALLY.

19 a. In addition to other powers, a cooperative as an agent  
20 or otherwise may do any of the following:

21 (1) Perform every act necessary or proper to the conduct  
22 of the cooperative's business or the accomplishment of the  
23 purposes of the cooperative.

24 (2) Enjoy other rights, powers, or privileges granted by  
25 the laws of this state to other cooperatives, except those  
26 that are inconsistent with the express provisions of this  
27 chapter.

28 (3) Have the powers provided in section 501A.501 and in  
29 this section.

30 b. This section does not give a cooperative the power or  
31 authority to exercise the powers of a credit union under  
32 chapter 533, a bank under chapter 524, or a savings and loan  
33 association under chapter 534.

34 2. DEALING IN PRODUCTS. A cooperative may buy, sell, or  
35 deal in its own commodities or products or those of another

1 person, including but not limited to those of its members,  
2 patrons, or nonmembers; another cooperative organized under  
3 this chapter or another cooperative association organized  
4 under other law including a traditional cooperative, or  
5 members or patrons of such cooperatives or cooperative  
6 associations. A cooperative may negotiate the price at which  
7 its commodities products may be sold.

8 3. CONTRACTS WITH MEMBERS. A cooperative may enter into  
9 or become a party to a contract or agreement for the  
10 cooperative or for the cooperative's members or patrons or  
11 between the cooperative and its members or patrons.

12 4. HOLDING AND TRANSACTIONS OF REAL AND PERSONAL PROPERTY.

13 a. A cooperative may purchase and hold, lease, mortgage,  
14 encumber, sell, exchange, and convey as a legal entity real,  
15 personal, and intellectual property, including real estate,  
16 buildings, personal property, patents, and copyrights as the  
17 business of the cooperative may require, including but not  
18 limited to the sale or other disposition of assets required by  
19 the business of the cooperative as determined by the board.

20 b. A cooperative may take, receive, and hold real or  
21 personal property, including the principal and interest of  
22 money or other negotiable instruments and rights in a  
23 contract, in trust for any purpose not inconsistent with the  
24 purposes of the cooperative in its articles or bylaws. The  
25 cooperative may exercise fiduciary powers in relation to  
26 taking, receiving, and holding the real or personal property.  
27 However, a cooperative's fiduciary powers do not include trust  
28 powers or trust services exercised for its members as provided  
29 in section 633.63 or chapter 524.

30 5. BUILDINGS. A cooperative may erect buildings or other  
31 structures or facilities on the cooperative's owned or leased  
32 property or on a right-of-way legally acquired by the  
33 cooperative.

34 6. DEBT INSTRUMENTS.

35 a. A cooperative may issue bonds, debentures, or other

1 evidence of indebtedness, except as provided in subsection 1,  
2 paragraph "b". The cooperative shall not issue bonds,  
3 debentures, or other evidence of indebtedness to a  
4 nonaccredited member, unless prior to issuance the cooperative  
5 provides the member with a written disclosure statement which  
6 includes a conspicuous notice that moneys are not insured or  
7 guaranteed by an agency or instrumentality of the United  
8 States government, and that the investment may lose value.

9     b. A cooperative may borrow money, may secure any of its  
10 obligations by mortgage of or creation of a security interest  
11 in or other encumbrances or assignment of all or any of its  
12 property, franchises, or income, and may issue guarantees for  
13 any legal purpose.

14     c. A cooperative may form special purpose business  
15 entities to secure assets of the cooperative.

16     7. ADVANCES TO PATRONS. A cooperative may make advances  
17 to its members or patrons on products delivered by the members  
18 or patrons to the cooperative.

19     8. DEPOSITS. A cooperative may accept donations or  
20 deposits of money or real or personal property from other  
21 cooperatives or associations from which the cooperative is  
22 constituted.

23     9. BORROWING, INVESTMENT, AND PAYMENT TERMS. A  
24 cooperative may borrow money from its members, or cooperatives  
25 or associations from which the cooperative is constituted,  
26 with security that the cooperative considers sufficient. A  
27 cooperative may invest or reinvest its moneys. A cooperative  
28 may extend payment terms to its customers on the sale of the  
29 cooperative's goods or services. An extension of payment  
30 terms by the cooperative shall not be secured by real  
31 property.

32     10. PENSIONS AND BENEFITS. A cooperative may pay  
33 pensions, retirement allowances, and compensation for past  
34 services to and for the benefit of, and establish, maintain,  
35 continue, and carry out, wholly or partially at the expense of

1 the cooperative, employee, or incentive benefit plans, trusts,  
2 and provisions to or for the benefit of any or all of its and  
3 its related organizations' officers, managers, directors,  
4 governors, employees, and agents; and in the case of a related  
5 organization that is a cooperative, members who provide  
6 services to the cooperative, and any of their families,  
7 dependents, and beneficiaries. A cooperative may indemnify  
8 and purchase and maintain insurance for and on behalf of a  
9 fiduciary of any of these employee benefit and incentive  
10 plans, trusts, and provisions.

11 11. INSURANCE. A cooperative may purchase and maintain  
12 insurance on behalf of a person who is or was a director,  
13 officer, employee, or agent of the cooperative and in which  
14 the cooperative has an insurable interest. The cooperative  
15 may also purchase and maintain insurance on the life of a  
16 member for the purpose of acquiring at the death of the member  
17 any or all membership interests in the cooperative owned by  
18 the member.

19 12. OWNERSHIP INTERESTS IN OTHER ENTITIES.

20 a. A cooperative may purchase, acquire, hold, or dispose  
21 of the ownership interests of another business entity or  
22 organize business entities whether organized under the laws of  
23 this state or another state or the United States and assume  
24 all rights, interests, privileges, responsibilities, and  
25 obligations arising out of the ownership interests, including  
26 a business entity organized as any of the following:

27 (1) As a federation of associations.

28 (2) For the purpose of forming a district, state, or  
29 national marketing sales or service agency.

30 (3) For the purpose of acquiring marketing facilities at  
31 terminal or other markets in this state or other states.

32 b. A cooperative may purchase, own, and hold ownership  
33 interests, including stock and other equity interests,  
34 memberships, interests in nonstock capital, and evidences of  
35 indebtedness of any domestic business entity or foreign

1 business entity.

2 13. FIDUCIARY POWERS. A cooperative may exercise any and  
3 all fiduciary powers in relations with members, cooperatives,  
4 or business entities from which the cooperative is  
5 constituted. However, these fiduciary powers do not include  
6 trust powers or trust services for its members as provided in  
7 section 633.63 or chapter 524.

8 Sec. 32. NEW SECTION. 501A.602 EMERGENCY POWERS.

9 1. In anticipation of or during an emergency as defined in  
10 this section, the board may do any of the following:

11 a. Modify lines of succession to accommodate the  
12 incapacity of any director, officer, employee, or agent.

13 b. Relocate the principal office, designate alternative  
14 principal offices or regional offices, or authorize the  
15 officers to do so.

16 2. During an emergency, unless emergency bylaws provide  
17 otherwise, all of the following apply:

18 a. A notice of a meeting of the board need be given only  
19 to those directors to whom it is practicable to reach and may  
20 be given in any practicable manner, including by publication  
21 or radio.

22 b. One or more officers of the cooperative present at a  
23 meeting of the board may be deemed to be directors for the  
24 meeting, in order of rank and within the same rank in order of  
25 seniority, as necessary to achieve a quorum.

26 3. All of the following apply to cooperative action taken  
27 in good faith during an emergency under this section to  
28 further the ordinary business affairs of the cooperative:

29 a. The action binds the cooperative.

30 b. The action shall not be the basis for the imposition of  
31 liability on any director, officer, employee, or agent of the  
32 cooperative on the grounds that the action was not an  
33 authorized cooperative action.

34 4. An emergency exists for purposes of this section if a  
35 quorum of the directors cannot readily be obtained because of

1 a catastrophic event.

2 Sec. 33. NEW SECTION. 501A.603 AGRICULTURAL COMMODITIES  
3 AND PRODUCTS -- MARKETING CONTRACTS.

4 1. AUTHORITY. A cooperative and its patron member or  
5 patron may make and execute a marketing contract, requiring  
6 the patron member or patron to sell a specified portion of the  
7 patron member's or patron's agricultural commodity or product  
8 or specified commodity or product produced from a certain area  
9 exclusively to or through the cooperative or facility  
10 established by the cooperative.

11 2. TITLE TO COMMODITIES OR PRODUCTS. If a sale is  
12 contracted to the cooperative, the sale shall transfer title  
13 to the commodity or product absolutely, except for a recorded  
14 lien or security interest against the agricultural commodity  
15 or product of the patron member or patron as provided in  
16 article 9 of chapter 554, and provisions in Title XIV,  
17 subtitle 3, governing agricultural liens, and liens granted  
18 against farm products under federal law, to the cooperative on  
19 delivery of the commodity or product or at another specified  
20 time if expressly provided in the contract. The contract may  
21 allow the cooperative to sell or resell the commodity or  
22 product of its patron member or patron with or without taking  
23 title to the commodity or product, and pay the resale price to  
24 the patron member or patron, after deducting all necessary  
25 selling, overhead, and other costs and expenses, including  
26 other proper reserves and interest.

27 3. TERM OF CONTRACT. A single term of a marketing  
28 contract shall not exceed ten years, but a marketing contract  
29 may be made self-renewing for periods not exceeding five years  
30 each, subject to the right of either party to terminate by  
31 giving written notice of the termination during a period of  
32 the current term as specified in the contract.

33 4. DAMAGES FOR BREACH OF CONTRACT. The cooperative's  
34 bylaws or marketing contract in which the cooperative is a  
35 party may set a specific sum as liquidated damages to be paid

1 by the patron member or patron to the cooperative for breach  
2 of any provision of the marketing contract regarding the sale  
3 or delivery or withholding of a commodity or product and may  
4 provide that the patron member or patron shall pay the costs,  
5 premiums for bonds, expenses, and fees if an action is brought  
6 on the contract by the cooperative. The remedies for breach  
7 of contract are valid and enforceable in the courts of this  
8 state. The provisions shall be enforced as liquidated damages  
9 and are not considered a penalty.

10 5. INJUNCTION AGAINST BREACH OF CONTRACT. If there is a  
11 breach or threatened breach of a marketing contract by a  
12 patron member or patron, the cooperative is entitled to an  
13 injunction to prevent the further breach of the contract and  
14 to a decree of specific performance of the contract. Pending  
15 the adjudication of the action after filing a complaint  
16 showing the breach or threatened breach and filing a  
17 sufficient bond, the cooperative is entitled to a temporary  
18 restraining order and preliminary injunction against the  
19 patron member or patron.

20 6. PENALTIES FOR CONTRACT INTERFERENCE AND FALSE REPORTS.  
21 A person who knowingly induces or attempts to induce any  
22 member or patron of a cooperative organized under this chapter  
23 to breach a marketing contract with the cooperative, or who  
24 maliciously and knowingly spreads false reports about the  
25 cooperative's finances or management, is guilty of a simple  
26 misdemeanor.

27 7. CIVIL DAMAGES FOR CONTRACT INTERFERENCE AND FALSE  
28 REPORTS. In addition to the penalty provided in subsection 6,  
29 the person may be liable to the cooperative for civil damages  
30 for any violation of that subsection. Each violation shall  
31 constitute a separate offense.

32 SUBCHAPTER 7

33 DIRECTORS AND OFFICERS

34 Sec. 34. NEW SECTION. 501A.701 BOARD GOVERNS  
35 COOPERATIVE.

1 A cooperative shall be governed by its board of directors,  
2 which shall take all action for and on behalf of the  
3 cooperative, except those actions reserved or granted to  
4 members. Board action shall be by the affirmative vote of a  
5 majority of the directors voting at a duly called meeting  
6 unless a greater majority is required by the articles or  
7 bylaws. A director individually or collectively with other  
8 directors does not have authority to act for or on behalf of  
9 the cooperative unless authorized by the board. A director  
10 may advocate interests of members or member groups to the  
11 board, but the fiduciary duty of each director is to represent  
12 the best interests of the cooperative and all members  
13 collectively.

14 Sec. 35. NEW SECTION. 501A.702 NUMBER OF DIRECTORS.

15 The board shall not have less than five directors, except  
16 that a cooperative with fifty or fewer members may have three  
17 or more directors as prescribed in the cooperative's articles  
18 or bylaws.

19 Sec. 36. NEW SECTION. 501A.703 ELECTION OF DIRECTORS.

20 1. FIRST BOARD. The organizers shall elect and obtain the  
21 acknowledgment of the first board to serve until directors are  
22 elected by members. Until election by members, the first  
23 board shall appoint directors to fill any vacancies.

24 2. GENERALLY.

25 a. Directors shall be elected for the term, at the time,  
26 and in the manner provided in this section and the bylaws.

27 b. A majority of the directors shall be members and a  
28 majority of the directors shall be elected exclusively by the  
29 members holding patron membership interests unless otherwise  
30 provided in the articles or bylaws.

31 c. The voting authority of the directors may be allocated  
32 according to equity classifications or allocation units of the  
33 cooperative. If the cooperative authorizes nonpatron  
34 membership interests, one of the following must apply:

35 (1) At least one-half of the voting power on matters of

1 the cooperative that are not specific to equity  
2 classifications or allocation units shall be allocated to the  
3 directors elected by members holding patron membership  
4 interests.

5 (2) The directors elected by the members holding patron  
6 membership interests shall have at least an equal voting power  
7 or shall not have a minority voting power on general matters  
8 of the cooperative that are not specific to equity  
9 classifications or allocation units.

10 d. A director holds office for the term the director was  
11 elected and until a successor is elected and has qualified, or  
12 until the earlier death, resignation, removal, or  
13 disqualification of the director.

14 e. The expiration of a director's term with or without  
15 election of a qualified successor does not make the prior or  
16 subsequent acts of the director or the board void or voidable.

17 f. Subject to any limitation in the articles or bylaws,  
18 the board may set the compensation of directors.

19 g. Directors may be divided into or designated and elected  
20 by class or other distinction as provided in the articles or  
21 bylaws.

22 h. A director may resign by giving written notice to the  
23 chairperson of the board or the board. The resignation is  
24 effective without acceptance when the notice is given to the  
25 chairperson of the board or the board unless a later effective  
26 time is specified in the notice.

27 3. ELECTION AT REGULAR MEETING. Directors shall be  
28 elected at the regular members' meeting for the terms of  
29 office prescribed in the bylaws. Except for directors elected  
30 at district meetings or special meetings to fill a vacancy,  
31 all directors shall be elected at the regular members'  
32 meeting. There shall be no cumulative voting for directors  
33 except as provided in this chapter and the articles or bylaws.

34 4. DISTRICT OR LOCAL UNIT ELECTION OF DIRECTORS. For a  
35 cooperative with districts or other units, members may elect

1 directors on a district or unit basis if provided in the  
2 bylaws. The directors may be nominated or elected at district  
3 meetings if provided in the bylaws. Directors who are  
4 nominated at district meetings shall be elected at the annual  
5 regular members' meeting by vote of the entire membership,  
6 unless the bylaws provide that directors who are nominated at  
7 district meetings are to be elected by vote of the members of  
8 the district, at the district meeting, or the annual regular  
9 members' meeting.

10 5. VOTE BY MAIL OR ALTERNATIVE BALLOT. The following  
11 shall apply to voting by mail or alternative ballot voting:

12 a. A member shall not vote for a director other than by  
13 being present at a meeting or by mail ballot or alternative  
14 ballot authorized by the board.

15 b. The ballot shall be in a form prescribed by the board.

16 c. The member shall mark the ballot for the candidate  
17 chosen and mail the ballot to the cooperative in a sealed  
18 plain envelope inside another envelope bearing the member's  
19 name, or shall vote designating the candidate chosen by  
20 alternative ballot in the manner prescribed by the board.

21 d. If the ballot of the member is received by the  
22 cooperative on or before the date of the regular members'  
23 meeting or as otherwise prescribed for alternative ballots,  
24 the ballot shall be accepted and counted as the vote of the  
25 absent member.

26 6. BUSINESS ENTITY MEMBERS MAY NOMINATE PERSONS FOR  
27 DIRECTOR. If a member of a cooperative is not a natural  
28 person, and the bylaws do not provide otherwise, the member  
29 may appoint or elect one or more natural persons to be  
30 eligible for election as a director.

31 7. TERM. A director holds office for the term the  
32 director was elected and until a successor is elected and has  
33 qualified, or the earlier death, resignation, removal, or  
34 disqualification of the director.

35 8. ACTS NOT VOID OR VOIDABLE. The expiration of a

1 director's term with or without the election of a qualified  
2 successor does not make prior or subsequent acts of the  
3 director void or voidable.

4 9. COMPENSATION. Subject to any limitation in the  
5 articles or bylaws, the board may fix the compensation of the  
6 directors.

7 10. CLASSIFICATION. Directors may be divided into classes  
8 as provided in the articles or bylaws.

9 Sec. 37. NEW SECTION. 501A.704 FILLING VACANCIES.

10 1. PATRON DIRECTORS. If a patron member director's  
11 position becomes vacant or a new director position is created  
12 for a director that was or is to be elected by patron members,  
13 the board, in consultation with the directors elected by  
14 patron members, shall appoint a patron member of the  
15 cooperative to fill the director's position until the next  
16 regular or special members' meeting. If there are no  
17 directors elected by patron members on the board at the time  
18 of the vacancy, a special patron members' meeting shall be  
19 called to fill the patron member director vacancy.

20 2. NONPATRON DIRECTORS. If the vacating director was not  
21 elected by the patron members or a new director position is  
22 created, unless otherwise provided in the articles or bylaws,  
23 the board shall appoint a director to fill the vacant position  
24 by majority vote of the remaining or then serving directors  
25 even though less than a quorum. At the next regular or  
26 special members' meeting, the members or patron members shall  
27 elect a director to fill the unexpired term of the vacant  
28 director's position.

29 Sec. 38. NEW SECTION. 501A.705 REMOVAL OF DIRECTORS.

30 1. MODIFICATION. The provisions of this section apply  
31 unless modified by the articles or the bylaws.

32 2. REMOVAL OF DIRECTORS. A director may be removed at any  
33 time, with or without cause, if all of the following apply:

- 34 a. The director was named by the board to fill a vacancy.  
35 b. The members have not elected directors in the interval

1 between the time of the appointment to fill a vacancy and the  
2 time of the removal.

3 c. A majority of the remaining directors present  
4 affirmatively vote to remove the director.

5 3. REMOVAL BY MEMBERS. Any one or all of the directors  
6 may be removed at any time, with or without cause, by the  
7 affirmative vote of the holders of a majority of the voting  
8 power of membership interests entitled to vote at an election  
9 of directors, provided that if a director has been elected  
10 solely by the patron members or the holders of a class or  
11 series of membership interests as stated in the articles or  
12 bylaws, then that director may be removed only by the  
13 affirmative vote of the holders of a majority of the voting  
14 power of the patron members for a director elected by the  
15 patron members or of all membership interests of that class or  
16 series entitled to vote at an election of that director.

17 4. ELECTION OF REPLACEMENTS. New directors may be elected  
18 at a meeting at which directors are removed.

19 Sec. 39. NEW SECTION. 501A.706 BOARD OF DIRECTORS'  
20 MEETINGS.

21 1. TIME AND PLACE. Meetings of the board may be held from  
22 time to time as provided in the articles or bylaws at any  
23 place within or without the state that the board may select or  
24 by any means described in subsection 2. If the board fails to  
25 select a place for a meeting, the meeting must be held at the  
26 principal executive office, unless the articles or bylaws  
27 provide otherwise.

28 2. ELECTRONIC COMMUNICATIONS.

29 a. A conference among directors by any means of  
30 communication through which the directors may simultaneously  
31 hear each other during the conference constitutes a board  
32 meeting, if the same notice is given of the conference as  
33 would be required by subsection 3 for a meeting, and if the  
34 number of directors participating in the conference would be  
35 sufficient to constitute a quorum at a meeting. Participation

1 in a meeting by that means constitutes presence in person at  
2 the meeting.

3 b. A director may participate in a board meeting not  
4 described in paragraph "a" by any means of communication  
5 through which the director, other directors so participating,  
6 and all directors physically present at the meeting may  
7 simultaneously hear each other during the meeting.

8 Participation in a meeting by that means constitutes presence  
9 in person at the meeting.

10 3. CALLING MEETINGS AND NOTICE. Unless the articles or  
11 bylaws provide for a different time period, a director may  
12 call a board meeting by giving at least ten days' notice or,  
13 in the case of organizational meetings, at least three days'  
14 notice to all directors of the date, time, and place of the  
15 meeting. The notice need not state the purpose of the meeting  
16 unless this chapter, the articles, or the bylaws require it.

17 4. PREVIOUSLY SCHEDULED MEETINGS. If the day or date,  
18 time, and place of a board meeting have been provided in the  
19 articles or bylaws, or announced at a previous meeting of the  
20 board, no notice is required. Notice of an adjourned meeting  
21 need not be given other than by announcement at the meeting at  
22 which adjournment is taken.

