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SENATE FILE 2404

BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 2157)

(p. 697) Passed Senate, Date 3-12-98 Passed House, (p. 1299) Date 4/6/98
 Vote: Ayes 43 Nays 0 Vote: Ayes 100 Nays 0
 Approved April 23, 1998

A BILL FOR

1 An Act relating to cooperatives organized under Code chapter 501.
 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 2404

S-5178

1 Amend Senate File 2404 as follows:

2 1. Page 4, by striking lines 6 through 11 and
 3 inserting the following:

4 "c. The cooperative does not, either directly or
 5 indirectly, acquire or otherwise obtain or lease
 6 agricultural land, if the total agricultural land
 7 either directly or indirectly owned or leased by the
 8 cooperative would then exceed six hundred forty
 9 acres."

Adopted 3/12/98 (p. 696)

By H. KAY HEDGE
JOHN P. KIBBIE

S-5178 FILED MARCH 11, 1998

S.F. 2404

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1 Section 1. Section 501.101, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. "Articles" means the cooperative's articles of
4 incorporation association.

5 Sec. 2. Section 501.101, subsection 2, paragraph b, Code
6 1997, is amended to read as follows:

7 ~~b. An individual or general partnership that~~ A person who
8 owns at least one hundred fifty acres of agricultural land and
9 receives as rent a share of the crops or the animals raised on
10 the land if these crops or animals are a significant component
11 of the cooperative's business operations that person is a
12 natural person or a general partnership as organized under
13 chapter 486 in which all partners are natural persons.

14 Sec. 3. Section 501.101, subsection 4, Code 1997, is
15 amended to read as follows:

16 4. "Cooperative" means a cooperative corporation
17 association organized under this chapter or converted to this
18 chapter pursuant to section 501.601.

19 Sec. 4. Section 501.101, subsection 6, Code 1997, is
20 amended by adding the following new paragraph:

21 NEW PARAGRAPH. c. A general partnership as organized
22 under chapter 486 in which all the partners are natural
23 persons actively engaged in farming as provided in section
24 9H.1.

25 Sec. 5. Section 501.101, subsections 7 through 9, Code
26 1997, are amended to read as follows:

27 7. "Member" means a person who owns a voting stock
28 interest in a cooperative.

29 8. "~~Shareholder~~" "Interest holder" means a person who owns
30 stock an interest in a cooperative, whether or not that stock
31 interest has voting rights.

32 9. "Voting stock interest" means stock an interest in a
33 cooperative that has voting rights.

34 Sec. 6. Section 501.101, Code 1997, is amended by adding
35 the following new subsections:

1 NEW SUBSECTION. 6A. "Interest" means a voting interest or
2 other interest in a cooperative as described in the
3 cooperative's articles of association.

4 NEW SUBSECTION. 7A. "Membership" means the interest
5 established by a member owning a voting interest.

6 Sec. 7. Section 501.102, subsection 2, Code 1997, is
7 amended to read as follows:

8 2. Unless its articles provide otherwise, a cooperative
9 has perpetual duration and succession in its corporate
10 cooperative name and has the same powers as an individual to
11 do all things necessary or convenient to carry out its
12 business and affairs, including, ~~without limitation, all of~~
13 ~~the powers enumerated in sections 490-302 and 490-303~~ but not
14 limited to, all of the following:

15 a. Sue and be sued, complain, and defend in its name.

16 b. Have a seal, which may be altered at will, and use it,
17 or a facsimile of it, by impressing or affixing it or in any
18 other manner reproducing it.

19 c. Make and amend bylaws, not inconsistent with its
20 articles of association or with the laws of this state, for
21 managing the business and regulating the affairs of the
22 cooperative.

23 d. Purchase, receive, lease, or otherwise acquire, and
24 own, hold, improve, use, and otherwise deal with, real or
25 personal property, or any legal or equitable interest in
26 property, wherever located.

27 e. Sell, convey, mortgage, pledge, lease, exchange, and
28 otherwise dispose of all or any part of its property.

29 f. Purchase, receive, subscribe for, or otherwise acquire,
30 own, hold, vote, use, sell, mortgage, lend, pledge, or
31 otherwise dispose of, and deal in and with shares or other
32 interests in, or obligations of, any other entity.

33 g. Make contracts and guarantees, incur liabilities,
34 borrow money, issue its notes, bonds, and other obligations,
35 which may be convertible into or include the option to

1 purchase other interests of the cooperative, and secure any of
2 its obligations by mortgage or pledge of any of its property,
3 franchises, or income.

4 h. Lend money, invest and reinvest its funds, and receive
5 and hold real and personal property as security for repayment.

6 i. Be a promoter, partner, member, associate, or manager
7 of any partnership, joint venture, trust, or other entity.

8 j. Conduct its business, locate offices, and exercise the
9 powers granted by this chapter within or without this state.

10 k. Elect directors and appoint officers, employees, and
11 agents of the cooperative, define their duties, fix their
12 compensation, and lend them money and credit.

13 l. Pay pensions and establish pension plans, pension
14 trusts, profit-sharing plans, bonus plans, and benefit or
15 incentive plans for any or all of its current or former
16 directors, officers, employees, and agents.

17 m. Make donations for the public welfare or for
18 charitable, scientific, or educational purposes.

19 n. Transact any lawful business that will aid governmental
20 policy.