23 5. WAIVER OF NOTICE. A director may waive notice of a  
24 meeting of the board. A waiver of notice by a director  
25 entitled to notice is effective whether given before, at, or  
26 after the meeting, and whether given in writing, orally, or by  
27 attendance. Attendance by a director at a meeting is a waiver  
28 of notice of that meeting, except where the director objects  
29 at the beginning of the meeting to the transaction of business  
30 because the meeting is not lawfully called or convened and  
31 does not participate in the meeting after the objection.

32 6. ABSENT DIRECTORS. If the articles or bylaws so  
33 provide, a director may give advance written consent or  
34 opposition to a proposal to be acted on at a board meeting.  
35 If the director is not present at the meeting, consent or

1 opposition to a proposal does not constitute presence for  
2 purposes of determining the existence of a quorum, but consent  
3 or opposition must be counted as the vote of a director  
4 present at the meeting in favor of or against the proposal and  
5 must be entered in the minutes or other record of action at  
6 the meeting, if the proposal acted on at the meeting is  
7 substantially the same or has substantially the same effect as  
8 the proposal to which the director has consented or objected.

9 Sec. 40. NEW SECTION. 501A.707 QUORUM.

10 A majority, or a larger or smaller portion or number  
11 provided in the articles or bylaws, of the directors currently  
12 holding office is a quorum for the transaction of business.  
13 In the absence of a quorum, a majority of the directors  
14 present may adjourn a meeting from time to time until a quorum  
15 is present. If a quorum is present when a duly called or held  
16 meeting is convened, the directors present may continue to  
17 transact business until adjournment, even though the  
18 withdrawal of a number of directors originally present leaves  
19 less than the proportion of number otherwise required for a  
20 quorum.

21 Sec. 41. NEW SECTION. 501A.708 ACT OF BOARD OF  
22 DIRECTORS.

23 1. Except as provided in subsection 2, the board shall  
24 only take action by the affirmative vote of the greater of any  
25 of the following:

26 a. A majority of directors present or a majority of  
27 directors' voting authority present at a duly held meeting at  
28 the time the action is taken.

29 b. A majority of the minimum proportion or number of  
30 directors or a majority of the minimum proportion or number of  
31 directors' voting authority that would constitute a quorum for  
32 the transaction of business at the meeting.

33 2. The articles or bylaws may require the affirmative vote  
34 of a larger proportion or number than provided in subsection  
35 1. If the articles or bylaws require a larger proportion or

1 number than is required by this chapter for a particular  
2 action, the articles or bylaws control.

3 Sec. 42. NEW SECTION. 501A.709 ACTION WITHOUT A MEETING.

4 1. METHOD. An action required or permitted to be taken at  
5 a board meeting may be taken by written action signed by all  
6 of the directors. If the articles or bylaws so provide, any  
7 action, other than an action requiring member approval, may be  
8 taken by written action signed by the number of directors that  
9 would be required to take the same action at a meeting of the  
10 board at which all directors were present.

11 2. EFFECTIVE TIME. The written action is effective when  
12 signed by the required number of directors, unless a different  
13 effective time is provided in the written action.

14 3. NOTICE AND LIABILITY. When written action is permitted  
15 to be taken by less than all directors, all directors must be  
16 notified immediately of its text and effective date. Failure  
17 to provide the notice does not invalidate the written action.  
18 A director who does not sign or consent to the written action  
19 has no liability for the action or actions taken by the  
20 written action.

21 Sec. 43. NEW SECTION. 501A.710 AUDIT COMMITTEE.

22 The board shall establish an audit committee to review the  
23 financial information and accounting report of the  
24 cooperative. The cooperative shall have the financial  
25 information audited for presentation to the members unless the  
26 cooperative's bylaws allow financial statements that are not  
27 audited and the financial statements clearly state that they  
28 are not audited and the difference between the financial  
29 statements and audited financial statements that are prepared  
30 according to generally accepted accounting procedures. The  
31 directors shall elect members to the audit committee. The  
32 audit committee shall ensure an independent review of the  
33 cooperative's finances and audit.

34 Sec. 44. NEW SECTION. 501A.711 COMMITTEES.

35 1. GENERALLY. A resolution approved by the affirmative

1 vote of a majority of the board may establish committees  
2 having the authority of the board in the management of the  
3 business of the cooperative only to the extent provided in the  
4 resolution. Committees may include a special litigation  
5 committee consisting of one or more independent directors or  
6 other independent persons to consider legal rights or remedies  
7 of the cooperative and whether those rights and remedies  
8 should be pursued. Committees other than special litigation  
9 committees are subject at all times to the direction and  
10 control of the board.

11 2. MEMBERSHIP. Committee members must be natural persons.  
12 Unless the articles or bylaws provide for a different  
13 membership or manner of appointment, a committee consists of  
14 one or more persons, who need not be directors, appointed by  
15 affirmative vote of a majority of the directors present.

16 3. PROCEDURE. The procedures for meetings of the board  
17 apply to committees and members of committees to the same  
18 extent as those sections apply to the board and individual  
19 directors.

20 4. MINUTES. Minutes, if any, of committee meetings must  
21 be made available upon request to members of the committee and  
22 to any director.

23 5. STANDARD OF CONDUCT. The establishment of, delegation  
24 of authority to, and action by a committee does not alone  
25 constitute compliance by a director with the standard of  
26 conduct set forth in section 501A.712.

27 6. COMMITTEE MEMBERS CONSIDERED DIRECTORS. Committee  
28 members are considered to be directors for purposes of  
29 sections 501A.712, 501A.713, and 501A.715.

30 Sec. 45. NEW SECTION. 501A.712 STANDARD OF CONDUCT.

31 1. STANDARD AND LIABILITY. A director shall discharge the  
32 duties of the position of director in good faith, in a manner  
33 the director reasonably believes to be in the best interests  
34 of the cooperative, and with the care an ordinarily prudent  
35 person in a like position would exercise under similar

1 circumstances. A person who so performs those duties is not  
2 liable by reason of being or having been a director of the  
3 cooperative.

4 2. RELIANCE.

5 a. A director is entitled to rely on information,  
6 opinions, reports, or statements, including financial  
7 statements and other financial data, in each case prepared or  
8 presented by any of the following:

9 (1) One or more officers or employees of the cooperative  
10 who the director reasonably believes to be liable and  
11 competent in the matters presented.

12 (2) Counsel, public accountants, or other persons as to  
13 matters that the director reasonably believes are within the  
14 person's professional or expert competence.

15 (3) A committee of the board upon which the director does  
16 not serve, duly established by the board, as to matters within  
17 its designated authority, if the director reasonably believes  
18 the committee to merit confidence.

19 b. Paragraph "a" does not apply to a director who has  
20 knowledge concerning the matter in question that makes the  
21 reliance otherwise permitted by paragraph "a" unwarranted.

22 3. PRESUMPTION OF ASSENT AND DISSENT. A director who is  
23 present at a meeting of the board when an action is approved  
24 by the affirmative vote of a majority of the directors present  
25 is presumed to have assented to the action approved, unless  
26 any of the following applies:

27 a. The director objects at the beginning of the meeting to  
28 the transaction of business because the meeting is not  
29 lawfully called or convened and does not participate in the  
30 meeting after the objection, in which case the director is not  
31 considered to be present at the meeting for any purpose of  
32 this chapter.

33 b. The director votes against the action at the meeting.

34 c. The director is prohibited by a conflict of interest  
35 from voting on the action.

1 4. CONSIDERATIONS. In discharging the duties of the  
2 position of director, a director may, in considering the best  
3 interests of the cooperative, consider the interests of the  
4 cooperative's employees, customers, suppliers, and creditors,  
5 the economy of the state, and long-term as well as short-term  
6 interests of the cooperative and its patron members, including  
7 the possibility that these interests may be best served by the  
8 continued independence of the cooperative.

9 Sec. 46. NEW SECTION. 501A.713 DIRECTOR CONFLICTS OF  
10 INTEREST.

11 1. CONFLICT AND PROCEDURE WHEN CONFLICT ARISES.

12 a. A contract or other transaction between a cooperative  
13 and one or more of its directors, or between a cooperative and  
14 a business entity in or of which one or more of its directors  
15 are governors, directors, managers, officers, or legal  
16 representatives or have a material financial interest, is not  
17 void or voidable because the director or directors or the  
18 other business entities are parties or because the director or  
19 directors are present at the meeting of the members or the  
20 board or a committee at which the contract or transaction is  
21 authorized, approved, or ratified, if any of the following  
22 applies:

23 (1) The contract or transaction was, and the person  
24 asserting the validity of the contract or transaction sustains  
25 the burden of establishing that the contract or transaction  
26 was, fair and reasonable as to the cooperative at the time it  
27 was authorized, approved, or ratified and all of the following  
28 apply:

29 (a) The material facts as to the contract or transaction  
30 and as to the director's or directors' interest are disclosed  
31 or known to the members.

32 (b) The material facts as to the contract or transaction  
33 and as to the director's or directors' interest are fully  
34 disclosed or known to the board or a committee, and the board  
35 or committee authorizes, approves, or ratifies the contract or

1 transaction in good faith by a majority of the board or  
2 committee, but the interested director or directors are not  
3 counted in determining the presence of a quorum and must not  
4 vote.

5 (2) The contract or transaction is a distribution,  
6 contract, or transaction that is made available to all members  
7 or patron members as part of the cooperative's business.

8 b. If a committee is elected or appointed to authorize,  
9 ratify, or approve a contract or transaction under this  
10 section, the members of the committee must not have a conflict  
11 of interest and must be charged with representing the best  
12 interests of the cooperative.

13 2. MATERIAL FINANCIAL INTEREST. For purposes of this  
14 section, all of the following apply:

15 a. A resolution fixing the compensation of a director or  
16 fixing the compensation of another director as a director,  
17 officer, employee, or agent of the cooperative is not void or  
18 voidable or considered to be a contract or other transaction  
19 between a cooperative and one or more of its directors for  
20 purposes of this section even though the director receiving  
21 the compensation fixed by the resolution is present and voting  
22 at the meeting of the board or a committee at which the  
23 resolution is authorized, approved, or ratified or even though  
24 other directors voting upon the resolution are also receiving  
25 compensation from the cooperative.

26 b. A director has a material financial interest in each  
27 organization in which the director or a family member of the  
28 director has a material financial interest. A contract or  
29 other transaction between a cooperative and a family member of  
30 a director is considered to be a transaction between the  
31 cooperative and the director. A family member of a director  
32 includes the spouse, parents, children and spouses of  
33 children, brothers and sisters and spouses of brothers and  
34 sisters, and the brothers and sisters of the spouse of the  
35 director or any combination of them.

1 Sec. 47. NEW SECTION. 501A.714 LIMITATION OF DIRECTOR'S  
2 LIABILITY.

3 Except as otherwise provided in this chapter, a director,  
4 officer, employee, or member of the cooperative is not liable  
5 for the cooperative's debts or obligations, and a director,  
6 officer, member, or other volunteer is not personally liable  
7 in that capacity, for a claim based upon any action taken, or  
8 any failure to take action in the discharge of the person's  
9 duties, except for the amount of a financial benefit received  
10 by the person to which the person is not entitled, an  
11 intentional infliction of harm to the cooperative or its  
12 members or patrons, or an intentional violation of criminal  
13 law.

14 Sec. 48. NEW SECTION. 501A.715 INDEMNIFICATION.

15 1. DEFINITIONS. As used in this section, all of the  
16 following apply:

17 a. "Official capacity" means any of the following:

18 (1) With respect to a director, the position of director  
19 in a cooperative.

20 (2) With respect to a person other than a director, the  
21 elective or appointive office or position held by the person,  
22 member of a committee of the board, the employment  
23 relationship undertaken by an employee of the cooperative, or  
24 the scope of the services provided by members of the  
25 cooperative who provide services to the cooperative.

26 (3) With respect to a director, chief executive officer,  
27 member, or employee of the cooperative who, while a director,  
28 chief executive officer, or member or employee of the  
29 cooperative, is or was serving at the request of the  
30 cooperative or whose duties in that position involve or  
31 involved service as a governor, director, manager, officer,  
32 member, partner, trustee, employee, or agent of another  
33 organization or employee benefit plan, the position of that  
34 person as a governor, director, manager, officer, member,  
35 partner, trustee, employee, or agent, as the case may be, of

1 the other organization or employee benefit plan.

2 b. "Predecessor entity" includes a domestic cooperative or  
3 foreign cooperative that was the predecessor of the  
4 cooperative referred to in this section in a merger or other  
5 transaction in which the predecessor entity's existence ceased  
6 upon consummation of the transaction.

7 c. "Proceeding" means a threatened, pending, or completed  
8 civil, criminal, administrative, arbitration, or investigative  
9 proceeding, including a proceeding by or in the right of the  
10 cooperative.

11 d. "Special legal counsel" means counsel who has not  
12 represented the cooperative or a related organization, or a  
13 director, manager, member of a committee of the board, or  
14 employee whose indemnification is in issue.

15 2. INDEMNIFICATION.

16 a. Subject to the provisions of subsection 4, a  
17 cooperative shall indemnify a person made or threatened to be  
18 made a party to a proceeding by reason of the former or  
19 present official capacity of the person against judgments,  
20 penalties, fines, including, without limitation, excise taxes  
21 assessed against the person with respect to an employee  
22 benefit plan, settlements, and reasonable expenses, including  
23 attorney fees and disbursements incurred by the person in  
24 connection with the proceeding, if, with respect to the acts  
25 or omissions of the person complained of in the proceeding,  
26 any of the following applies:

27 (1) All of the following apply:

28 (a) The person has not been indemnified by another  
29 organization or employee benefit plan for the same judgments,  
30 penalties, fines, including, without limitation, excise taxes  
31 assessed against the person with respect to an employee  
32 benefit plan, settlements, and reasonable expenses, including  
33 attorney fees and disbursements incurred by the person in  
34 connection with the proceeding with respect to the same acts  
35 or omissions.

1 (b) The person acted in good faith.

2 (c) The person has not received an improper personal  
3 benefit.

4 (d) The person has not committed an act for which  
5 liability cannot be eliminated or limited under section  
6 501A.714.

7 (e) In the case of a criminal proceeding, the person had  
8 no reasonable cause to believe the conduct was unlawful.

9 (2) (a) In the case of an act or omission occurring in  
10 the official capacity described in subsection 1, paragraph  
11 "a", subparagraph (1) or (2), the person reasonably believed  
12 that the conduct was in the best interests of the cooperative.

13 (b) In the case of an act or omission occurring in the  
14 official capacity described in subsection 1, paragraph "a",  
15 subparagraph (3), the person reasonably believed that the  
16 conduct was not opposed to the best interests of the  
17 cooperative.

18 If the person's acts or omissions complained of in the  
19 proceeding relate to conduct as a director, officer, trustee,  
20 employee, or agent of an employee benefit plan, the conduct is  
21 not considered to be opposed to the best interests of the  
22 cooperative if the person reasonably believed that the conduct  
23 was in the best interests of the participants or beneficiaries  
24 of the employee benefit plan.

25 b. The termination of a proceeding by judgment, order,  
26 settlement, conviction, or upon a plea of nolo contendere or  
27 its equivalent does not, of itself, establish that the person  
28 did not meet the criteria set forth in this subsection.

29 3. ADVANCES. Subject to the provisions of subsection 4,  
30 if a person is made or threatened to be made a party to a  
31 proceeding, the person is entitled, upon written request to  
32 the cooperative, to payment or reimbursement by the  
33 cooperative of reasonable expenses, including attorney fees  
34 and disbursements incurred by the person in advance of the  
35 final disposition of the proceeding, as follows:

1 a. Upon receipt by the cooperative of a written  
2 affirmation by the person of a good-faith belief that the  
3 criteria for indemnification set forth in subsection 2 has  
4 been satisfied, and a written undertaking by the person to  
5 repay all amounts paid or reimbursed by the cooperative, if it  
6 is ultimately determined that the criteria for indemnification  
7 have not been satisfied.

8 b. After a determination that the facts then known to  
9 those making the determination would not preclude  
10 indemnification under this section.

11 The written undertaking required by this subsection is an  
12 unlimited general obligation of the person making it, but need  
13 not be secured and shall be accepted without reference to  
14 financial ability to make the repayment.

15 4. PROHIBITION OR LIMIT ON INDEMNIFICATION OR ADVANCES.

16 The articles or bylaws either may prohibit indemnification or  
17 advances of expenses otherwise required by this section or may  
18 impose conditions on indemnification or advances of expenses  
19 in addition to the conditions contained in subsection 2 or 3,  
20 including, without limitation, monetary limits on  
21 indemnification or advances of expenses if the conditions  
22 apply equally to all persons or to all persons within a given  
23 class. A prohibition or limit on indemnification or advances  
24 of expenses shall not apply to or affect the right of a person  
25 to indemnification or advances of expenses with respect to any  
26 acts or omissions of the person occurring before the effective  
27 date of a provision in the articles or the date of adoption of  
28 a provision in the bylaws establishing the prohibition or  
29 limit on indemnification or advances of expenses.

30 5. REIMBURSEMENT TO WITNESSES. This section does not  
31 require, or limit the ability of, a cooperative to reimburse  
32 expenses, including attorney fees and disbursements incurred  
33 by a person in connection with an appearance as a witness in a  
34 proceeding at a time when the person has not been made or  
35 threatened to be made a party to a proceeding.

1 6. DETERMINATION OF ELIGIBILITY.

2 a. All determinations whether indemnification of a person  
3 is required because the criteria set forth in subsection 2  
4 have been satisfied and whether a person is entitled to  
5 payment or reimbursement of expenses in advance of the final  
6 disposition of a proceeding as provided in subsection 3 must  
7 be made as follows:

8 (1) By the board by a majority of a quorum, if the  
9 directors who are, at the time, parties to the proceeding are  
10 not counted for determining either a majority or the presence  
11 of a quorum.

12 (2) If a quorum under subparagraph (1) cannot be obtained  
13 by a majority of a committee of the board consisting solely of  
14 two or more directors not at the time parties to the  
15 proceeding duly designated to act in the matter by a majority  
16 of the full board, including directors who are parties.

17 (3) If a determination is not made under subparagraph (1)  
18 or (2) by special legal counsel selected either by a majority  
19 of the board or a committee by vote under subparagraph (1) or  
20 (2) or if the requisite quorum of the full board cannot be  
21 obtained and the committee cannot be established by a majority  
22 of the full board, including directors who are parties.

23 (4) If a determination is not made under subparagraphs (1)  
24 through (3) by the affirmative vote of the members, but the  
25 membership interests held by parties to the proceeding must  
26 not be counted in determining the presence of a quorum, and  
27 are not considered to be present and entitled to vote on the  
28 determination.

29 (5) If an adverse determination is made under  
30 subparagraphs (1) through (4) or paragraph "b" or if a  
31 determination is not made under subparagraphs (1) through (4)  
32 or paragraph "b" within sixty days either after the later to  
33 occur of the termination of a proceeding or a written request  
34 for indemnification to the cooperative, or a written request  
35 for an advance of expenses, as the case may be, by a court in

1 this state, which may be the same court in which the  
2 proceeding involving the person's liability took place upon  
3 application of the person and any notice the court requires.  
4 The person seeking indemnification or payment or reimbursement  
5 of expenses under this subparagraph has the burden of  
6 establishing that the person is entitled to indemnification or  
7 payment or reimbursement of expenses.

8     b. With respect to a person who is not, and was not at the  
9 time of the act or omission complained of in the proceedings,  
10 a director, chief executive officer, or person possessing,  
11 directly or indirectly, the power to direct or cause the  
12 direction of the management or policies of the cooperative,  
13 the determination whether indemnification of this person is  
14 required because the criteria set forth in subsection 2 have  
15 been satisfied and whether such person is entitled to payment  
16 or reimbursement of expenses in advance of the final  
17 disposition of a proceeding as provided in subsection 3, may  
18 be made by an annually appointed committee of the board,  
19 having at least one member who is a director. The committee  
20 shall report at least annually to the board concerning its  
21 actions.

22     7. INSURANCE. A cooperative may purchase and maintain  
23 insurance on behalf of a person in that person's official  
24 capacity against any liability asserted against and incurred  
25 by the person in or arising from that capacity, whether or not  
26 the cooperative would have been required to indemnify the  
27 person against the liability under the provisions of this  
28 section.

29     8. DISCLOSURE. A cooperative that indemnifies or advances  
30 expenses to a person in accordance with this section in  
31 connection with a proceeding by or on behalf of the  
32 cooperative shall report to the members in writing the amount  
33 of the indemnification or advance and to whom and on whose  
34 behalf it was paid not later than the next meeting of members.

35     9. INDEMNIFICATION OF OTHER PERSONS. Nothing in this

1 section must be construed to limit the power of the  
2 cooperative to indemnify persons other than a director, chief  
3 executive officer, member, employee, or member of a committee  
4 of the board of the cooperative by contract or otherwise.

5 Sec. 49. NEW SECTION. 501A.716 OFFICERS.

6 1. REQUIRED OFFICERS.

7 a. The board shall elect all of the following:

8 (1) A chairperson.

9 (2) One or more vice chairpersons.

10 b. The board shall elect or appoint all of the following:

11 (1) A records officer.

12 (2) A financial officer.

13 c. The officers, other than the chief executive officer,  
14 shall not have the authority to bind the cooperative except as  
15 authorized by the board.

16 2. ADDITIONAL OFFICERS. The board may elect additional  
17 officers as the articles or bylaws authorize or require.

18 3. RECORDS OFFICER AND FINANCIAL OFFICER MAY BE COMBINED.

19 The offices of records officer and financial officer may be  
20 combined.

21 4. OFFICERS THAT MUST BE MEMBERS. The chairperson and  
22 first vice chairperson shall be directors and members. The  
23 financial officer, records officer, and additional officers  
24 need not be directors or members.

25 5. CHIEF EXECUTIVE OFFICER. The board may employ a chief  
26 executive officer to manage the day-to-day affairs and  
27 business of the cooperative, and if a chief executive officer  
28 is employed, the chief executive officer shall have the  
29 authority to implement the functions, duties, and obligations  
30 of the cooperative except as restricted by the board. The  
31 chief executive officer shall not exercise authority reserved  
32 to the board or the members under this chapter, the articles,  
33 or the bylaws.

34

SUBCHAPTER 8

35

MEMBERS

1     Sec. 50. NEW SECTION. 501A.801 MEMBERS.

2     1. REQUIREMENT. A cooperative shall have one or more  
3 patron members.

4     2. GROUPING OF MEMBERS.

5     a. A cooperative may group members and patron members in  
6 districts, units, or on another basis if and as authorized in  
7 its articles or bylaws. The articles or bylaws may include  
8 authorization for the board to determine the groupings.

9     b. The board may implement the use of districts or units,  
10 including setting the time and place and prescribing the rules  
11 of conduct for holding meetings by districts or units to elect  
12 delegates to members' meetings.

13    3. MEMBER VIOLATIONS.

14    a. A member who knowingly, intentionally, or repeatedly  
15 violates a provision of this chapter, the articles or bylaws  
16 of the cooperative, or a member control agreement or marketing  
17 contract with the cooperative may be required by the board to  
18 surrender the member's voting power or the financial rights of  
19 membership interest of any class owned by the member, or both.

20    b. The cooperative shall refund to the member for the  
21 surrendered financial rights of membership interest the lesser  
22 of the book value or market value of the financial right of  
23 the membership interest payable in not more than seven years  
24 from the date of surrender or the board may transfer all of  
25 any patron member's financial rights to a class of financial  
26 rights held by members who are not patron members, or to a  
27 certificate of interest, which carries liquidation rights on  
28 par with membership interests and is redeemed within seven  
29 years after the transfer as provided in the certificate.

30    c. Membership interests required to be surrendered may be  
31 reissued or be retired and canceled by the board.

32    4. INSPECTION OF COOPERATIVE RECORDS BY MEMBER.

33    a. A member is entitled to inspect and copy, at the  
34 member's expense, during regular business hours at a  
35 reasonable location specified by the cooperative, any of the

1 records described in section 501A.507 if the member meets the  
2 requirements of paragraph "b" and gives the cooperative  
3 written demand at least five business days before the date on  
4 which the member wishes to inspect and copy the records.  
5 Notwithstanding the provisions of this subsection or any  
6 provisions of section 501A.507, a member shall not have the  
7 right to inspect or copy any records of the cooperative  
8 relating to the amount of equity capital in the cooperative  
9 held by any person or any accounts receivable or other amounts  
10 due the cooperative from any person, or any personnel records  
11 or employment records of any employee.

12 b. To be entitled to inspect and copy permitted records,  
13 the member shall meet all of the following requirements:

14 (1) The member must have been a member for at least one  
15 year immediately preceding the demand to inspect or copy or  
16 must be a member holding at least five percent of all of the  
17 outstanding equity interests in the cooperative as of the date  
18 the demand is made.

19 (2) The demand is made in good faith and for a proper  
20 cooperative business purpose.

21 (3) The member describes with reasonable particularity the  
22 purpose and the records the member desires to inspect.

23 (4) The records are directly connected with the described  
24 purpose.

25 c. The right of inspection granted by this subsection  
26 shall not be abolished or limited by the articles, bylaws, or  
27 any actions of the board or the members.

28 d. This subsection does not affect any of the following:

29 (1) The right of a member to inspect records to the same  
30 extent as any other litigant if the member is in litigation  
31 with the cooperative.

32 (2) The power of a court to compel the production of the  
33 cooperative's records for examination.

34 e. Notwithstanding any other provision in this subsection,  
35 if the records to be inspected or copied are in active use or

1 storage and, therefore, not available at the time otherwise  
2 provided for inspection or copying, the cooperative shall  
3 notify the member and shall set a date and hour within three  
4 business days of the date otherwise set in this subsection for  
5 the inspection or copying.

6 f. A member's agent or attorney has the same inspection  
7 and copying rights as the member. The right to copy records  
8 under this subsection includes, if reasonable, the right to  
9 receive copies made by photographic copying, xerographic  
10 copying, or other means. The cooperative may impose a  
11 reasonable charge, covering the costs of labor and material,  
12 for copies of any documents provided to the member. The  
13 charge shall not exceed the estimated cost of production and  
14 reproduction of the records.

15 g. If a cooperative refuses to allow a member, or the  
16 member's agent or attorney, who complies with this subsection  
17 to inspect or copy any records that the member is entitled to  
18 inspect or copy within a prescribed time limit or, if none,  
19 within a reasonable time, the district court of the county in  
20 this state where the cooperative's principal office is located  
21 or, if it has no principal office in this state, the district  
22 court of the county in which its registered office is located  
23 may, on application of the member, summarily order the  
24 inspection or copying of the records demanded at the  
25 cooperative's expense.

26 h. If a court orders inspection or copying of the records  
27 demanded, unless the cooperative proves that it refused  
28 inspection or copying in good faith because it had a  
29 reasonable basis for doubt about the right of the member or  
30 the member's agent or attorney to inspect or copy the records  
31 demanded, all of the following shall apply:

32 (1) The court may order the losing party to pay the  
33 prevailing party's reasonable costs, including reasonable  
34 attorney fees.

35 (2) The court may order the losing party to pay the

1 prevailing party for any damages the prevailing party shall  
2 have incurred by reason of the subject matter of the  
3 litigation.

4 (3) If inspection or copying is ordered under this  
5 paragraph "h", the court may order the cooperative to pay the  
6 member's inspection and copying expenses.

7 (4) The court may grant either party any other remedy  
8 provided by law.

9 (5) The court may impose reasonable restrictions on the  
10 use or distribution of the records by the demanding member.

11 Sec. 51. NEW SECTION. 501A.802 MEMBER NOT LIABLE FOR  
12 COOPERATIVE DEBTS.

13 A member is not, merely on the account of that status,  
14 personally liable for the acts, debts, liabilities, or  
15 obligations of a cooperative. A member is liable for any  
16 unpaid subscription for the membership interest, unpaid  
17 membership fees, or a debt for which the member has separately  
18 contracted with the cooperative.

19 Sec. 52. NEW SECTION. 501A.803 REGULAR MEMBERS'  
20 MEETINGS.

21 1. ANNUAL MEETING. Regular members' meetings shall be  
22 held annually at a time determined by the board, unless  
23 otherwise provided for in the bylaws.

24 2. LOCATION. The regular members' meeting shall be held  
25 at the principal place of business of the cooperative or at  
26 another conveniently located place as determined by the bylaws  
27 or the board.

28 3. BUSINESS AND FISCAL REPORTS. The officers shall submit  
29 reports to the members at the regular members' meeting  
30 covering the business of the cooperative for the previous  
31 fiscal year that show the condition of the cooperative at the  
32 close of the fiscal year.

33 4. ELECTION OF DIRECTORS. All directors shall be elected  
34 at the regular members' meeting for the terms of office  
35 prescribed in the bylaws, except for directors elected at

1 district or unit meetings.

2 5. NOTICE.

3 a. The cooperative shall give notice of regular members'  
4 meetings by mailing the regular members' meeting notice to  
5 each member at the members' last known post office address or  
6 by other notification approved by the board and agreed to by  
7 the members. The regular members' meeting notice shall be  
8 published or otherwise given by approved method at least two  
9 weeks before the date of the meeting or mailed at least  
10 fifteen days before the date of the meeting.

11 b. The notice shall contain a summary of any bylaw  
12 amendments adopted by the board since the last annual meeting.

13 6. WAIVER AND OBJECTIONS. A member may waive notice of a  
14 meeting of members. A waiver of notice by a member entitled  
15 to notice is effective whether given before, at, or after the  
16 meeting, and whether given in writing, orally, or by  
17 attendance. Attendance by a member at a meeting is a waiver  
18 of notice of that meeting, except where the member objects at  
19 the beginning of the meeting to the transaction of business  
20 because the meeting is not lawfully called or convened, or  
21 objects before a vote on an item of business because the item  
22 cannot lawfully be considered at that meeting and does not  
23 participate in the consideration of the item at that meeting.

24 Sec. 53. NEW SECTION. 501A.804 SPECIAL MEMBERS'  
25 MEETINGS.

26 1. CALLING MEETING. Special members' meetings of the  
27 members may be called by any of the following:

28 a. A majority vote of the board.

29 b. The written petition of at least twenty percent of the  
30 patron members and, if authorized by the articles or bylaws,  
31 twenty percent of the nonpatron members, twenty percent of all  
32 members, or members representing twenty percent of the  
33 membership interests collectively submitted to the  
34 chairperson.

35 2. NOTICE. The cooperative shall give notice of a special

1 members' meeting by mailing the special members' meeting  
2 notice to each member personally at the person's last known  
3 post office address or an alternative method approved by the  
4 board and agreed to by the member individually or the members  
5 generally. For a member that is an entity, notice mailed or  
6 delivered by an alternative method shall be to an officer of  
7 the entity. The special members' meeting notice shall state  
8 the time, place, and purpose of the special members' meeting.  
9 The special members' meeting notice shall be issued within ten  
10 days from and after the date of the presentation of a members'  
11 petition, and the special members' meeting shall be held  
12 within thirty days after the date of the presentation of the  
13 members' petition.

14 3. WAIVER AND OBJECTIONS. A member may waive notice of a  
15 meeting of members. A waiver of notice by a member entitled  
16 to notice is effective whether given before, at, or after the  
17 meeting, and whether given in writing, orally, or by  
18 attendance. Attendance by a member at a meeting is a waiver  
19 of notice of that meeting, except where the member objects at  
20 the beginning of the meeting to the transaction of business  
21 because the meeting is not lawfully called or convened, or  
22 objects before a vote on an item of business because the item  
23 cannot lawfully be considered at that meeting and does not  
24 participate in the consideration of the item at that meeting.

25 Sec. 54. NEW SECTION. 501A.805 CERTIFICATION OF MEETING  
26 NOTICE.

27 1. CERTIFICATE OF MAILING. After mailing special or  
28 regular members' meeting notices or otherwise delivering the  
29 notices, the cooperative shall execute a certificate  
30 containing the date of mailing or delivery of the notice and a  
31 statement that the special or regular members' meeting notices  
32 were mailed or delivered as prescribed by law.

33 2. MATTER OF RECORD. The certificate shall be made a part  
34 of the record of the meeting.

35 3. FAILURE TO RECEIVE MEETING NOTICE. Failure of a member

1 to receive a special or regular members' meeting notice does  
2 not invalidate an action taken by the members at a members'  
3 meeting.

4 Sec. 55. NEW SECTION. 501A.806 QUORUM.

5 1. QUORUM. The quorum for a members' meeting to transact  
6 business shall be by any of the following:

7 a. Ten percent of the total number of members of a  
8 cooperative with five hundred or fewer members.

9 b. Fifty members for cooperatives with more than five  
10 hundred members.

11 2. QUORUM FOR VOTING BY MAIL. In determining a quorum at  
12 a meeting, on a question submitted to a vote by mail or an  
13 alternative method, members present in person or represented  
14 by mail vote or the alternative voting method shall be  
15 counted. The attendance of a sufficient number of members to  
16 constitute a quorum shall be established by a registration of  
17 the members of the cooperative present at the meeting. The  
18 registration shall be verified by the chairperson or the  
19 records officer of the cooperative and shall be reported in  
20 the minutes of the meeting.

21 3. MEETING ACTION INVALID WITHOUT QUORUM. An action by a  
22 cooperative is not valid or legal in the absence of a quorum  
23 at the meeting at which the action was taken.

24 Sec. 56. NEW SECTION. 501A.807 REMOTE COMMUNICATIONS FOR  
25 MEMBERS' MEETINGS.

26 1. CONSTRUCTION AND APPLICATION. This section shall be  
27 construed and applied to all of the following:

28 a. To facilitate remote communication consistent with  
29 other applicable law.

30 b. To be consistent with reasonable practices concerning  
31 remote communication and with the continued expansion of those  
32 practices.

33 2. MEMBERS' MEETINGS HELD SOLELY BY MEANS OF REMOTE  
34 COMMUNICATION. To the extent authorized in the articles, a  
35 member control agreement, or the bylaws and determined by the

1 board, a regular or special meeting of members may be held  
2 solely by any combination of means of remote communication  
3 through which the members may participate in the meeting, if  
4 notice of the meeting is given to every owner of membership  
5 interests entitled to vote as would be required by this  
6 chapter for a meeting, and if the membership interests held by  
7 the members participating in the meeting would be sufficient  
8 to constitute a quorum at a meeting. Participation by a  
9 member by that means constitutes presence at the meeting in  
10 person or by proxy if all the other requirements of this  
11 chapter for the meeting are met.

12 3. PARTICIPATION IN MEMBERS' MEETINGS BY MEANS OF REMOTE  
13 COMMUNICATION. To the extent authorized in the articles or  
14 the bylaws and determined by the board, a member not  
15 physically present in person or by proxy at a regular or  
16 special meeting of members may, by means of remote  
17 communication, participate in a meeting of members held at a  
18 designated place. Participation by a member by that means  
19 constitutes presence at the meeting in person or by proxy if  
20 all the other requirements of this chapter for the meeting are  
21 met.

22 4. REQUIREMENTS FOR MEETINGS HELD SOLELY BY MEANS OF  
23 REMOTE COMMUNICATION AND FOR PARTICIPATION BY MEANS OF REMOTE  
24 COMMUNICATION. In any meeting of members held solely by means  
25 of remote communication under subsection 2 or in any meeting  
26 of members held at a designated place in which one or more  
27 members participate by means of remote communication under  
28 subsection 3, all of the following shall apply:

29 a. The cooperative shall implement reasonable measures to  
30 verify that each person deemed present and entitled to vote at  
31 the meeting by means of remote communication is a member.

32 b. The cooperative shall implement reasonable measures to  
33 provide each member participating by means of remote  
34 communication with a reasonable opportunity to participate in  
35 the meeting, including an opportunity to do all of the

1 following:

2 (1) Read or hear the proceedings of the meeting  
3 substantially concurrently with those proceedings.

4 (2) If allowed by the procedures governing the meeting,  
5 have the member's remarks heard or read by other participants  
6 in the meeting substantially concurrently with the making of  
7 those remarks.

8 (3) If otherwise entitled, vote on matters submitted to  
9 the members.

10 5. NOTICE TO MEMBERS.

11 a. Any notice to members given by the cooperative under  
12 any provision of this chapter, the articles, or the bylaws by  
13 a form of electronic communication consented to by the member  
14 to whom the notice is given is effective when given. The  
15 notice is deemed given upon any of the following:

16 (1) If by facsimile communication, when directed to a  
17 telephone number at which the member has consented to receive  
18 notice.

19 (2) If by electronic mail, when directed to an electronic  
20 mail address at which the member has consented to receive  
21 notice.

22 (3) If by a posting on an electronic network on which the  
23 member has consented to receive notice, together with separate  
24 notice to the member of the specific posting, upon the later  
25 of any of the following:

26 (a) The posting.

27 (b) The giving of the separate notice.

28 (4) If by any other form of electronic communication by  
29 which the member has consented to receive notice, when  
30 directed to the member.

31 b. An affidavit of the secretary, other authorized  
32 officer, or authorized agent of the cooperative that the  
33 notice has been given by a form of electronic communication  
34 is, in the absence of fraud, prima facie evidence of the facts  
35 stated in the affidavit.

1 c. Consent by a member to notice given by electronic  
2 communication may be given in writing or by authenticated  
3 electronic communication. The cooperative is entitled to rely  
4 on any consent so given until revoked by the member, provided  
5 that no revocation affects the validity of any notice given  
6 before receipt by the cooperative of revocation of the  
7 consent.

8 6. REVOCATION. Any ballot, vote, authorization, or  
9 consent submitted by electronic communication under this  
10 chapter may be revoked by the member submitting the ballot,  
11 vote, authorization, or consent so long as the revocation is  
12 received by a director or the chief executive officer of the  
13 cooperative at or before the meeting or before an action  
14 without a meeting is effective.

15 7. WAIVER. Waiver of notice by a member of a meeting by  
16 means of authenticated electronic communication may be given  
17 in the manner provided for the regular or special meeting.  
18 Participation in a meeting by means of remote communication  
19 described in subsections 2 and 3 is a waiver of notice of that  
20 meeting, except where the member objects at the beginning of  
21 the meeting to the transaction of business because the meeting  
22 is not lawfully called or convened, or objects before a vote  
23 on an item of business because the item cannot lawfully be  
24 considered at the meeting and does not participate in the  
25 consideration of the item at that meeting.

26 Sec. 57. NEW SECTION. 501A.808 ACT OF MEMBERS.

27 1. ACTION BY AFFIRMATIVE VOTE OF MEMBERS.

28 a. The members shall take action by the affirmative vote  
29 of the members of the greater of any of the following:

30 (1) A majority of the voting power of the membership  
31 interests present and entitled to vote on that item of  
32 business.

33 (2) A majority of the voting power that would constitute a  
34 quorum for the transaction of business at the meeting, except  
35 where this chapter, the articles or bylaws, or a member

1 control agreement require a larger proportion.

2 b. If the articles, bylaws, or a member control agreement  
3 require a larger proportion than is required by this chapter  
4 for a particular action, the articles, bylaws, or the member  
5 control agreement shall have control over the provisions of  
6 this chapter.

7 2. CLASS OR SERIES OF MEMBERSHIP INTERESTS. In any case  
8 where a class or series of membership interests is entitled by  
9 this chapter, the articles, bylaws, a member control  
10 agreement, or the terms of the membership interests to vote as  
11 a class or series, the matter being voted upon must also  
12 receive the affirmative vote of the owners of the same  
13 proportion of the membership interests present of that class  
14 or series; or of the total outstanding membership interests of  
15 that class or series, as the proportion required under  
16 subsection 1, unless the articles, bylaws, or the member  
17 control agreement require a larger proportion. Unless  
18 otherwise stated in the articles, bylaws, or a member control  
19 agreement, in the case of voting as a class or series, the  
20 minimum percentage of the total voting power of membership  
21 interests of the class or series that must be present is equal  
22 to the minimum percentage of all membership interests entitled  
23 to vote required to be present under section 501A.707.

24 3. GREATER QUORUM OR VOTING REQUIREMENTS.

25 a. The articles or bylaws adopted by the members may  
26 provide for a greater quorum or voting requirement for members  
27 or voting groups than is provided for by this chapter.

28 b. An amendment to the articles or bylaws that adds,  
29 changes, or deletes a greater quorum or voting requirement  
30 shall meet the same quorum requirement and be adopted by the  
31 same vote and voting groups required to take action under the  
32 quorum and voting requirements then in effect or proposed to  
33 be adopted, whichever is greater.

34 Sec. 58. NEW SECTION. 501A.809 ACTION WITHOUT A MEETING.

35 1. METHOD. An action required or permitted to be taken at

1 a meeting of the members may be taken by written action  
2 signed, or consented to by authenticated electronic  
3 communication, by all of the members. If the articles,  
4 bylaws, or a member control agreement so provide, any action  
5 may be taken by written action signed, or consented to by  
6 authenticated electronic communication, by the members who own  
7 voting power equal to the voting power that would be required  
8 to take the same action at a meeting of the members at which  
9 all members were present.

10 2. EFFECTIVE TIME. The written action is effective when  
11 signed or consented to by authenticated electronic  
12 communication by the required members, unless a different  
13 effective time is provided in the written action.

14 3. NOTICE AND LIABILITY. When written action is permitted  
15 to be taken by less than all members, all members must be  
16 notified immediately of its text and effective date. Failure  
17 to provide the notice does not invalidate the written action.  
18 A member who does not sign or consent to the written action  
19 has no liability for the action or actions taken by the  
20 written action.

21 Sec. 59. NEW SECTION. 501A.810 MEMBER VOTING RIGHTS.

22 1. MEMBER HAS ONE VOTE OR PATRONAGE VOTING. A patron  
23 member of a cooperative is only entitled to one vote on an  
24 issue to be voted upon by members holding patron membership  
25 interests. However, if authorized in the cooperative's  
26 articles or bylaws, a patron member may be entitled to  
27 additional votes based on patronage criteria in section  
28 501A.811. If nonpatron members are authorized by the patron  
29 members and granted voting rights on any matter voted on by  
30 the members of the cooperative, the entire patron members'  
31 voting power shall be voted collectively based upon the vote  
32 of the majority of patron members voting on the issue and the  
33 collective vote of the patron members shall be a majority of  
34 the vote cast unless otherwise provided in the bylaws. The  
35 bylaws shall not reduce the collective patron member vote to

1 less than fifteen percent of the total vote on matters of the  
2 cooperative. A nonpatron member has the voting rights in  
3 accordance to the nonpatron member's nonpatron membership  
4 interests as granted in the bylaws, subject to the provisions  
5 of this chapter.

6 2. RIGHT TO VOTE AT MEETING. A member or delegate may  
7 exercise voting rights on any matter that is before the  
8 members as prescribed in the articles or bylaws at a members'  
9 meeting from the time the member or delegate arrives at the  
10 members' meeting, unless the articles or bylaws specify an  
11 earlier and specific time for closing the right to vote.

12 3. VOTING METHOD. A member's vote at a members' meeting  
13 shall be in person or by mail if a mail vote is authorized by  
14 the board or by alternative method if authorized by the board  
15 and not by proxy, except as provided in subsection 4.

16 4. MEMBERS REPRESENTED BY DELEGATES.

17 a. The provisions of this subsection apply to members  
18 represented by delegates.

19 b. A cooperative may provide in the articles or bylaws  
20 that units or districts of members are entitled to be  
21 represented at members' meetings by delegates chosen by the  
22 members of the unit or district. The delegates may vote on  
23 matters at the members' meeting in the same manner as a  
24 member. The delegates may only exercise the voting rights on  
25 a basis and with the number of votes as prescribed in the  
26 articles or bylaws.

27 c. If the approval of a certain portion of the members is  
28 required for adoption of amendments, a dissolution, a merger,  
29 a consolidation, or a sale of assets, the votes of delegates  
30 shall be counted as votes by the members represented by the  
31 delegate.

32 d. Patron members may be represented by the proxy of other  
33 patron members.

34 e. Nonpatron members may be represented by proxy if  
35 authorized in the bylaws.

1 5. ABSENTEE BALLOTS.

2 a. The provisions of this subsection apply to absentee  
3 ballots.

4 b. A member who is or will be absent from a members'  
5 meeting may vote by mail or by an approved alternative method  
6 on the ballot prescribed in this subsection on any motion,  
7 resolution, or amendment that the board submits for vote by  
8 mail or alternative method to the members.

9 c. The ballot shall be in the form prescribed by the board  
10 and contain all of the following:

11 (1) The exact text of the proposed motion, resolution, or  
12 amendment to be acted on at the meeting.

13 (2) The text of the motion, resolution, or amendment for  
14 which the member may indicate an affirmative or negative vote.

15 d. The member shall express a choice by marking an  
16 appropriate choice on the ballot and mail, deliver, or  
17 otherwise submit the ballot to the cooperative in a plain,  
18 sealed envelope inside another envelope bearing the member's  
19 name or by an alternative method approved by the board.

20 e. A properly executed ballot shall be accepted by the  
21 board and counted as the vote of the absent member at the  
22 meeting.

23 Sec. 60. NEW SECTION. 501A.811 PATRON MEMBER VOTING  
24 BASED ON PATRONAGE.

25 1. PATRON MEMBERS TO HAVE AN ADDITIONAL VOTE. A  
26 cooperative may authorize by the articles or the bylaws for  
27 patron members to have an additional vote for all of the  
28 following:

29 a. A stipulated amount of business transacted between the  
30 patron member and cooperative.

31 b. A stipulated number of patron members in a member  
32 cooperative.

33 c. A certain stipulated amount of equity allocated to or  
34 held by a patron member in the cooperative's central  
35 organization.

1 d. A combination of methods provided in this subsection.  
2 2. DELEGATES ELECTED BY PATRONS TO HAVE AN ADDITIONAL  
3 VOTE. A cooperative that is organized into units or districts  
4 of patron members may, by the articles or the bylaws,  
5 authorize the delegates elected by its patron members to have  
6 an additional vote for any of the following:  
7 a. A stipulated amount of business transacted between the  
8 patron members in the units or districts and the cooperative.  
9 b. A certain stipulated amount of equity allocated to or  
10 held by the patron members of the units or districts of the  
11 cooperative.  
12 c. A combination of methods in this subsection.  
13 Sec. 61. NEW SECTION. 501A.812 VOTING RIGHTS.  
14 1. DETERMINATION. The board may fix a date not more than  
15 sixty days, or a shorter time period provided in the articles  
16 or bylaws, before the date of a meeting of members as the date  
17 for the determination of the owners of membership interests  
18 entitled to notice of and entitled to vote at the meeting.  
19 When a date is so fixed, only members on that date are  
20 entitled to notice of and permitted to vote at that meeting of  
21 members.  
22 2. VOTING POWER. Unless otherwise provided in the  
23 articles, bylaws, or a member control agreement, members have  
24 voting power as provided in section 501A.810.  
25 3. NONMEMBERS. The articles or bylaws may give or  
26 prescribe the manner of giving a creditor, security holder, or  
27 other person a right to vote on patron membership interests  
28 under this section.  
29 4. JOINTLY OWNED MEMBERSHIP INTERESTS. Membership  
30 interests owned by two or more members may be voted by any one  
31 of them unless the cooperative receives written notice from  
32 any one of them denying the authority of that person to vote  
33 those membership interests.  
34 5. MANNER OF VOTING AND PRESUMPTION. Except as provided  
35 in subsection 4, an owner of a nonpatron membership interest

1 or a patron membership interest with more than one vote that  
2 is entitled to vote may vote any portion of the membership  
3 interest in any way the member chooses. If a member votes  
4 without designating the proportion voted in a particular way,  
5 the member is considered to have voted all of the membership  
6 interest in that way.

7 Sec. 62. NEW SECTION. 501A.813 VOTING BY ORGANIZATIONS  
8 AND LEGAL REPRESENTATIVES.

9 1. MEMBERSHIP INTERESTS HELD BY ANOTHER ORGANIZATION.

10 Membership interests of a cooperative reflected in the  
11 required records as being owned by another domestic business  
12 entity or foreign business entity may be voted by the  
13 chairperson, chief executive officer, or another legal  
14 representative of that organization.

15 2. MEMBERSHIP INTERESTS HELD BY SUBSIDIARY. Except as  
16 provided in subsection 3, membership interests of a  
17 cooperative reflected in the required records as being owned  
18 by a subsidiary are not entitled to be voted on any matter.

19 3. MEMBERSHIP INTERESTS CONTROLLED IN A FIDUCIARY  
20 CAPACITY. Membership interests of a cooperative in the name  
21 of, or under the control of, the cooperative or a subsidiary  
22 in a fiduciary capacity are not entitled to be voted on any  
23 matter, except to the extent that the settler or beneficiary  
24 possesses and exercises a right to vote or gives the  
25 cooperative or, with respect to membership interests in the  
26 name of or under control of a subsidiary, the subsidiary,  
27 binding instructions on how to vote the membership interests.

28 4. VOTING BY CERTAIN REPRESENTATIVES. Subject to section  
29 501A.810, membership interests under the control of a person  
30 in a capacity as a personal representative, an administrator,  
31 executor, guardian, conservator, or the like may be voted by  
32 the person, either in person or by proxy, without reflecting  
33 in the required records those membership interests in the name  
34 of the person.

35 5. VOTING BY TRUSTEES IN BANKRUPTCY OR RECEIVER.

1 Membership interests reflected in the required records in the  
2 name of a trustee in bankruptcy or a receiver may be voted by  
3 the trustee or receiver either in person or by proxy.  
4 Membership interests under the control of a trustee in  
5 bankruptcy or a receiver may be voted by the trustee or  
6 receiver without reflecting in the required records the name  
7 of the trustee or receiver, if authority to do so is contained  
8 in an appropriate order of the court by which the trustee or  
9 receiver was appointed. The right to vote of trustees in  
10 bankruptcy and receivers is subject to section 501A.810.

11 6. MEMBERSHIP INTERESTS HELD BY OTHER ORGANIZATIONS.

12 Membership interests reflected in the required records in the  
13 name of a business entity not described in subsections 1  
14 through 5 may be voted either in person or by proxy by the  
15 legal representative of that business entity.

16 7. GRANT OF SECURITY INTEREST. The grant of a security  
17 interest in a membership interest does not entitle the holders  
18 of the security interest to vote.

19 Sec. 63. NEW SECTION. 501A.814 PROXIES.

20 1. AUTHORIZATION.

21 a. A patron member may only grant a proxy to vote to  
22 another patron member.

23 b. A member may cast or authorize the casting of a vote by  
24 any of the following:

25 (1) Filing a written appointment of a proxy with the board  
26 at or before the meeting at which the appointment is to be  
27 effective.

28 (2) Telephonic transmission or authenticated electronic  
29 communication, whether or not accompanied by written  
30 instructions of the member, of an appointment of a proxy with  
31 the cooperative or the cooperative's duly authorized agent at  
32 or before the meeting at which the appointment is to be  
33 effective.

34 c. The telephonic transmission or authenticated electronic  
35 communication must set forth or be submitted with information

1 from which it can be determined that the appointment was  
2 authorized by the member. If it is reasonably concluded that  
3 the telephonic transmission or authenticated electronic  
4 communication is valid, the inspectors of election or, if  
5 there are not inspectors, the other persons making that  
6 determination shall specify the information upon which they  
7 relied to make that determination. A proxy so appointed may  
8 vote on behalf of the member, or otherwise participate, in a  
9 meeting by remote communication under section 501A.807, to the  
10 extent the member appointing the proxy would have been  
11 entitled to participate by remote communication if the member  
12 did not appoint the proxy.

13 d. A copy, facsimile, telecommunication, or other  
14 reproduction of the original writing or transmission may be  
15 substituted or used in lieu of the original writing or  
16 transmission for any purpose for which the original  
17 transmission could be used, if the copy, facsimile,  
18 telecommunication, or other reproduction is a complete and  
19 legible reproduction of the entire original writing or  
20 transmission.

21 e. An appointment of a proxy for membership interests  
22 owned jointly by two or more members is valid if signed or  
23 consented to by authenticated electronic communication, by any  
24 one of them, unless the cooperative receives from any one of  
25 those members written notice or an authenticated electronic  
26 communication either denying the authority of that person to  
27 appoint a proxy or appointing a different proxy.

28 2. DURATION. The appointment of a proxy is valid for  
29 eleven months unless a longer period is expressly provided in  
30 the appointment. An appointment is not irrevocable unless the  
31 appointment is coupled with an interest in the membership  
32 interests or the cooperative.

33 3. TERMINATION. An appointment may be terminated at will  
34 unless the appointment is coupled with an interest, in which  
35 case the appointment shall not be terminated except in

1 accordance with the terms of an agreement, if any, between the  
2 parties to the appointment. Termination may be made by filing  
3 written notice of the termination of the appointment with a  
4 manager of the cooperative or by filing a new written  
5 appointment of a proxy with a manager of the cooperative.  
6 Termination in either manner revokes all prior proxy  
7 appointments and is effective when filed with a manager of the  
8 cooperative.

9 4. REVOCATION BY DEATH OR INCAPACITY. The death or  
10 incapacity of a person appointing a proxy does not revoke the  
11 authority of the proxy, unless written notice of the death or  
12 incapacity is received by a manager of the cooperative before  
13 the proxy exercises the authority under that appointment.

14 5. MULTIPLE PROXIES. Unless the appointment specifically  
15 provides otherwise, if two or more persons are appointed as  
16 proxies for a member, all of the following apply:

17 a. Any one of them may vote the membership interests on  
18 each item of business in accordance with specific instructions  
19 contained in the appointment.

20 b. If no specific instructions are contained in the  
21 appointment with respect to voting the membership interests on  
22 a particular item of business, the membership interests must  
23 be voted as a majority of the proxies determine. If the  
24 proxies are equally divided, the membership interests must not  
25 be voted.

26 6. VOTE OF PROXY ACCEPTED AND LIABILITY. Unless the  
27 appointment of a proxy contains a restriction, limitation, or  
28 specific reservation of authority, the cooperative may accept  
29 a vote or action taken by a person named in the appointment.  
30 The vote of a proxy is final, binding, and not subject to  
31 challenge, but the proxy is liable to the member for damages  
32 resulting from a failure to exercise the proxy or from an  
33 exercise of the proxy in violation of the authority granted in  
34 the appointment.

35 7. LIMITED AUTHORITY. If a proxy is given authority by a

1 member to vote on less than all items of business considered  
2 at a meeting of members, the member is considered to be  
3 present and entitled to vote by the proxy only with respect to  
4 those items of business for which the proxy has authority to  
5 vote. A proxy who is given authority by a member who abstains  
6 with respect to an item of business is considered to have  
7 authority to vote on the item of business for purposes of this  
8 subsection.

9 Sec. 64. NEW SECTION. 501A.815 SALE OF PROPERTY AND  
10 ASSETS.

11 1. MEMBER APPROVAL NOT REQUIRED. A cooperative may, by  
12 affirmative vote of a majority of the board present, upon  
13 those terms and conditions and for those considerations, which  
14 may be money, securities, or other instruments for the payment  
15 of money or other property, as the board considers expedient  
16 and without member approval, do any of the following:

17 a. Sell, lease, transfer, or otherwise dispose of all or  
18 substantially all of its property and assets in the usual and  
19 regular course of its business.

20 b. Grant a security interest in all or substantially all  
21 of its property and assets whether or not in the usual and  
22 regular course of its business.

23 c. Transfer any or all of its property to a business  
24 entity all the ownership interests of which are owned by the  
25 cooperative.

26 d. For purposes of debt financing, transfer any or all of  
27 its property to a special purpose entity owned or controlled  
28 by the cooperative for an asset securitization.

29 2. MEMBER APPROVAL REQUIRED. Except as provided in  
30 subsection 1, a cooperative, by affirmative vote of a majority  
31 of the board present, may sell, lease, transfer, or otherwise  
32 dispose of all or substantially all of its property and  
33 assets, including its goodwill, not in the usual and regular  
34 course of its business, upon those terms and conditions and  
35 for those considerations, which may be money, securities, or

1 other instruments for the payment of money or other property,  
2 as the board considers expedient, when approved at a regular  
3 or special meeting of the members by the affirmative vote of  
4 two-thirds of the voting power voting at the meeting. Ten  
5 days' written notice of the meeting must be given to all  
6 members whether or not they are entitled to vote at the  
7 meeting. The written notice must state that a purpose of the  
8 meeting is to consider the sale, lease, transfer, or other  
9 disposition of all or substantially all of the property and  
10 assets of the cooperative.

11 3. CONFIRMATORY DOCUMENTS. Confirmatory deeds,  
12 assignments, or similar instruments to evidence a sale, lease,  
13 transfer, or other disposition may be signed and delivered at  
14 any time in the name of the transferor by its current  
15 chairperson of the board or authorized agents.

16 4. LIABILITY OF TRANSFEREE. The transferee is liable for  
17 the debts, obligations, and liabilities of the transferor only  
18 to the extent provided in the contract or agreement between  
19 the transferee and the transferor or to the extent provided by  
20 law.

21 Sec. 65. NEW SECTION. 501A.816 VOTE OF OWNERSHIP  
22 INTERESTS HELD BY COOPERATIVE.

23 A cooperative that holds ownership interests of another  
24 business entity may, by direction of the cooperative's board,  
25 elect or appoint a person to represent the cooperative at a  
26 meeting of the business entity. The representative has  
27 authority to represent the cooperative and may cast the  
28 cooperative's vote at the business entity's meeting.

29 SUBCHAPTER 9  
30 MEMBERSHIP INTERESTS

31 Sec. 66. NEW SECTION. 501A.901 MEMBERSHIP INTERESTS.

32 1. PATRON MEMBERSHIP INTERESTS. Patron membership  
33 interests shall be the only membership interest of a  
34 cooperative unless nonpatron memberships are authorized under  
35 subsection 2. If nonpatron interests are authorized, the

1 patron membership interests collectively shall have not less  
2 than fifty percent of the cooperative's financial rights to  
3 profit allocations and distributions. However, the  
4 cooperative's articles or bylaws may be amended by the  
5 affirmative vote of patron members to allow the cooperative's  
6 financial rights to profit allocations and distributions to  
7 patron members collectively to be a lesser amount but in no  
8 case less than fifteen percent.

9 2. NONPATRONAGE MEMBERSHIP INTERESTS.

10 a. In order for a cooperative to have nonpatron membership  
11 interests, the patron members must approve articles or bylaw  
12 provisions authorizing the terms and conditions of the  
13 nonpatron membership interests, which may include authorizing  
14 the board to determine the terms and conditions of the  
15 nonpatron membership interests.

16 b. If nonpatron membership interests are authorized, the  
17 cooperative may solicit and issue nonpatron membership  
18 interests on terms and conditions determined by the board and  
19 disclosed in the articles, bylaws, or by separate disclosure  
20 to the members. Each member acquiring nonpatron membership  
21 interests shall sign a member control agreement or otherwise  
22 agree to the conditions of the bylaws. The control agreement  
23 or the bylaws shall describe the rights and obligations of the  
24 member as it relates to the nonpatron membership interests,  
25 the financial and governance rights, the transferability of  
26 the nonpatron membership interests, the division and  
27 allocation of profits and losses among the membership  
28 interests and membership classes, and financial rights upon  
29 liquidation. If the articles or bylaws do not otherwise  
30 provide for the allocation of the profits and losses between  
31 patron membership interests and nonpatron membership  
32 interests, then the allocation of profits and losses among  
33 nonpatron membership interests individually and patron  
34 membership interests collectively shall be allocated on the  
35 basis of the value of contributions to capital made according

1 to the patron membership interests collectively and the  
2 nonpatron memberships interests individually to the extent the  
3 contributions have been accepted by the cooperative.  
4 Distributions of cash or other assets of the cooperative shall  
5 be allocated among the membership interests as provided in the  
6 articles or bylaws, subject to the provisions of this chapter.  
7 If not otherwise provided in the articles or bylaws,  
8 distributions shall be made on the basis of value of the  
9 capital contributions of the patron membership interests  
10 collectively and the nonpatron membership interests to the  
11 extent the contributions have been accepted by the  
12 cooperative.

13 3. AMOUNTS AND DIVISIONS OF MEMBERSHIP INTERESTS. The  
14 authorized amount and divisions of patron membership interests  
15 and, if authorized by the patron members, nonpatron membership  
16 interest, may be increased, decreased, established, or altered  
17 in accordance with the restrictions in this chapter by  
18 amending the articles or bylaws at a regular members' meeting  
19 or at a special members' meeting called for the purpose of the  
20 amendment.

21 4. ISSUANCE OF MEMBERSHIP INTERESTS. Authorized  
22 membership interests may be issued on terms and conditions  
23 prescribed in the articles, bylaws, or if authorized in the  
24 articles or bylaws as determined by the board. The  
25 cooperative shall disclose to any person acquiring membership  
26 interests to be issued by the cooperative, the organization,  
27 capital structure, and known business prospects and risks of  
28 the cooperative, the nature of the governance and financial  
29 rights of the membership interest being acquired and of other  
30 classes of membership and membership interests. The  
31 cooperative shall notify all members of the membership  
32 interests being issued by the cooperative. A membership  
33 interest shall not be issued until subscription price of the  
34 membership interest has been paid for in money or property  
35 with the value of the property to be contributed approved by

1 the board.

2 5. TRANSFERRING OR SELLING MEMBERSHIP INTERESTS. After  
3 issuance by the cooperative, membership interests in a  
4 cooperative may only be sold or transferred with the approval  
5 of the board. The board may adopt resolutions prescribing  
6 procedures to prospectively approve transfers.

7 6. COOPERATIVE FIRST RIGHT TO PURCHASE MEMBERSHIP  
8 INTERESTS. The articles or bylaws may provide that the  
9 cooperative or the patron members, individually or  
10 collectively, have the first privilege of purchasing the  
11 membership interests of any class of membership interests  
12 offered for sale. The first privilege to purchase membership  
13 interests may be satisfied by notice to other members that the  
14 membership interests are for sale and a procedure by which  
15 members may proceed to attempt to purchase and acquire the  
16 membership interests.

17 7. PAYMENT FOR DISSENTING MEMBERSHIP INTERESTS.

18 a. Subject to the provisions in the articles and bylaws, a  
19 member may dissent from and obtain payment for the fair value  
20 of the member's membership interests in the cooperative if all  
21 of the following apply:

22 (1) The majority of the cooperative's member voting power  
23 is held by different classes of interests.

24 (2) The articles or bylaws are amended or the cooperative  
25 is merged or otherwise combined with another entity in a  
26 manner that materially and adversely affects the rights and  
27 preferences of the membership interests of the dissenting  
28 member.

29 b. The dissenting member shall file a notice of intent to  
30 demand fair value of the membership interest with the records  
31 officer of the cooperative within thirty days after the  
32 amendment of the bylaws and notice of the amendment to  
33 members; otherwise, the right of the dissenting member to  
34 demand payment of fair value for the membership interest is  
35 waived. If a proposed amendment of the articles or bylaws

1 must be approved by the members, a member who is entitled to  
2 dissent and who wishes to exercise dissenter's rights shall  
3 file a notice to demand fair value of the membership interest  
4 with the records officer of the cooperative; otherwise, the  
5 right to demand fair value for the membership interest by the  
6 dissenting member is waived. After receipt of the dissenting  
7 member's demand notice and approval of the amendment, the  
8 cooperative has sixty days to rescind the amendment, or  
9 otherwise the cooperative shall remit the fair value for the  
10 member's interest to the dissenting member by one hundred  
11 eighty days after receipt of the notice. Upon receipt of the  
12 fair value for the membership interest, the member has no  
13 further member rights in the cooperative.

14 Sec. 67. NEW SECTION. 501A.902 ASSIGNMENT OF FINANCIAL  
15 RIGHTS.

16 1. ASSIGNMENT OF FINANCIAL RIGHTS PERMITTED. Except as  
17 provided in subsection 3, a member's financial rights are  
18 transferable in whole or in part.

19 2. EFFECT OF ASSIGNMENT OF FINANCIAL RIGHTS. An  
20 assignment of a member's financial rights entitles the  
21 assignee to receive, to the extent assigned, only the share of  
22 profits and losses and the distributions to which the assignor  
23 would otherwise be entitled. An assignment of a member's  
24 financial rights does not dissolve the cooperative and does  
25 not entitle or empower the assignee to become a member, to  
26 exercise any governance rights, to receive any notices from  
27 the cooperative, or to cause dissolution. The assignment  
28 shall not allow the assignee to control the member's exercise  
29 of governance or voting rights.

30 3. RESTRICTIONS OF ASSIGNMENT OF FINANCIAL RIGHTS.

31 a. A restriction on the assignment of financial rights may  
32 be imposed in the articles, in the bylaws, in a member control  
33 agreement, by a resolution adopted by the members, by an  
34 agreement among or other written action by the members, or by  
35 an agreement among or other written action by the members and

1 the cooperative. A restriction is not binding with respect to  
2 financial rights reflected in the required records before the  
3 adoption of the restriction, unless the owners of those  
4 financial rights are parties to the agreement or voted in  
5 favor of the restriction.

6 b. Subject to paragraph "c", a written restriction on the  
7 assignment of financial rights that is not manifestly  
8 unreasonable under the circumstances and is noted  
9 conspicuously in the required records may be enforced against  
10 the owner of the restricted financial rights or a successor or  
11 transferee of the owner, including a pledgee or a legal  
12 representative. Unless noted conspicuously in the required  
13 records, a restriction, even though permitted by this section,  
14 is ineffective against a person without knowledge of the  
15 restriction.

16 c. With regard to restrictions on the assignment of  
17 financial rights, a would-be assignee of financial rights is  
18 entitled to rely on a statement of membership interest issued  
19 by the cooperative under section 501A.903. A restriction on  
20 the assignment of financial rights, which is otherwise valid  
21 and in effect at the time of the issuance of a statement of  
22 membership interest but which is not reflected in that  
23 statement, is ineffective against an assignee who takes an  
24 assignment in reliance on the statement.

25 d. Notwithstanding any provision of law, articles, bylaws,  
26 member control agreement, other agreement, resolution, or  
27 action to the contrary, a security interest in a member's  
28 financial rights may be foreclosed and otherwise enforced, and  
29 a secured party may assign a member's financial rights in  
30 accordance with the uniform commercial code, chapter 554,  
31 without the consent or approval of the member whose financial  
32 rights are subject to the security interest.

33 Sec. 68. NEW SECTION. 501A.903 NATURE OF A MEMBERSHIP  
34 INTEREST AND STATEMENT OF INTEREST OWNED.

35 1. GENERALLY. A membership interest is personal property.

1 A member has no interest in specific cooperative property.  
2 All property of the cooperative is property of the  
3 cooperative.

4 2. STATEMENT OF MEMBERSHIP INTEREST. At the request of  
5 any member, the cooperative shall state in writing the  
6 particular membership interest owned by that member as of the  
7 date the cooperative makes the statement. The statement must  
8 describe the member's rights to vote, if any, to share in  
9 profits and losses, and to share in distributions,  
10 restrictions on assignments of financial rights under section  
11 501A.902, subsection 3, or voting rights under section  
12 501A.810 then in effect, as well as any assignment of the  
13 member's rights then in effect other than a security interest.

14 3. TERMS OF MEMBERSHIP INTERESTS. All the membership  
15 interests of a cooperative are subject to all of the  
16 following:

17 a. Membership interests shall be of one class, without  
18 series, unless the articles or bylaws establish or authorize  
19 the board to establish more than one class or series within  
20 classes.

21 b. Ordinary patron membership interests and, if  
22 authorized, nonpatron membership interest subject to this  
23 chapter are entitled to vote as provided in section 501A.810,  
24 and have equal rights and preferences in all matters not  
25 otherwise provided for by the board and to the extent that the  
26 articles or bylaws have fixed the relative rights and  
27 preferences of different classes and series.

28 c. Membership interests share profits and losses and are  
29 entitled to distributions as provided in sections 501A.1005  
30 and 501A.1006.

31 4. RIGHTS OF JUDGMENT CREDITOR. On application to a court  
32 of competent jurisdiction by any judgment creditor of a  
33 member, the court may charge a member's or an assignee's  
34 financial rights with payment of the unsatisfied amount of the  
35 judgment with interest. To the extent so charged, the

1 judgment creditor has only the rights of an assignee of a  
2 member's financial rights under section 501A.902. This  
3 chapter does not deprive any member or assignee of financial  
4 rights of the benefit of any exemption laws applicable to the  
5 membership interest. This section is the sole and exclusive  
6 remedy of a judgment creditor with respect to the judgment  
7 debtor's membership interest.

8 5. a. Subject to any restrictions in the articles or  
9 bylaws, the power granted in this subsection may be exercised  
10 by a resolution or resolutions establishing a class or series,  
11 setting forth the designation of the class or series, and  
12 fixing the relative rights and preferences of the class or  
13 series. Any of the rights and preferences of a class or  
14 series established in the articles, bylaws, or by resolution  
15 of the board may do any of the following:

16 (1) Be made dependent upon facts ascertainable outside the  
17 articles or bylaws or outside the resolution or resolutions  
18 establishing the class or series, if the manner in which the  
19 facts operate upon the rights and preferences of the class or  
20 series is clearly and expressly set forth in the articles or  
21 bylaws or in the resolution or resolutions establishing the  
22 class or series.

23 (2) Include by reference some or all of the terms of any  
24 agreements, contracts, or other arrangements entered into by  
25 the cooperative in connection with the establishment of the  
26 class or series if the cooperative retains at its principal  
27 executive office a copy of the agreements, contracts, or other  
28 arrangements or the portions will be included by reference.

29 b. A statement setting forth the name of the cooperative  
30 and the text of the resolution and certifying the adoption of  
31 the resolution and the date of adoption must be given to the  
32 members before the acceptance of any contributions for which  
33 the resolution creates rights or preferences not set forth in  
34 the articles or bylaws. Where the members have received  
35 notice of the creation of membership interests with rights or

1 preferences not set forth in the articles or bylaws before the  
2 acceptance of the contributions with respect to the membership  
3 interests, the statement may be filed anytime within one year  
4 after the acceptance of the contributions. The resolution is  
5 effective three days after delivery to the members is deemed  
6 effective by the board, or, if the statement is not required  
7 to be given to the members before the acceptance of  
8 contributions, on the date of its adoption by the directors.

9 6. SPECIFIC TERMS. Without limiting the authority granted  
10 in this section, in regulating the membership interests of a  
11 class or series, a cooperative may do any of the following:

12 a. Subject to the right of the cooperative to redeem any  
13 of those membership interests at the price fixed for their  
14 redemption by the articles or bylaws or by the board.

15 b. Entitle the members to receive cumulative, partially  
16 cumulative, or noncumulative distributions.

17 c. Provide a preference over any class or series of  
18 membership interests for the payment of distributions of any  
19 or all kinds.

20 d. Convert into membership interests of any other class or  
21 any series of the same or another class.

22 e. Provide full, partial, or no voting rights, except as  
23 provided in section 501A.810.

24 7. GRANT OF A SECURITY INTEREST. For the purpose of any  
25 law relating to security interests, membership interests,  
26 governance or voting rights, and financial rights are each to  
27 be characterized as provided in section 554.8103, subsection  
28 3.

29 8. POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER.

30 a. If a member who is an individual dies or a court of  
31 competent jurisdiction adjudges the member to be incompetent  
32 to manage the member's person or property, or an order for  
33 relief under the bankruptcy code is entered with respect to  
34 the member, the member's executor, administrator, guardian,  
35 conservator, trustee, or other legal representative may

1 exercise all of the member's rights for the purpose of  
2 settling the estate or administering the member's property.  
3 If a member is a business entity, trust, or other entity and  
4 is dissolved, terminated, or placed by a court in receivership  
5 or bankruptcy, the powers of that member may be exercised by  
6 its legal representative or successor.

7 b. If an event referred to in paragraph "a" causes the  
8 termination of a member's membership interest and the  
9 termination does not result in dissolution, then, subject to  
10 the articles and bylaws, all of the following apply:

11 (1) As provided in section 501A.902, the terminated  
12 member's interest will be considered to be merely that of an  
13 assignee of the financial rights owned before the termination  
14 of membership.

15 (2) The rights to be exercised by the legal representative  
16 of the terminated member shall be limited accordingly.

17 9. LIABILITY OF SUBSCRIBERS AND MEMBERS WITH RESPECT TO  
18 MEMBERSHIP INTERESTS. A person who subscribes to or owns a  
19 membership interest in a cooperative is under no obligation to  
20 the cooperative or its creditors with respect to the  
21 membership interests subscribed for or owned, except to pay to  
22 the cooperative the full consideration for which the  
23 membership interests are issued or to be issued.

24 Sec. 69. NEW SECTION. 501A.904 CERTIFICATED MEMBERSHIP  
25 INTERESTS.

26 1. CERTIFICATED -- UNCERTIFICATED. The membership  
27 interests of a cooperative shall be either certificated or  
28 uncertificated. Each holder of certificated membership  
29 interests issued is entitled to a certificate of membership  
30 interest.

31 2. SIGNATURE REQUIRED. Certificates shall be signed by an  
32 agent or officer authorized in the articles or bylaws to sign  
33 share certificates or, in the absence of an authorization, by  
34 the chairperson or records officer of the cooperative.

35 3. SIGNATURE VALID. If a person signs or has a facsimile

1 signature placed upon a certificate while the chairperson, an  
2 officer, transfer agent, or records officer of a cooperative,  
3 the certificate may be issued by the cooperative, even if the  
4 person has ceased to have that capacity before the certificate  
5 is issued, with the same effect as if the person had that  
6 capacity at the date of its issue.

7 4. FORM OF CERTIFICATE. A certificate representing  
8 membership interests of a cooperative shall contain on its  
9 face all of the following:

10 a. The name of the cooperative.

11 b. A statement that the cooperative is organized under the  
12 laws of this state and this chapter.

13 c. The name of the person to whom the certificate is  
14 issued.

15 d. The number and class of membership interests, and the  
16 designation of the series, if any, that the certificate  
17 represents.

18 e. A statement that the membership interests in the  
19 cooperative are subject to the articles and bylaws of the  
20 cooperative.

21 f. Any restrictions on transfer, including approval of the  
22 board, if applicable, first rights of purchase by the  
23 cooperative, and other restrictions on transfer, which may be  
24 stated by reference to the back of the certificate or to  
25 another document.

26 5. LIMITATIONS SET FORTH. A certificate representing  
27 membership interests issued by a cooperative authorized to  
28 issue membership interests of more than one class or series  
29 shall set forth upon the face or back of the certificate, or  
30 shall state that the cooperative will furnish to any member  
31 upon request and without charge, a full statement of the  
32 designations, preferences, limitations, and relative rights of  
33 the membership interests of each class or series authorized to  
34 be issued, so far as they have been determined, and the  
35 authority of the board to determine the relative rights and

1 preferences of subsequent classes or series.

2 6. PRIMA FACIE EVIDENCE. A certificate signed as provided  
3 in subsection 2 is prima facie evidence of the ownership of  
4 the membership interests referred to in the certificate.

5 7. UNCERTIFICATED MEMBERSHIP INTERESTS. Unless  
6 uncertificated membership interests are prohibited by the  
7 articles or bylaws, a resolution approved by the affirmative  
8 vote of a majority of the directors present may provide that  
9 some or all of any or all classes and series of its membership  
10 interests will be uncertificated membership interests.

11 The resolution does not apply to membership interests  
12 represented by a certificate until the certificate is  
13 surrendered to the cooperative. Within a reasonable time  
14 after the issuance or transfer of uncertificated membership  
15 interests, the cooperative shall send to the new member the  
16 information required by this section to be stated on  
17 certificates. This information is not required to be sent to  
18 the new holder by a publicly held cooperative that has adopted  
19 a system of issuance, recordation, and transfer of its  
20 membership interests by electronic or other means not  
21 involving an issuance of certificates if the system complies  
22 with section 17A of the Securities Exchange Act of 1934, 15  
23 U.S.C. § 78a et seq. Except as otherwise expressly provided  
24 by statute, the rights and obligations of the holders of  
25 certificated and uncertificated membership interests of the  
26 same class and series are identical.

27 Sec. 70. NEW SECTION. 501A.905 LOST CERTIFICATES --  
28 REPLACEMENT.

29 1. ISSUANCE. A new membership interest certificate may be  
30 issued under section 554.8405 in place of one that is alleged  
31 to have been lost, stolen, or destroyed.

32 2. NOT OVERISSUE. The issuance of a new certificate under  
33 this section does not constitute an overissue of the  
34 membership interests the new certificate represents.

35 Sec. 71. NEW SECTION. 501A.906 RESTRICTION ON TRANSFER

1 OR REGISTRATION OF MEMBERSHIP INTERESTS.

2 1. HOW IMPOSED. A restriction on the transfer or  
3 registration of transfer of membership interests of a  
4 cooperative may be imposed in the articles, in the bylaws, by  
5 a resolution adopted by the members, or by an agreement among  
6 or other written action by a number of members or holders of  
7 other membership interests or among them and the cooperative.  
8 A restriction is not binding with respect to membership  
9 interests issued prior to the adoption of the restriction,  
10 unless the holders of those membership interests are parties  
11 to the agreement or voted in favor of the restriction.

12 2. RESTRICTIONS PERMITTED. A written restriction on the  
13 transfer or registration of transfer of membership interests  
14 of a cooperative that is not manifestly unreasonable under the  
15 circumstances may be enforced against the holder of the  
16 restricted membership interests or a successor or transferee  
17 of the holder, including a pledgee or a legal representative,  
18 if the restriction is any of the following:

19 a. Noted conspicuously on the face or back of the  
20 certificate.

21 b. Included in this chapter or the articles or bylaws.

22 c. Included in information sent to the holders of  
23 uncertificated membership interests.

24 Unless otherwise restricted by this chapter, the articles,  
25 bylaws, noted conspicuously on the face or back of the  
26 certificate, or included in information sent to the holders of  
27 uncertificated membership interests, a restriction, even  
28 though permitted by this section, is ineffective against a  
29 person without knowledge of the restriction. A restriction  
30 under this section is deemed to be noted conspicuously and is  
31 effective if the existence of the restriction is stated on the  
32 certificate and reference is made to a separate document  
33 creating or describing the restriction.

34

SUBCHAPTER 10

35

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

1     Sec. 72. NEW SECTION. 501A.1001 AUTHORIZATION, FORM, AND  
2 ACCEPTANCE OF CONTRIBUTIONS.

3     1. Subject to any restrictions in this chapter regarding  
4 patron and nonpatron membership interests or in the articles  
5 or bylaws, and only when authorized by the board, a  
6 cooperative may accept contributions, which may be patron or  
7 nonpatron membership contributions as determined by the board  
8 under subsections 2 and 3, make contribution agreements under  
9 section 501A.1003, and make contribution rights agreements  
10 under section 501A.1004.

11    2. PERMISSIBLE FORMS. A person may make a contribution to  
12 a cooperative by any of following:

13    a. Paying money or transferring the ownership of an  
14 interest in property to the cooperative or rendering services  
15 to or for the benefit of the cooperative.

16    b. Executing a written obligation signed by the person to  
17 pay money or transfer ownership of an interest in property to  
18 the cooperative or to perform services to or for the benefit  
19 of the cooperative.

20    3. A purported contribution shall not be treated or  
21 considered as a contribution, unless all of the following  
22 apply:

23    a. The board accepts the contribution on behalf of the  
24 cooperative and in that acceptance describes the contribution,  
25 including terms of future performance, if any, and states the  
26 value being accorded to the contribution.

27    b. The fact of contribution and the contribution's  
28 accorded value are both reflected in the required records of  
29 the cooperative.

30    4. The determinations of the board as to the amount or  
31 fair value or the fairness to the cooperative of the  
32 contribution accepted or to be accepted by the cooperative or  
33 the terms of payment or performance, including under a  
34 contribution rights in section 501A.1003, and a contribution  
35 rights agreement in section 501A.1004, are presumed to be

1 proper if they are made in good faith and on the basis of  
2 accounting methods, or a fair valuation or other method,  
3 reasonable in the circumstances. Directors who are present  
4 and entitled to vote, and who, intentionally or without  
5 reasonable investigation, fail to vote against approving a  
6 consideration that is unfair to the cooperative, or overvalue  
7 property or services received or to be received by the  
8 cooperative as a contribution, are jointly and severally  
9 liable to the cooperative for the benefit of the then members  
10 who did not consent to and are damaged by the action to the  
11 extent of the damages of those members. A director against  
12 whom a claim is asserted under this subsection, except in case  
13 of knowing participation in a deliberate fraud, is entitled to  
14 contribution on an equitable basis from other directors who  
15 are liable under this subsection.

16 Sec. 73. NEW SECTION. 501A.1002 RESTATEMENT OF VALUE OF  
17 PREVIOUS CONTRIBUTIONS.

18 1. DEFINITION. As used in this section, an "old  
19 contribution" is a contribution reflected in the required  
20 records of a cooperative before the time the cooperative  
21 accepts a new contribution.

22 2. RESTATEMENT REQUIRED. Whenever a cooperative accepts a  
23 new contribution, the board shall restate, as required by this  
24 section, the value of all old contributions.

25 3. RESTATEMENT AS TO PARTICULAR SERIES OR CLASS TO WHICH  
26 NEW CONTRIBUTION PERTAINS.

27 a. Unless otherwise provided in a cooperative's articles  
28 or bylaws, this subsection sets forth the method of restating  
29 the value of old contributions that pertain to the same series  
30 or class to which the new contribution pertains. In restating  
31 the value, the cooperative shall do all of the following:

32 (1) State the value the cooperative has accorded to the  
33 new contribution under section 504A.1001, subsection 3,  
34 paragraph "a".

35 (2) Determine what percentage the value stated under

1 subparagraph (1) will constitute, after the restatement  
2 required by this subsection, of the total value of all  
3 contributions that pertain to the particular series or class  
4 to which the new contribution pertains.

5 (3) Divide the value stated under subparagraph (1) by the  
6 percentage determined under subparagraph (2), yielding the  
7 total value, after the restatement required by this  
8 subsection, of all contributions pertaining to the particular  
9 series or class.

10 (4) Subtract the value stated under subparagraph (1) from  
11 the value determined under subparagraph (3), yielding the  
12 total value, after the restatement required by this  
13 subsection, of all the old contributions pertaining to the  
14 particular series or class.

15 (5) Subtract the value, as reflected in the required  
16 records before the restatement required by this subsection, of  
17 the old contributions from the value determined under  
18 subparagraph (4), yielding the value to be allocated among and  
19 added to the old contributions pertaining to the particular  
20 series or class.

21 (6) Allocate the value determined under subparagraph (5)  
22 proportionally among the old contributions pertaining to the  
23 particular series or class, add the allocated values to those  
24 old contributions, and change the required records  
25 accordingly.

26 b. The values determined under paragraph "a", subparagraph  
27 (5), and allocated and added under paragraph "a", subparagraph  
28 (6), may be positive, negative, or zero.

29 4. RESTATEMENT METHOD FOR OTHER SERIES OR CLASS. Unless  
30 otherwise provided in a cooperative's articles or bylaws, this  
31 subsection sets forth the method of restating the value of old  
32 contributions that do not pertain to the same series or class  
33 to which the new contribution pertains. In restating the  
34 value, the cooperative shall do all of the following:

35 a. Determine the percentage by which the restatement under

1 subsection 3 has changed the total contribution value  
2 reflected in the required records for the series or class to  
3 which the new contribution pertains.

4 b. As to each old contribution that does not pertain to  
5 the same series or class to which the new contribution  
6 pertains, change the value reflected in the required records  
7 by the percentage determined under paragraph "a". The  
8 percentage determined under paragraph "a" may be positive,  
9 negative, or zero.

10 5. NEW CONTRIBUTIONS MAY BE AGGREGATED. If a cooperative  
11 accepts more than one contribution pertaining to the same  
12 series or class at the same time, then for the purpose of the  
13 restatement required by this section, the cooperative may  
14 consider all the new contributions a single contribution.

15 Sec. 74. NEW SECTION. 501A.1003 CONTRIBUTION AGREEMENTS.

16 1. SIGNED WRITING. A contribution agreement, whether made  
17 before or after the formation of the cooperative, is not  
18 enforceable against the would-be contributor unless it is in  
19 writing and signed by the would-be contributor.

20 2. IRREVOCABLE PERIOD. Unless otherwise provided in the  
21 contribution agreement, or unless all of the would-be  
22 contributors and, if in existence, the cooperative, consent to  
23 a shorter or longer period, a contribution agreement is  
24 irrevocable for a period of six months.

25 3. CURRENT AND DEFERRED PAYMENT. A contribution  
26 agreement, whether made before or after the formation of a  
27 cooperative, must be paid or performed in full at the time or  
28 times, or in the installments, if any, specified in the  
29 contribution agreement. In the absence of a provision in the  
30 contribution agreement specifying the time at which the  
31 contribution is to be paid or performed, the contribution must  
32 be paid or performed at the time or times determined by the  
33 board. However, a call made by the board for payment or  
34 performance on contributions must be uniform for all  
35 membership interests of the same class or for all membership

1 interests of the same series.

2 4. FAILURE TO PAY REMEDIES.

3 a. Unless otherwise provided in the contribution  
4 agreement, in the event of default in the payment or  
5 performance of an installment or call when due, the  
6 cooperative may proceed to collect the amount due in the same  
7 manner as a debt due the cooperative. If a would-be  
8 contributor does not make a required contribution of property  
9 or services, the cooperative shall require the would-be  
10 contributor to contribute cash equal to that portion of the  
11 value, as stated in the cooperative's required records, of the  
12 contribution that has not been made.

13 b. If the amount due under a contribution agreement  
14 remains unpaid for a period of twenty days after written  
15 notice of demand for payment has been given to the delinquent  
16 would-be contributor, the membership interests that were  
17 subject to the contribution agreement may be offered for sale  
18 by the cooperative for a price in money equaling or exceeding  
19 the sum of the full balance owed by the delinquent would-be  
20 contributor plus the expenses incidental to the sale.

21 If the membership interests that were subject to the  
22 contribution agreement are sold according to this paragraph  
23 "b", the cooperative shall pay to the delinquent would-be  
24 contributor or to the delinquent would-be contributor's legal  
25 representative the lesser of one of the following:

26 (1) The excess of net proceeds realized by the cooperative  
27 over the sum of the amount owed by the delinquent would-be  
28 contributor plus the expenses incidental to the sale, less any  
29 penalty stated in the contribution agreement, which may  
30 include forfeiture of the partial contribution.

31 (2) The amount actually paid by the delinquent would-be  
32 contributor.

33 If the membership interests that were subject to the  
34 contribution agreement are not sold according to this  
35 paragraph "b", the cooperative may collect the amount due in

1 the same manner as a debt due the cooperative or cancel the  
2 contribution agreement according to paragraph "c".

3 c. If the amount due under a contribution agreement  
4 remains unpaid for a period of twenty days after written  
5 notice of demand for payment has been given to the delinquent  
6 would-be contributor and the membership interests that were  
7 subject to the defaulted contribution agreement have not been  
8 sold according to paragraph "b", the cooperative may cancel  
9 the contribution agreement. In addition, the cooperative may  
10 retain any portion of the contribution agreement price  
11 actually paid as provided in the contribution agreement. The  
12 cooperative shall refund to the delinquent would-be  
13 contributor or the delinquent would-be contributor's legal  
14 representatives any portion of the contribution agreement  
15 price as provided in the contribution agreement.

16 5. RESTRICTIONS ON ASSIGNMENT. Unless otherwise provided  
17 in the articles or bylaws, a would-be contributor's rights  
18 under a contribution agreement shall not be assigned, in whole  
19 or in part, to a person who was not a member at the time of  
20 the assignment, unless all the members approve the assignment  
21 by unanimous written consent.

22 Sec. 75. NEW SECTION. 501A.1004 CONTRIBUTION RIGHTS  
23 AGREEMENTS.

24 1. AGREEMENTS PERMITTED. Subject to any restrictions in a  
25 cooperative's articles or bylaws, the cooperative may enter  
26 into contribution rights agreements under the terms,  
27 provisions, and conditions established by board resolution.

28 2. WRITING REQUIRED AND TERMS TO BE STATED. Any  
29 contribution rights agreement must be in writing and the  
30 writing must state in full, summarize, or include by reference  
31 all the agreement's terms, provisions, and conditions of the  
32 rights to make contributions.

33 3. RESTRICTIONS ON ASSIGNMENT. Unless otherwise provided  
34 in a cooperative's articles or bylaws, a would-be  
35 contributor's rights under a contribution rights agreement

1 shall not be assigned, in whole or in part, to a person who  
2 was not a member at the time of the assignment, unless all the  
3 members approve the assignment by unanimous written consent.

4 Sec. 76. NEW SECTION. 501A.1005 ALLOCATIONS AND  
5 DISTRIBUTIONS TO MEMBERS.

6 1. ALLOCATION OF PROFITS AND LOSSES. If nonpatron  
7 membership interests are authorized by the patrons, the bylaws  
8 shall prescribe the allocation of profits and losses between  
9 patron membership interests collectively and any other  
10 membership interests. If the bylaws do not otherwise provide,  
11 the profits and losses between patron membership interests  
12 collectively and other membership interests shall be allocated  
13 on the basis of the value of contributions to capital made by  
14 the patron membership interests collectively and other  
15 membership interests accepted by the cooperative. The  
16 allocation of profits to the patron membership interests  
17 collectively shall not be less than fifty percent of the total  
18 profits in any fiscal year, except if authorized in the  
19 cooperative's articles or bylaws that are adopted by an  
20 affirmative vote of the patron members, or in the articles or  
21 bylaws as amended by the affirmative vote of the patron  
22 members. However, the allocation of profits to the patron  
23 membership interests collectively shall not be less than  
24 fifteen percent of the total profits in any fiscal year.

25 2. DISTRIBUTION OF CASH OR OTHER ASSETS. A cooperative's  
26 bylaws shall prescribe the distribution of cash or other  
27 assets of the cooperative among the membership interests of  
28 the cooperative. If nonpatron membership interests are  
29 authorized by the patrons and the bylaws do not provide  
30 otherwise, distributions and allocations shall be made to the  
31 patron membership interests collectively and other members on  
32 the basis of the value of contributions to capital made and  
33 accepted by the cooperative, by the patron membership  
34 interests collectively, and other membership interests. The  
35 distributions to patron membership interests collectively

1 shall not be less than fifty percent of the total  
2 distributions in any fiscal year, except if authorized in the  
3 articles or bylaws adopted by the affirmative vote of the  
4 patron members, or the articles or bylaws as amended by the  
5 affirmative vote of the patron members. However, the  
6 distributions to patron membership interests collectively  
7 shall not be less than fifteen percent of the total  
8 distributions in any fiscal year.

9 Sec. 77. NEW SECTION. 501A.1006 ALLOCATIONS AND  
10 DISTRIBUTIONS TO PATRON MEMBERS.

11 1. DISTRIBUTION OF NET INCOME. A cooperative may set  
12 aside a portion of net income allocated to the patron  
13 membership interests as the board determines advisable to  
14 create or maintain a capital reserve.

15 2. RESERVES. In addition to a capital reserve, the board  
16 may, for patron membership interests, do any of the following:

17 a. Set aside an amount not to exceed five percent of the  
18 annual net income of the cooperative for promoting and  
19 encouraging cooperative organization.

20 b. Establish and accumulate reserves for new buildings,  
21 machinery and equipment, depreciation, losses, and other  
22 proper purposes.

23 3. PATRONAGE DISTRIBUTIONS. Net income allocated to  
24 patron members in excess of dividends on equity and additions  
25 to reserves shall be distributed to patron members on the  
26 basis of patronage. A cooperative may establish allocation  
27 units, whether the units are functional, divisional,  
28 departmental, geographic, or otherwise. The cooperative may  
29 provide for pooling arrangements. The cooperative may account  
30 for and distribute net income to patrons on the basis of  
31 allocation units and pooling arrangements. A cooperative may  
32 offset the net loss of an allocation unit or pooling  
33 arrangement against the net income of other allocation units  
34 or pooling arrangements.

35 4. FREQUENCY OF DISTRIBUTION. A distribution of net

1 income shall be made at least annually. The board shall  
2 present to the members at their annual meeting a report  
3 covering the operations of the cooperative during the  
4 preceding fiscal year.

5 5. FORM OF DISTRIBUTION. A cooperative may distribute net  
6 income to patron members in cash, capital credits, allocated  
7 patronage equities, revolving fund certificates, or its own or  
8 other securities.

9 6. ELIGIBLE NONMEMBER PATRONS. A cooperative may provide  
10 in the bylaws that nonmember patrons are allowed to  
11 participate in the distribution of net income, payable to  
12 patron members on equal terms with patron members.

13 7. PATRONAGE CREDITS FOR INELIGIBLE MEMBERS. If a  
14 nonmember patron with patronage credits is not qualified or  
15 eligible for membership, a refund due may be credited to the  
16 nonmember patron's individual account. The board may issue a  
17 certificate of interest to reflect the credited amount. After  
18 the nonmember patron is issued a certificate of interest, the  
19 nonmember patron may participate in the distribution of income  
20 on the same basis as a patron member.

21 Sec. 78. NEW SECTION. 501A.1007 MEMBER CONTROL  
22 AGREEMENTS.

23 1. AUTHORIZATION. A written agreement among persons who  
24 are then members, including a sole member, or who have signed  
25 subscription or contribution agreements, relating to the  
26 control of any phase of the business and affairs of the  
27 cooperative, its liquidation, dissolution and termination, or  
28 the relations among members or persons who have signed  
29 subscription or contribution agreements is valid as provided  
30 in subsection 2. Other than the authorization of nonpatron  
31 membership interests as provided in section 501A.901 and  
32 nonpatron voting rights as provided in section 501A.810,  
33 whenever this chapter provides that a particular result may or  
34 must be obtained through a provision in a cooperative's  
35 articles or bylaws, the same result can be accomplished

1 through a member control agreement valid under this section or  
2 through a procedure established by a member control agreement  
3 valid under this section. However, the member control  
4 agreement must be authorized by the cooperative's articles or  
5 bylaws and cannot conflict with the cooperative's articles or  
6 bylaws. Any result accomplished through a membership control  
7 agreement under this section must be properly disclosed as  
8 provided in section 501A.901.

9 2. VALID EXECUTION. Other than patron member voting  
10 control under section 501A.810 and patron member allocation  
11 and distribution provisions under sections 501A.1005 and  
12 501A.1006, a written agreement among persons described in  
13 subsection 1 that relates to the control of or the  
14 liquidation, dissolution, and termination of the cooperative,  
15 the relations among them, or any phase of the business and  
16 affairs of the cooperative is valid if it meets the  
17 requirements of this subsection. This includes but is not  
18 limited to the management of its business, the declaration and  
19 payment of distributions, the sharing of profits and losses,  
20 the election of directors, the employment of members by the  
21 cooperative, or the arbitration of disputes. The written  
22 agreement must be signed by all persons who are then the  
23 members of the cooperative, whether or not the members all  
24 have voting power, and all those who have signed contribution  
25 agreements, regardless of whether those signatories will, when  
26 members, have voting power.

27 3. OTHER AGREEMENTS NOT AFFECTED. This section does not  
28 apply to, limit, or restrict agreements otherwise valid, nor  
29 is the procedure set forth in this section the exclusive  
30 method of agreement among members or between the members and  
31 the cooperative with respect to any of the matters described.

32 Sec. 79. NEW SECTION. 501A.1008 DISTRIBUTION OF  
33 ABANDONED PROPERTY.

34 1. ALTERNATE PROCEDURE TO DISBURSE PROPERTY. A  
35 cooperative may, in lieu of paying or delivering to the state

1 abandoned property specified in its report of abandoned  
2 property as provided in chapter 556, distribute the abandoned  
3 property to a business entity or organization that is exempt  
4 from taxation. A cooperative making the election to  
5 distribute unclaimed property shall file with the secretary  
6 all of the following:

7 a. A verified written explanation of the proof of claim of  
8 an owner establishing a right to receive the abandoned  
9 property.

10 b. Any error in the presumption of abandonment.

11 c. The name, address, and exemption number of the business  
12 entity or organization to which the property was or is to be  
13 distributed.

14 d. The approximate date of distribution.

15 2. REPORTING AND CLAIMING PROCEDURE NOT AFFECTED. This  
16 section does not alter the procedure provided by law for  
17 cooperatives to report abandoned property to the treasurer of  
18 state and the requirement that claims of owners are made to  
19 the cooperatives for a period following the publication of  
20 lists of abandoned property.

21 3. OWNER'S RIGHT EXTINGUISHED ON DISBURSEMENT. The right  
22 of an owner to abandoned property held by a cooperative is  
23 extinguished when the property is disbursed by the cooperative  
24 to a tax-exempt organization in accordance with this section.

#### 25 SUBCHAPTER 11

#### 26 MERGER AND CONVERSION

27 Sec. 80. NEW SECTION. 501A.1101 MERGER AND  
28 CONSOLIDATION.

29 1. AUTHORIZATION. Unless otherwise prohibited,  
30 cooperatives organized under the laws of this state, including  
31 cooperatives organized under this chapter or traditional  
32 cooperatives, may merge or consolidate with each other, an  
33 Iowa limited liability company under the provisions of section  
34 490A.1207, or other business entities organized under the laws  
35 of another state by complying with the provisions of this

1 section and the law of the state where the surviving or new  
2 business entity will exist. A cooperative shall not merge or  
3 consolidate with a business entity organized under the laws of  
4 this state, other than a traditional cooperative unless the  
5 law governing the business entity expressly authorizes merger  
6 or consolidation with a cooperative. This subsection does not  
7 authorize a foreign business entity to do any act not  
8 authorized by the law governing the foreign business entity.

9 2. PLAN. To initiate a merger or consolidation of a  
10 cooperative, a written plan of merger or consolidation shall  
11 be prepared by the board or by a committee selected by the  
12 board to prepare a plan. The plan shall state all of the  
13 following:

14 a. The names of the constituent domestic cooperative, the  
15 name of any Iowa limited liability company that is a party to  
16 the merger, to the extent authorized under section 490A.1207,  
17 and any foreign business entities.

18 b. The name of the surviving or new domestic cooperative,  
19 Iowa limited liability company as required by section  
20 490A.1207, or other foreign business entity.

21 c. The manner and basis of converting membership or  
22 ownership interests of the constituent domestic cooperative,  
23 the surviving Iowa limited liability company as provided in  
24 section 490A.1207, or foreign business entity into membership  
25 or ownership interests in the surviving or new domestic  
26 cooperative, the surviving Iowa limited liability company as  
27 authorized in section 490A.1207, or foreign business entity.

28 d. The terms of the merger or consolidation.

29 e. The proposed effect of the merger or consolidation on  
30 the members and patron members of each constituent domestic  
31 cooperative.

32 f. For a consolidation, the plan shall contain the  
33 articles of the entity or organizational documents to be filed  
34 with the state in which the entity is organized or, if the  
35 surviving organization is an Iowa limited liability company,

1 the articles of organization.

2 3. NOTICE. The following shall apply to notice:

3 a. The board shall mail or otherwise transmit or deliver  
4 notice of the merger or consolidation to each member. The  
5 notice shall contain the full text of the plan, and the time  
6 and place of the meeting at which the plan will be considered.

7 b. A cooperative with more than two hundred members may  
8 provide the notice in the same manner as a regular members'  
9 meeting notice.

10 4. ADOPTION OF PLAN.

11 a. A plan of merger or consolidation shall be adopted by a  
12 domestic cooperative as provided in this subsection.

13 b. The plan of merger or consolidation is adopted if all  
14 of the following apply:

15 (1) A quorum of the members eligible to vote is registered  
16 as being present or represented by mail vote or alternative  
17 ballot at the meeting.

18 (2) The plan is approved by the patron members, or if  
19 otherwise provided in the articles or bylaws, is approved by a  
20 majority of the votes cast in each class of votes cast. For a  
21 domestic cooperative with articles or bylaws requiring more  
22 than a majority of the votes cast or other conditions for  
23 approval, the plan must be approved by a proportion of the  
24 votes cast or a number of total members as required by the  
25 articles or bylaws and the conditions for approval in the  
26 articles or bylaws have been satisfied.

27 c. After the plan has been adopted, articles of merger or  
28 consolidation stating the plan and that the plan was adopted  
29 according to this subsection shall be signed by the  
30 chairperson, vice chairperson, records officer, or documents  
31 officer of each cooperative merging or consolidating.

32 d. The articles of merger or consolidation shall be filed  
33 in the office of the secretary.

34 e. For a merger, the articles of the surviving domestic  
35 cooperative subject to this chapter are deemed amended to the

1 extent provided in the articles of merger.

2 f. Unless a later date is provided in the plan, the merger  
3 or consolidation is effective when the articles of merger or  
4 consolidation are filed in the office of the secretary or the  
5 appropriate office of another jurisdiction.

6 g. The secretary shall issue a certificate of organization  
7 of the merged or consolidated cooperative.

8 5. EFFECT OF MERGER. For a merger that does not involve  
9 an Iowa limited liability company, the following shall apply  
10 to the effect of a merger:

11 a. After the effective date, the domestic cooperative,  
12 Iowa limited liability company, if party to the plan, and any  
13 foreign business entity that is a party to the plan become a  
14 single entity. For a merger, the surviving business entity is  
15 the business entity designated in the plan. For a  
16 consolidation, the new domestic cooperative, the Iowa limited  
17 liability company, if any, and any foreign business entity is  
18 the business entity provided for in the plan. Except for the  
19 surviving or new domestic cooperative, Iowa limited liability  
20 company, or foreign business entity, the separate existence of  
21 each merged or consolidated domestic or foreign business  
22 entity that is a party to the plan ceases on the effective  
23 date of the merger or consolidation.

24 b. The surviving or new domestic cooperative, Iowa limited  
25 liability company, or foreign business entity possesses all of  
26 the rights and property of each of the merged or consolidated  
27 business entities and is responsible for all their  
28 obligations. The title to property of the merged or  
29 consolidated domestic cooperative, Iowa limited liability  
30 company, or foreign business entity is vested in the surviving  
31 or new domestic cooperative, Iowa limited liability company,  
32 or foreign business entity without reversion or impairment of  
33 the title caused by the merger or consolidation.

34 c. If a merger involves an Iowa limited liability company,  
35 this subsection is subject to the provisions of section

1 490A.1207.

2 Sec. 81. NEW SECTION. 501A.1102 MERGER OF SUBSIDIARY.

3 1. WHEN AUTHORIZED -- CONTENTS OF PLAN. For purposes of  
4 this section, "subsidiary" means a domestic cooperative, an  
5 Iowa limited liability company, or a foreign cooperative.

6 2. An Iowa limited liability company may only participate  
7 in a merger under this section to the extent authorized under  
8 section 490A.1207. A parent domestic cooperative or a  
9 subsidiary that is a domestic cooperative may complete the  
10 merger of a subsidiary as provided in this section. However,  
11 if either the parent cooperative or the subsidiary is a  
12 business entity organized under the laws of this state, the  
13 merger of the subsidiary is not authorized under this section  
14 unless the law governing the business entity expressly  
15 authorizes merger with a cooperative.

16 a. A parent cooperative owning at least ninety percent of  
17 the outstanding ownership interests of each class and series  
18 of a subsidiary directly, or indirectly through related  
19 organizations, other than classes or series that, absent this  
20 section, would otherwise not be entitled to vote on the  
21 merger, may merge the subsidiary into itself or into any other  
22 subsidiary at least ninety percent of the outstanding  
23 ownership interests of each class and series of which is owned  
24 by the parent cooperative directly, or indirectly through  
25 related organizations, other than classes or series that,  
26 absent this section, would otherwise not be entitled to vote  
27 on the merger, without a vote of the members of itself or any  
28 subsidiary or may merge itself, or itself and one or more of  
29 the subsidiaries, into one of the subsidiaries under this  
30 section. A resolution approved by the affirmative vote of a  
31 majority of the directors of the parent cooperative present  
32 shall set forth a plan of merger that contains all of the  
33 following:

34 (1) The name of the subsidiary or subsidiaries, the name  
35 of the parent cooperative, and the name of the surviving

1 cooperative.

2 (2) The manner and basis of converting the membership  
3 interests of the subsidiary or subsidiaries or parent  
4 cooperative into securities of the parent cooperative,  
5 subsidiary, or of another cooperative or, in whole or in part,  
6 into money or other property.

7 (3) If the parent cooperative is a constituent cooperative  
8 but is not the surviving cooperative in the merger, a  
9 provision for the pro rata issuance of membership interests of  
10 the surviving cooperative to the holders of membership  
11 interests of the parent on surrender of any certificates for  
12 shares or membership interests of the parent cooperative.

13 (4) If the surviving cooperative is a subsidiary, a  
14 statement of any amendments to the articles of the surviving  
15 cooperative that will be part of the merger.

16 b. If the parent is a constituent cooperative and the  
17 surviving cooperative in the merger, the parent cooperative  
18 may change its cooperative name, without a vote of its  
19 members, by the inclusion of a provision to that effect in the  
20 resolution of merger setting forth the plan of merger that is  
21 approved by the affirmative vote of a majority of the  
22 directors of the parent cooperative present. Upon the  
23 effective date of the merger, the name of the parent  
24 cooperative shall be changed.

25 c. If the parent cooperative is a constituent cooperative  
26 but is not the surviving cooperative in the merger, the  
27 resolution is not effective unless the resolution is also  
28 approved by the affirmative vote of the holders of a majority  
29 of the voting power of all membership interests of the parent  
30 entitled to vote at a regular or special meeting if the parent  
31 is a cooperative, or in accordance with the laws under which  
32 the parent is organized if the parent is a foreign business  
33 entity or foreign cooperative.

34 3. NOTICE TO MEMBERS OF SUBSIDIARY. Notice of the action,  
35 including a copy of the plan of merger, shall be delivered to

1 each member, other than the parent cooperative and any  
2 subsidiary of each subsidiary that is a constituent  
3 cooperative in the merger before, or within ten days after,  
4 the effective date of the merger.

5 4. ARTICLES OF MERGER -- CONTENTS OF ARTICLES. Articles  
6 of merger shall be prepared that contain all of the following:

7 a. The plan of merger.

8 b. The number of outstanding membership interests of each  
9 series and class of each subsidiary that is a constituent  
10 cooperative in the merger, other than the series or classes  
11 that, absent this section, would otherwise not be entitled to  
12 vote on the merger, and the number of membership interests of  
13 each series and class of the subsidiary or subsidiaries, other  
14 than series or classes that, absent this section, would  
15 otherwise not be entitled to vote on the merger, owned by the  
16 parent directly, or indirectly through related organizations.

17 c. A statement that the plan of merger has been approved  
18 by the parent under this section.

19 5. ARTICLES SIGNED, FILED. The articles of merger shall  
20 be signed on behalf of the parent and filed with the  
21 secretary.

22 6. CERTIFICATE. The secretary shall issue a certificate  
23 of merger to the parent or its legal representative or, if the  
24 parent is a constituent cooperative but is not the surviving  
25 cooperative in the merger, to the surviving cooperative or its  
26 legal representative.

27 7. NONEXCLUSIVITY. A merger among a parent and one or  
28 more subsidiaries or among two or more subsidiaries of a  
29 parent may be accomplished under section 501A.1101 instead of  
30 this section, in which case this section does not apply.

31 Sec. 82. NEW SECTION. 501A.1103 ABANDONMENT.

32 1. ABANDONMENT BY MEMBERS OF PLAN. After a plan of merger  
33 has been approved by the members entitled to vote on the  
34 approval of the plan and before the effective date of the  
35 plan, the plan may be abandoned by the same vote that approved

1 the plan.

2 2. ABANDONMENT OF MERGER.

3 a. A merger may be abandoned upon any of the following:

4 (1) The members of each of the constituent domestic  
5 cooperatives entitled to vote on the approval of the plan have  
6 approved the abandonment at a meeting by the affirmative vote  
7 of the holders of a majority of the voting power of the  
8 membership interests entitled to vote.

9 (2) The merger is with a domestic cooperative and an Iowa  
10 limited liability company or foreign business entity.

11 (3) The abandonment is approved in such manner as may be  
12 required by section 490A.1207 for the involvement of an Iowa  
13 limited liability company, or for a foreign business entity by  
14 the laws of the state under which the foreign business entity  
15 is organized.

16 (4) The members of a constituent domestic cooperative are  
17 not entitled to vote on the approval of the plan, and the  
18 board of the constituent domestic cooperative has approved the  
19 abandonment by the affirmative vote of a majority of the  
20 directors present.

21 (5) The plan provides for abandonment and all conditions  
22 for abandonment set forth in the plan are met.

23 (6) The plan is abandoned before the effective date of the  
24 plan by a resolution of the board of any constituent domestic  
25 cooperative abandoning the plan of merger approved by the  
26 affirmative vote of a majority of the directors present,  
27 subject to the contract rights of any other person under the  
28 plan. If a plan of merger is with a domestic business entity  
29 or foreign business entity, the plan of merger may be  
30 abandoned before the effective date of the plan by a  
31 resolution of the foreign business entity adopted according to  
32 the laws of the state under which the foreign business entity  
33 is organized, subject to the contract rights of any other  
34 person under the plan. If the plan of merger is with an Iowa  
35 limited liability company, the plan of merger may be abandoned

1 by the Iowa limited liability company as provided in section  
2 490A.1207, subject to the contractual rights of any other  
3 person under the plan.

4 b. If articles of merger have been filed with the  
5 secretary, but have not yet become effective, the constituent  
6 organizations, in the case of abandonment under paragraph "a",  
7 subparagraphs (1) through (4), the constituent organizations  
8 or any one of them, in the case of abandonment under paragraph  
9 "a", subparagraph (5), or the abandoning organization in the  
10 case of abandonment under paragraph "a", subparagraph (6),  
11 shall file with the secretary articles of abandonment that  
12 include all of the following:

13 (1) The names of the constituent organizations.

14 (2) The provisions of this section under which the plan is  
15 abandoned.

16 (3) If the plan is abandoned under paragraph "a",  
17 subparagraph (6), the text of the resolution abandoning the  
18 plan.

19 Sec. 83. NEW SECTION. 501A.1104 CONVERSION -- AMENDMENT  
20 OF ORGANIZATIONAL DOCUMENTS TO BE GOVERNED BY THIS CHAPTER.

21 1. AUTHORITY.

22 a. A traditional cooperative organized may convert to a  
23 cooperative and become subject to this chapter by amending its  
24 organizational documents to conform to the requirements of  
25 this chapter.

26 b. A traditional cooperative becoming a converted  
27 cooperative must provide its members with a disclosure  
28 statement of the rights and obligations of the members and the  
29 capital structure of the cooperative before becoming subject  
30 to this chapter. A traditional cooperative, upon distribution  
31 of the disclosure required in this subsection and approval of  
32 its members as necessary for amending its articles under the  
33 respective chapter of its organization, may amend its articles  
34 to comply with this chapter.

35 c. A traditional cooperative becoming a converted

1 cooperative must prepare a certificate stating all of the  
2 following:

3 (1) The date on which the traditional cooperative was  
4 first organized.

5 (2) The name of the traditional cooperative and, if the  
6 name is changed, the name of the cooperative becoming  
7 converted.

8 (3) The future effective date and time, which must be a  
9 date and time certain, that the traditional cooperative will  
10 be governed by this chapter, if the effective date and time is  
11 not to be the date and time of filing.

12 d. Upon filing with the secretary of the articles for  
13 compliance with this chapter and the certificate required  
14 under paragraph "c", a traditional cooperative is converted  
15 and governed by this chapter unless a later date and time is  
16 specified in the certificate under paragraph "c".

17 e. In connection with a conversion under which a  
18 traditional cooperative becomes governed by this chapter, the  
19 rights, securities, or interests of the traditional  
20 cooperative as provided in chapter 497, 498, 499, or 501 may  
21 be exchanged or converted into rights, property, securities,  
22 or interests in the converted cooperative.

23 2. EFFECT OF BEING GOVERNED BY THIS CHAPTER. The  
24 conversion of a traditional cooperative to a cooperative  
25 governed by this chapter does not affect any obligations or  
26 liabilities of the cooperative before the conversion or the  
27 personal liability of any person incurred before the  
28 conversion.

29 a. When the conversion is effective, the rights,  
30 privileges, and powers of the cooperative, real and personal  
31 property of the cooperative, debts due to the cooperative, and  
32 causes of action belonging to the traditional cooperative  
33 remain vested in the converted cooperative and are the  
34 property of the converted cooperative and governed by this  
35 chapter. Title to real property vested by deed or otherwise

1 in the traditional cooperative does not revert and is not  
2 impaired by reason of the cooperative being converted and  
3 governed by this chapter.

4 b. Rights of creditors and liens upon property of the  
5 traditional cooperative are preserved unimpaired, and debts,  
6 liabilities, and duties of the traditional cooperative remain  
7 attached to the converted cooperative and may be enforced  
8 against the converted cooperative to the same extent as if the  
9 debts, liabilities, and duties had originally been incurred or  
10 contracted by the cooperative as organized under this chapter.

11 c. The rights, privileges, powers, and interests in  
12 property of the traditional cooperative as well as the debts,  
13 liabilities, and duties of the traditional cooperative are not  
14 deemed, as a consequence of the conversion, to have been  
15 transferred for any purpose by the laws of this state.

16 SUBCHAPTER 12

17 DISSOLUTION

18 Sec. 84. NEW SECTION. 501A.1201 METHODS OF DISSOLUTION.

19 A cooperative may be dissolved by the members or by  
20 administrative or court order as provided in this chapter.

21 Sec. 85. NEW SECTION. 501A.1202 WINDING UP.

22 1. COLLECTION AND PAYMENT OF DEBTS. After the notice of  
23 intent to dissolve has been filed with the secretary, the  
24 board, or the officers acting under the direction of the  
25 board, shall proceed as soon as possible to do all of the  
26 following:

27 a. Collect or make provision for the collection of all  
28 debts due or owing to the cooperative, including unpaid  
29 subscriptions for membership interests.

30 b. Pay or make provision for the payment of all debts,  
31 obligations, and liabilities of the cooperative according to  
32 their priorities.

33 2. TRANSFER OF ASSETS. After the notice of intent to  
34 dissolve has been filed with the secretary, the board may  
35 sell, lease, transfer, or otherwise dispose of all or

1 substantially all of the property and assets of the dissolving  
2 cooperative without a vote of the members.

3 3. DISTRIBUTION TO MEMBERS. Tangible and intangible  
4 property, including money, remaining after the discharge of  
5 the debts, obligations, and liabilities of the cooperative  
6 shall be distributed to the members and former members as  
7 provided in the cooperative's articles or bylaws, unless  
8 otherwise provided by law. If previously authorized by the  
9 members, the tangible and intangible property of the  
10 cooperative may be liquidated and disposed of at the  
11 discretion of the board.

12 Sec. 86. NEW SECTION. 501A.1203 REVOCATION OF  
13 DISSOLUTION PROCEEDINGS.

14 1. AUTHORITY TO REVOKE. Dissolution proceedings may be  
15 revoked before the articles of dissolution are filed with the  
16 secretary.

17 2. REVOCATION BY MEMBERS. The chairperson may call a  
18 members' meeting to consider the advisability of revoking the  
19 dissolution proceedings. The question of the proposed  
20 revocation shall be submitted to the members at the members'  
21 meeting called to consider the revocation. The dissolution  
22 proceedings are revoked if the proposed revocation is approved  
23 at the members' meeting by a majority of the members of the  
24 cooperative or, for a cooperative with articles or bylaws  
25 requiring a greater number of members, the number of members  
26 required by the articles or bylaws.

27 3. FILING WITH THE SECRETARY. Revocation of dissolution  
28 proceedings is effective when a notice of revocation is filed  
29 with the secretary. After the notice is filed, the  
30 cooperative may resume business.

31 Sec. 87. NEW SECTION. 501A.1204 STATUTE OF LIMITATIONS.

32 The claim of a creditor or claimant against a dissolving  
33 cooperative is barred if the claim has not been enforced by  
34 initiating legal, administrative, or arbitration proceedings  
35 concerning the claim by two years after the date the notice of

1 intent to dissolve is filed with the secretary.

2 Sec. 88. NEW SECTION. 501A.1205 ARTICLES OF DISSOLUTION.

3 1. CONDITIONS TO FILE. Articles of dissolution of a  
4 cooperative shall be filed with the secretary after payment of  
5 the claims of all known creditors and claimants has been made  
6 or provided for and the remaining property has been  
7 distributed by the board. The articles of dissolution shall  
8 state all of the following:

9 a. All debts, obligations, and liabilities of the  
10 cooperative have been paid or discharged or adequate  
11 provisions have been made for them or time periods allowing  
12 claims have run and other claims are not outstanding.

13 b. The remaining property, assets, and claims of the  
14 cooperative have been distributed among the members or under a  
15 liquidation authorized by the members.

16 c. Legal, administrative, or arbitration proceedings by or  
17 against the cooperative are not pending or adequate provision  
18 has been made for the satisfaction of a judgment, order, or  
19 decree that may be entered against the cooperative in a  
20 pending proceeding.

21 2. DISSOLUTION EFFECTIVE ON FILING. The cooperative is  
22 dissolved when the articles of dissolution have been filed  
23 with the secretary.

24 3. CERTIFICATE. The secretary shall issue to the  
25 dissolved cooperative or its legal representative a  
26 certificate of dissolution that contains all of the following:

27 a. The name of the dissolved cooperative.

28 b. The date the articles of dissolution were filed with  
29 the secretary.

30 c. A statement that the cooperative is dissolved.

31 Sec. 89. NEW SECTION. 501A.1206 APPLICATION FOR COURT-  
32 SUPERVISED VOLUNTARY DISSOLUTION.

33 After a notice of intent to dissolve has been filed with  
34 the secretary and before a certificate of dissolution has been  
35 issued, the cooperative or, for good cause shown, a member or

1 creditor may apply to a court within the county where the  
2 registered address is located to have the dissolution  
3 conducted or continued under the supervision of the court.

4 Sec. 90. NEW SECTION. 501A.1207 COURT-ORDERED REMEDIES  
5 FOR DISSOLUTION.

6 1. CONDITIONS FOR RELIEF. A court may grant equitable  
7 relief that the court deems just and reasonable in the  
8 circumstances or may dissolve a cooperative and liquidate its  
9 assets and business as follows:

10 a. In a supervised voluntary dissolution that is applied  
11 for by the cooperative.

12 b. In an action by a member when it is established that  
13 any of the following apply:

14 (1) The directors or the persons having the authority  
15 otherwise vested in the board are deadlocked in the management  
16 of the cooperative's affairs and the members are unable to  
17 break the deadlock.

18 (2) The directors or those in control of the cooperative  
19 have acted fraudulently, illegally, or in a manner unfairly  
20 prejudicial toward one or more members in their capacities as  
21 members, directors, or officers.

22 (3) The members of the cooperative are so divided in  
23 voting power that, for a period that includes the time when  
24 two consecutive regular members' meetings were held, they have  
25 failed to elect successors to directors whose terms have  
26 expired or would have expired upon the election and  
27 qualification of their successors.

28 (4) The cooperative assets are being misapplied or wasted.

29 (5) The period of duration as provided in the articles has  
30 expired and has not been extended as provided in this chapter.

31 c. In an action by a creditor when any of the following  
32 applies:

33 (1) The claim of the creditor against the cooperative has  
34 been reduced to judgment and an execution on the judgment has  
35 been returned unsatisfied.

1 (2) The cooperative has admitted in writing that the claim  
2 of the creditor against the cooperative is due and owing and  
3 it is established that the cooperative is unable to pay its  
4 debts in the ordinary course of business.

5 (3) In an action by the attorney general to dissolve the  
6 cooperative in accordance with this chapter when it is  
7 established that a decree of dissolution is appropriate.

8 2. CONDITION OF COOPERATIVE OR ASSOCIATION. In  
9 determining whether to order equitable relief or dissolution,  
10 the court shall take into consideration the financial  
11 condition of the cooperative, but shall not refuse to order  
12 equitable relief or dissolution solely on the grounds that the  
13 cooperative has accumulated operating net income or current  
14 operating net income.

15 3. DISSOLUTION AS REMEDY. In deciding whether to order  
16 dissolution of the cooperative, the court shall consider  
17 whether lesser relief suggested by one or more parties, such  
18 as a form of equitable relief or a partial liquidation, would  
19 be adequate to permanently relieve the circumstances  
20 established under subsection 1, paragraph "b", subparagraph  
21 (1) or (2). Lesser relief may be ordered if it would be  
22 appropriate under the facts and circumstances of the case.

23 4. EXPENSES. If the court finds that a party to a  
24 proceeding brought under this section has acted arbitrarily,  
25 vexatiously, or otherwise not in good faith, the court may in  
26 its discretion award reasonable expenses, including attorney  
27 fees and disbursements to any of the other parties.

28 5. VENUE. Proceedings under this section shall be brought  
29 in a court within the county where the registered address of  
30 the cooperative is located.

31 6. PARTIES. It is not necessary to make members parties  
32 to the action or proceeding unless relief is sought against  
33 them personally.

34 Sec. 91. NEW SECTION. 501A.1208 PROCEDURE IN INVOLUNTARY  
35 OR COURT-SUPERVISED VOLUNTARY DISSOLUTION.

1 1. ACTION BEFORE HEARING. Before a hearing is completed  
2 in dissolution proceedings, a court may do any of the  
3 following:

4 a. Issue injunctions.

5 b. Appoint receivers with all powers and duties that the  
6 court directs.

7 c. Take actions required to preserve the cooperative's  
8 assets, wherever located.

9 d. Carry on the business of the cooperative.

10 2. ACTION AFTER HEARING. After a hearing is completed,  
11 upon notice to parties to the proceedings and to other parties  
12 in interest designated by the court, the court may appoint a  
13 receiver to collect the cooperative's assets, including  
14 amounts owing to the cooperative by subscribers on account of  
15 an unpaid portion of the consideration for the issuance of  
16 membership interests. A receiver has authority, subject to  
17 the order of the court, to continue the business of the  
18 cooperative and to sell, lease, transfer, or otherwise dispose  
19 of the property and assets of the cooperative, either at  
20 public or private sale.

21 3. DISCHARGE OF OBLIGATIONS. The assets of the  
22 cooperative or the proceeds resulting from a sale, lease,  
23 transfer, or other disposition shall be applied in the  
24 following order of priority:

25 a. The costs and expense of the proceedings, including  
26 attorney fees and disbursements.

27 b. Debts, taxes, and assessments due the United States,  
28 this state, and other states in that order.

29 c. Claims duly proved and allowed to employees under the  
30 provisions of the workers' compensation law, except that  
31 claims under this paragraph shall not be allowed if the  
32 cooperative carried workers' compensation insurance, as  
33 provided by law, at the time the injury was sustained.

34 d. Claims, including the value of all compensation paid in  
35 a medium other than money, proved and allowed to employees for

1 services performed within three months preceding the  
2 appointment of the receiver.

3 e. Other claims that are proved and allowed by the court.

4 4. REMAINDER TO MEMBERS. After payment of the expenses of  
5 receivership and claims of creditors are proved, the remaining  
6 assets, if any, may be distributed to the members or  
7 distributed under an approved liquidation plan.

8 Sec. 92. NEW SECTION. 501A.1209 RECEIVER QUALIFICATIONS  
9 AND POWERS.

10 1. QUALIFICATIONS. A receiver shall be a natural person  
11 or a domestic business entity or a foreign business entity  
12 authorized to transact business in this state. A receiver  
13 shall give a bond as directed by the court with the sureties  
14 required by the court.

15 2. POWERS. A receiver may sue and defend in all courts as  
16 receiver of the cooperative. The court appointing the  
17 receiver has exclusive jurisdiction of the cooperative and its  
18 property.

19 Sec. 93. NEW SECTION. 501A.1210 DISSOLUTION ACTION BY  
20 ATTORNEY GENERAL -- ADMINISTRATIVE DISSOLUTION.

21 1. CONDITIONS TO BEGIN ACTION. A cooperative may be  
22 dissolved involuntarily by a decree of a court in this state  
23 in an action filed by the attorney general if it is  
24 established that any of the following applies:

25 a. The articles and certificate of organization were  
26 procured through fraud.

27 b. The cooperative was organized for a purpose not  
28 permitted by this chapter or prohibited by state law.

29 c. The cooperative has flagrantly violated a provision of  
30 this chapter, has violated a provision of this chapter more  
31 than once, or has violated more than one provision of this  
32 chapter.

33 d. The cooperative has acted, or failed to act, in a  
34 manner that constitutes surrender or abandonment of the  
35 cooperative's franchise, privileges, or enterprise.

1        2. NOTICE TO COOPERATIVE. An action shall not be  
2 commenced under subsection 1 until thirty days after notice to  
3 the cooperative by the attorney general of the reason for the  
4 filing of the action. If the reason for filing the action is  
5 an act that the cooperative has done, or omitted to do, and  
6 the act or omission may be corrected by an amendment of the  
7 articles or bylaws or by performance of or abstention from the  
8 act, the attorney general shall give the cooperative thirty  
9 additional days to make the correction before filing the  
10 action.

11        Sec. 94. NEW SECTION. 501A.1211 FILING CLAIMS IN COURT-  
12 SUPERVISED DISSOLUTION PROCEEDINGS.

13        1. FILING UNDER OATH. In proceedings to dissolve a  
14 cooperative, the court may require all creditors and claimants  
15 of the cooperative to file their claims under oath with the  
16 clerk of court or with the receiver in a form prescribed by  
17 the court.

18        2. DATE TO FILE A CLAIM. If the court requires the filing  
19 of claims, the court shall do all of the following:

20        a. Set a date, by order, at least one hundred twenty days  
21 after the date the order is filed as the last day for the  
22 filing of claims.

23        b. Prescribe the notice of the fixed date that shall be  
24 given to creditors and claimants.

25        3. FIXED DATE OR EXTENSION FOR FILING. Before the fixed  
26 date, the court may extend the time for filing claims.  
27 Creditors and claimants failing to file claims on or before  
28 the fixed date may be barred, by order of court, from claiming  
29 an interest in or receiving payment out of the property or  
30 assets of the cooperative.

31        Sec. 95. NEW SECTION. 501A.1212 DISCONTINUANCE OF COURT-  
32 SUPERVISED DISSOLUTION PROCEEDINGS.

33        The involuntary or supervised voluntary dissolution of a  
34 cooperative may be discontinued at any time during the  
35 dissolution proceedings if it is established that cause for

1 dissolution does not exist. The court shall dismiss the  
2 proceedings and direct the receiver, if any, to redeliver to  
3 the cooperative its remaining property and assets.

4 Sec. 96. NEW SECTION. 501A.1213 COURT-SUPERVISED  
5 DISSOLUTION ORDER.

6 1. CONDITIONS FOR DISSOLUTION ORDER. In an involuntary or  
7 supervised voluntary dissolution the court shall enter an  
8 order dissolving the cooperative upon the following  
9 conditions:

10 a. After the costs and expenses of the proceedings and all  
11 debts, obligations, and liabilities of the cooperative have  
12 been paid or discharged and the remaining property and assets  
13 have been distributed to its members.

14 b. If the property or other assets are not sufficient to  
15 satisfy and discharge the costs, expenses, debts, obligations,  
16 and liabilities, when all the property and assets have been  
17 applied so far as they will go to their payment according to  
18 their priorities.

19 2. DISSOLUTION EFFECTIVE ON FILING ORDER. When the order  
20 dissolving the cooperative has been entered, the cooperative  
21 is dissolved.

22 Sec. 97. NEW SECTION. 501A.1214 FILING COURT'S  
23 DISSOLUTION ORDER.

24 After the court enters an order dissolving a cooperative,  
25 the clerk of court shall cause a certified copy of the  
26 dissolution order to be filed with the secretary. The  
27 secretary shall not charge a fee for filing the dissolution  
28 order.

29 Sec. 98. NEW SECTION. 501A.1215 BARRING OF CLAIMS.

30 1. CLAIMS BARRED. A person who is or becomes a creditor  
31 or claimant before, during, or following the conclusion of  
32 dissolution proceedings, who does not file a claim or pursue a  
33 remedy in a legal, administrative, or arbitration proceeding  
34 during the pendency of the dissolution proceeding or has not  
35 initiated a legal, administrative, or arbitration proceeding

1 before the commencement of the dissolution proceedings and all  
2 those claiming through or under the creditor or claimant, are  
3 forever barred from suing on that claim or otherwise realizing  
4 upon or enforcing it, except as provided in this section.

5 2. CERTAIN UNFILED CLAIMS ALLOWED. Within one year after  
6 articles of dissolution have been filed with the secretary  
7 under this chapter or a dissolution order has been entered, a  
8 creditor or claimant who shows good cause for not having  
9 previously filed the claim may apply to a court in this state  
10 to allow a claim for any of the following:

11 a. Against the cooperative to the extent of undistributed  
12 assets.

13 b. If the undistributed assets are not sufficient to  
14 satisfy the claim, the claim may be allowed against a member  
15 to the extent of the distributions to members in dissolution  
16 received by the member.

17 3. OMITTED CLAIMS ALLOWED. Debts, obligations, and  
18 liabilities incurred during dissolution proceedings shall be  
19 paid or provided for by the cooperative before the  
20 distribution of assets to a member. A person to whom this  
21 kind of debt, obligation, or liability is owed but is not paid  
22 may pursue any remedy against the offenders, directors, or  
23 members of the cooperative before the expiration of the  
24 applicable statute of limitations. This subsection does not  
25 apply to dissolution under the supervision or order of a  
26 court.

27 Sec. 99. NEW SECTION. 501A.1216 RIGHT TO SUE OR DEFEND  
28 AFTER DISSOLUTION.

29 After a cooperative has been dissolved, any of its former  
30 officers, directors, or members may assert or defend, in the  
31 name of the cooperative, a claim by or against the  
32 cooperative.

33

DIVISION II

34

CONFORMING CHANGES

35 Sec. 100. Section 10B.1, subsection 2, Code 2005, is

1 amended to read as follows:

2 2. "Cooperative association" means any entity organized on  
3 a cooperative basis, including an association of persons  
4 organized under chapter 497, 498, or 499; an entity composed  
5 of entities organized under those chapters; or a cooperative  
6 organized under chapter 501 or 501A.

7 Sec. 101. Section 15.333, subsection 1, Code 2005, is  
8 amended to read as follows:

9 1. An eligible business may claim a corporate tax credit  
10 up to a maximum of ten percent of the new investment which is  
11 directly related to new jobs created by the location or  
12 expansion of an eligible business under the program. Any  
13 credit in excess of the tax liability for the tax year may be  
14 credited to the tax liability for the following seven years or  
15 until depleted, whichever occurs earlier. Subject to prior  
16 approval by the department of economic development in  
17 consultation with the department of revenue, an eligible  
18 business whose project primarily involves the production of  
19 value-added agricultural products may elect to receive a  
20 refund of all or a portion of an unused tax credit. For  
21 purposes of this section, an eligible business includes a  
22 cooperative described in section 521 of the Internal Revenue  
23 Code which is not required to file an Iowa corporate income  
24 tax return. The refund may be used against a tax liability  
25 imposed under chapter 422, division II, III, or V. If the  
26 business is a partnership, S corporation, limited liability  
27 company, cooperative organized under chapter 501 or 501A and  
28 filing as a partnership for federal tax purposes, or estate or  
29 trust electing to have the income taxed directly to the  
30 individual, an individual may claim the tax credit allowed.  
31 The amount claimed by the individual shall be based upon the  
32 pro rata share of the individual's earnings of the  
33 partnership, S corporation, limited liability company,  
34 cooperative organized under chapter 501 or 501A and filing as  
35 a partnership for federal tax purposes, or estate or trust.

1     Sec. 102. Section 15.385, subsection 3, paragraph a, Code  
2 2005, is amended to read as follows:

3     a. An eligible business may claim a tax credit equal to a  
4 percentage of the new investment directly related to new jobs  
5 created by the location or expansion of an eligible business  
6 under the program. The tax credit shall be allowed against  
7 taxes imposed under chapter 422, division II, III, or V. If  
8 the business is a partnership, S corporation, limited  
9 liability company, cooperative organized under chapter 501 and  
10 filing as a partnership for federal tax purposes, or estate or  
11 trust electing to have the income taxed directly to the  
12 individual, an individual may claim the tax credit allowed.  
13 The amount claimed by the individual shall be based upon the  
14 pro rata share of the individual's earnings of the  
15 partnership, S corporation, limited liability company,  
16 cooperative organized under chapter 501 or 501A, and filing as  
17 a partnership for federal tax purposes, or estate or trust.  
18 The percentage shall be equal to the amount provided in  
19 paragraph "d". Any tax credit in excess of the tax liability  
20 for the tax year may be credited to the tax liability for the  
21 following seven years or until depleted, whichever occurs  
22 first.

23     Subject to prior approval by the department of economic  
24 development, in consultation with the department of revenue,  
25 an eligible business whose project primarily involves the  
26 production of value-added agricultural products or uses  
27 biotechnology-related processes may elect to receive a refund  
28 of all or a portion of an unused tax credit. For purposes of  
29 this subsection, such an eligible business includes a  
30 cooperative described in section 521 of the Internal Revenue  
31 Code which is not required to file an Iowa corporate income  
32 tax return, and whose project primarily involves the  
33 production of ethanol. The refund may be applied against a  
34 tax liability imposed under chapter 422, division II, III, or  
35 V. If the business is a partnership, S corporation, limited

1 liability company, cooperative organized under chapter 501 or  
2 501A, and filing as a partnership for federal tax purposes, or  
3 estate or trust electing to have the income taxed directly to  
4 the individual, an individual may claim the tax credit  
5 allowed. The amount claimed by the individual shall be based  
6 upon the pro rata share of the individual's earnings of the  
7 partnership, S corporation, limited liability company,  
8 cooperative organized under chapter 501 and filing as a  
9 partnership for federal tax purposes, or estate or trust.

10 Sec. 103. Section 15E.202, subsection 17, paragraph b,  
11 Code 2005, is amended to read as follows:

12 b. A cooperative organized under chapter 501 or 501A.

13 Sec. 104. Section 203.1, subsection 10, paragraph i, Code  
14 2005, is amended to read as follows:

15 i. A cooperative organized under chapter 501 or 501A, if  
16 the cooperative only purchases grain from its members who are  
17 producers or from a licensed grain dealer, and the cooperative  
18 does not resell that grain.

19 Sec. 105. Section 490A.102, subsection 4, Code 2005, is  
20 amended to read as follows:

21 4. "Constituent entity" means each limited liability  
22 company, limited partnership, ~~or~~ corporation, or domestic  
23 cooperative which is party to a plan of merger pursuant to  
24 subchapter XII.

25 Sec. 106. Section 490A.102, Code 2005, is amended by  
26 adding the following new subsection:

27 NEW SUBSECTION. 7A. "Domestic cooperative" means a  
28 cooperative organized under chapter 497, 498, 499, 501, or  
29 501A.

30 Sec. 107. Section 490A.1201, Code 2005, is amended by  
31 striking the section and inserting in lieu thereof of the  
32 following:

33 490A.1201 CONSTITUENT ENTITY.

34 As used in this section, unless the context otherwise  
35 requires, "constituent entity", as used in sections 490A.1202,

1 490A.1204, 490A.1205, and 490A.1207, includes a domestic  
2 cooperative. However, as used in section 490A.1203,  
3 "constituent entity" does not include a domestic cooperative.

4 Sec. 108. NEW SECTION. 490A.1201A MERGER.

5 With or without a business purpose, a limited liability  
6 company may merge with any of the following:

7 1. Another domestic limited liability company pursuant to  
8 a plan of merger approved in the manner provided in sections  
9 490A.1202 through 490A.1205.

10 2. A domestic corporation under a plan of merger approved  
11 in the manner provided in sections 490A.1202 through  
12 490A.1205, and in chapter 490.

13 3. A domestic limited partnership pursuant to a plan of  
14 merger approved in the manner provided in sections 490A.1202  
15 through 490A.1207, and in chapter 487.

16 4. One or more cooperatives organized under chapter 497,  
17 498, 499, 501, or 501A, in the manner provided by and subject  
18 to the limitations in section 490A.1207.

19 5. A foreign corporation, foreign limited liability  
20 company, or foreign limited partnership pursuant to a plan of  
21 merger approved in the manner provided in section 490A.1206.

22 Sec. 109. Section 490A.1202, Code 2005, is amended by  
23 adding the following new subsection:

24 NEW SUBSECTION. 0A. As used in this section, "interests"  
25 includes but is not limited to membership interests in a  
26 domestic cooperative.

27 Sec. 110. NEW SECTION. 490A.1207 MERGER OF DOMESTIC  
28 COOPERATIVE INTO A DOMESTIC LIMITED LIABILITY COMPANY.

29 1. A limited liability company may merge with a domestic  
30 cooperative only as provided by this section. A limited  
31 liability company may merge with one or more domestic  
32 cooperatives if all of the following apply:

33 a. Only one limited liability company and one or more  
34 domestic cooperatives are parties to the merger.

35 b. When the merger becomes effective, the separate

1 existence of each domestic cooperative ceases and the limited  
2 liability company is the surviving entity per organization.

3 c. As to each domestic cooperative, the plan of merger is  
4 initiated and adopted, and the merger is effectuated, as  
5 provided in section 501A.1101.

6 d. As to the limited liability company, the plan of merger  
7 complies with section 490A.1202, the plan of merger is  
8 approved as provided in section 490A.1203, and the articles of  
9 merger are prepared, signed, and filed as provided in section  
10 490A.1204.

11 e. Notwithstanding section 490A.1202, 490A.1205, or  
12 490A.1206, the surviving organization must be the limited  
13 liability company.

14 2. Section 501A.1103 governs the abandonment by a domestic  
15 cooperative of a merger authorized by this section. Section  
16 490A.1203, subsection 2, governs the abandonment by a limited  
17 liability company of a merger authorized by this section,  
18 except that for the purposes of a merger authorized by this  
19 section, the requirements stated in section 490A.1203,  
20 subsection 2, paragraphs "b" and "c", do not apply and instead  
21 the abandonment must have been approved by the domestic  
22 cooperative.

23 Sec. 111. Section 499.4, unnumbered paragraph 1, Code  
24 2005, is amended to read as follows:

25 ~~No~~ A person or firm, and no including a corporation  
26 hereafter organized, which is not an association as defined in  
27 this chapter or a cooperative as defined in chapter 501 or  
28 501A, shall not use the word "cooperative" or any abbreviation  
29 thereof in its name or advertising or in any connection with  
30 its business, except foreign associations admitted under  
31 section 499.54. The attorney general or any association or  
32 any member thereof may sue and enjoin such use.

33 Sec. 112. Section 502.102, subsection 20, Code 2005, is  
34 amended to read as follows:

35 20. "Person" means an individual; corporation; business

1 trust; estate; trust; partnership; limited liability company;  
2 association; cooperative as provided in chapter 501A; joint  
3 venture; government; governmental subdivision, agency, or  
4 instrumentality; public corporation; or any other legal or  
5 commercial entity.

6 Sec. 113. Section 502.102, subsection 26, Code 2005, is  
7 amended by adding the following new unnumbered paragraph:

8 NEW UNNUMBERED PARAGRAPH. "Sale" does not include a  
9 dividend on equity distributed by an agricultural cooperative  
10 association organized under chapter 501A.

11 Sec. 114. Section 502.202, Code 2005, is amended by adding  
12 the following new subsection:

13 NEW SUBSECTION. 24. SALE OF SECURITIES TO MEMBERS OF  
14 COOPERATIVES.

15 a. Any offer or sale by a cooperative organized under  
16 chapter 501A of its securities when the securities are offered  
17 and sold only to its existing members or when the purchase of  
18 the securities is necessary or incidental to establishing  
19 patron membership in the cooperative, or when such securities  
20 are issued as patronage dividends. This subsection shall  
21 apply to offers and sales of securities, other than the  
22 issuance of securities as patronage dividends, only when the  
23 issuer, prior to the completion of the sale of such  
24 securities, provides each offeree or purchaser disclosure  
25 materials which, to the extent material to an understanding of  
26 the issuer, its business, and the securities being offered,  
27 substantially meet the disclosure conditions and limitations  
28 found in Rule 502(b) of Regulation D, promulgated by the  
29 securities and exchange commission, 17 C.F.R., pt. 17, §  
30 230.502.

31 b. An agricultural cooperative association organized under  
32 chapter 501A may, at or about the same time as offers or sales  
33 are being completed in reliance upon this exemption from  
34 registration and as part of a common plan of financing, offer  
35 or sell its securities in reliance upon any other exemption

1 from registration available under this chapter. The offer or  
2 sale of securities in reliance upon this subsection shall not  
3 be considered or deemed a part of or be integrated with any  
4 offer or sale of securities conducted by the agricultural  
5 cooperative association in reliance upon any other exemption  
6 from registration available under this chapter, nor shall  
7 offers or sales of securities by the agricultural cooperative  
8 association in reliance upon any other exemption from  
9 registration available under this chapter be considered or  
10 deemed a part of or be integrated with any offer or sale of  
11 securities conducted by the agricultural cooperative  
12 association in reliance upon this subsection.

13 Sec. 115. Section 556.1, subsection 3, Code 2005, is  
14 amended to read as follows:

15 3. "Cooperative association" means an any of the  
16 following:

17 a. An entity which is structured and operated on a  
18 cooperative basis, including an association of persons  
19 organized under chapter 497, 498, or 499; or an entity  
20 composed of entities organized under those chapters; ~~a.~~

21 b. A cooperative organized under chapter 501; .

22 c. A cooperative organized under chapter 501A.

23 d. a A cooperative association organized under chapter  
24 490; ~~or-any.~~

25 e. Any other entity recognized pursuant to 26 U.S.C. §  
26 1381(a) which meets the definitional requirements of an  
27 association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C.  
28 § 291.

29 Sec. 116. Section 556.5, subsection 4, paragraph b, Code  
30 2005, is amended to read as follows:

31 b. A disbursement held by a cooperative association shall  
32 not be deemed abandoned under this chapter if the disbursement  
33 is retained by a cooperative association organized under  
34 chapter 490 as provided in section 490.629, or by a  
35 cooperative association organized under chapter 499 as

1 provided in section 499.30A, or by a cooperative as provided  
2 in section 501A.1008.

3 Sec. 117. Section 501A.102, as enacted in this Act, is  
4 amended by striking from the section the word and figure "or  
5 487".

6 Sec. 118. EFFECTIVE DATES. This Act takes effect July 1,  
7 2006, except that section 117 of this Act takes effect January  
8 1, 2006.

9 EXPLANATION

10 This bill creates a new Code chapter 501A authorizing  
11 persons to organize as a new form of cooperative. Generally,  
12 cooperatives or cooperative associations in Iowa are formed  
13 under Code chapter 499 (older Code chapters include 497 and  
14 498). Traditionally, a cooperative is a business association  
15 organized for purposes of providing economic services to its  
16 members (sometimes referred to as shareholders) that does  
17 business with patrons on a nonprofit or "cooperative" basis  
18 and is taxed under special provisions.

19 Cooperatives are usually formed for agricultural purposes  
20 or for providing utilities. Code chapter 501 provides for a  
21 hybrid between a cooperative and corporation which is  
22 organized for purposes of attracting outside capital. The  
23 bill establishes another hybrid organization which includes  
24 provisions and terms common to both cooperative associations  
25 and limited liability companies. Its purpose is to allow the  
26 formation of these types of business associations which are  
27 organized and may be taxed as a limited liability company.

28 DIVISION I. The bill provides for administrative  
29 provisions (governing the state's administration of  
30 cooperative associations organized under the bill), its powers  
31 and duties, including the powers and duties of its members and  
32 directors, the equity interests (or membership interests) of  
33 its members, the allocations and distributions of profits and  
34 losses, mergers and conversions, and dissolution.

35 Specifically, the bill divides members up into investors

1 who do not patronize the cooperative and patrons who do. It  
2 provides that an outside investor member may hold an equity  
3 position in a cooperative, and to receive profits from its  
4 business endeavors. Generally, patrons are provided control  
5 of the cooperative (provided governance and financial rights)  
6 unless the patrons grant equal control or greater financial  
7 rights to nonpatron members. A patron member is entitled to  
8 one vote on issues. However, the cooperative may allow patron  
9 members additional votes based on patronage criteria.

10 The bill requires the allocations and distributions to  
11 patron members to be not less than 50 percent of the total  
12 profits or distributions in any fiscal year unless the patron  
13 members authorize a lesser amount which may not be less than  
14 15 percent. The bill provides that a cooperative may be  
15 formed to grant voting rights to members or directors who are  
16 patrons and nonpatrons (bloc voting). It also provides that,  
17 collectively, nonpatron members may control up to 85 percent  
18 of the voting, if provided in its bylaws. Under subchapter T  
19 of the federal Internal Revenue Code, income generated by an  
20 agricultural cooperative may be taxed at the cooperative level  
21 or the patron level. The bill enables a cooperative to elect  
22 to be taxed as a partnership under subchapter K or under  
23 subchapter T. The bill also provides that a cooperative  
24 organized under another chapter may elect to convert to a  
25 cooperative organized under Code chapter 501A, assuming that  
26 it meets the requirement of federal antitrust provisions.

27 The bill provides for mergers between cooperatives into  
28 Code chapter 501A business entities or into Iowa limited  
29 liability companies or foreign business entities. The bill  
30 does not specifically provide for dissenters' rights as  
31 ordinarily provided under cooperative law.

32 DIVISION II. The bill also provides a number of changes to  
33 other provisions of the Code. It makes changes to economic  
34 development provisions, including those in Code section  
35 15.333, which provides that an eligible business under the new

1 jobs and income program may claim a tax credit of up to 10  
2 percent of a new investment that involves the creation of new  
3 jobs. The bill amends provisions in Code chapter 15E, which  
4 includes the Iowa agricultural industry finance Act, by  
5 allowing Code chapter 501A cooperatives to participate in  
6 loans extended by an agricultural industry finance  
7 corporation.

8 The bill amends various provisions in Code chapter 490A,  
9 which provides for limited liability companies, by providing  
10 for mergers between such companies and cooperatives organized  
11 under Code chapter 501A.

12 The bill amends Iowa's "Blue Sky Law", codified in Code  
13 chapter 502, by providing for the regulation of cooperatives.  
14 It also amends Code chapter 556, which provides for abandoned  
15 property by providing special provisions for the distribution  
16 of such property by Code chapter 501A cooperatives.

17 Generally, the bill takes effect on July 1, 2005, but one  
18 provision relating to the repeal of Iowa's uniform limited  
19 partnership Act takes effect on January 1, 2006.

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35