21 o. Make payments or donations, or do any other act, not
22 inconsistent with law, that furthers the business and affairs
23 of the cooperative.

24 Sec. 8. Section 501.103, subsections 1, 2, and 5, Code
25 Supplement 1997, are amended to read as follows:

26 1. Notwithstanding section 9H.4, any person or entity,
27 subject to the limitations set forth in section 501.305, and
28 subject to the cooperative's articles and bylaws, is permitted
29 to own stock interests, including voting stock interests, in a
30 cooperative.

31 2. Notwithstanding section 9H.4, a cooperative may,
32 directly or indirectly, acquire or otherwise obtain or lease
33 agricultural land in this state, for as long as the
34 cooperative continues to meet the following requirements:

35 a. Farming entities own sixty percent of the stock

1 interests and are eligible to cast sixty percent of the votes
2 at member meetings.

3 b. Authorized persons own at least seventy-five percent of
4 the stock interests and are eligible to cast at least seventy-
5 five percent of the votes at member meetings.

6 c. The cooperative does not, either directly or
7 indirectly, acquire or otherwise obtain or lease agricultural
8 ~~land; if the total agricultural land either directly or~~
9 ~~indirectly owned or leased by the cooperative would then~~
10 exceed six hundred forty in this state in excess of one
11 thousand five hundred acres.

12 5. In the event of a transfer of stock an interest in a
13 cooperative by operation of law as a result of death, divorce,
14 bankruptcy, or pursuant to a security interest, the
15 cooperative may disregard the transfer for purposes of
16 determining compliance with subsection 2 for a period of two
17 years after the transfer.

18 Sec. 9. Section 501.105, subsection 2, Code 1997, is
19 amended to read as follows:

20 2. Articles must be signed by all of the incorporators
21 organizers; and all other documents filed with the secretary
22 of state must be signed by one of the cooperative's officers.
23 The printed name and capacity of each signatory must appear in
24 proximity to the signatory's signature. The secretary of
25 state may accept a document containing a copy of the
26 signature. A document is not required to contain a corporate
27 seal, an acknowledgment, or a verification.

28 Sec. 10. Section 501.106, subsection 2, unnumbered
29 paragraph 1, Code 1997, is amended to read as follows:

30 A corporation cooperative may change its registered office
31 or registered agent by delivering to the secretary of state
32 for filing a statement of change that sets forth all of the
33 following:

34 Sec. 11. Section 501.106, Code 1997, is amended by adding
35 the following new subsections:

1 NEW SUBSECTION. 5. a. A registered agent may resign the
2 agent's agency appointment by signing and delivering to the
3 secretary of state for filing the signed original statement of
4 resignation. The statement may include a statement that the
5 registered office is also discontinued. The registered agent
6 shall send a copy of the statement of resignation by certified
7 mail to the cooperative at its principal office and to the
8 registered office, if not discontinued. The registered agent
9 shall certify to the secretary of state that the copies have
10 been sent to the cooperative, including the date the copies
11 were sent.

12 b. The agency appointment is terminated, and the
13 registered office discontinued if so provided, on the date on
14 which the statement was filed.

15 NEW SUBSECTION. 6. a. A cooperative's registered agent
16 is the cooperative's agent for service of process, notice, or
17 demand required or permitted by law to be served on the
18 cooperative.

19 b. If a cooperative has no registered agent, or the agent
20 cannot with reasonable diligence be served, the cooperative
21 may be served by registered or certified mail, return receipt
22 requested, addressed to the secretary of the cooperative at
23 its principal office. Service is perfected under this
24 paragraph at the earliest of any of the following:

25 (1) The date that the cooperative receives the mail.

26 (2) The date shown on the return receipt, if signed on
27 behalf of the cooperative.

28 (3) Five days after its deposit in the United States mail,
29 as evidenced by the postmark, if mailed postpaid and correctly
30 addressed.

31 c. A cooperative may be served pursuant to this section or
32 as provided in other provisions of this chapter, unless the
33 manner of service is otherwise specifically provided for by
34 statute.

35 Sec. 12. Section 501.202, subsection 1, paragraph 2, Code

1 1997, is amended to read as follows:

2 a. The name, address, and occupation of each incorporator
3 organizer.

4 Sec. 13. Section 501.202, subsection 2, paragraph d, Code
5 1997, is amended to read as follows:

6 d. The classes of stock interests and the authorized
7 number of shares interests of each class.

8 Sec. 14. Section 501.306, Code 1997, is amended to read as
9 follows:

10 501.306 NUMBER OF VOTES.

11 A person who is a member ~~or-shareholder~~ shall not own more
12 than one membership ~~or-share-of-voting-stock~~. The person
13 shall be entitled to cast not more than one vote regarding any
14 matter in which a vote is conducted, including any matter
15 subject to a vote during a cooperative meeting.

16 Sec. 15. Section 501.403, subsection 2, paragraph e, Code
17 1997, is amended to read as follows:

18 e. Action required or permitted by this chapter to be
19 taken at a board meeting may be taken without a meeting if the
20 action is taken by all members of the board. The action must
21 be evidenced by one or more written consents describing the
22 action taken, signed by each director, and included in the
23 minutes or filed with the corporate cooperative's records
24 reflecting the action taken. Action taken under this section
25 is effective when the last director signs the consent, unless
26 the consent specifies a different effective date. A consent
27 signed under this section has the effect of a meeting vote and
28 may be described as such in any document.

29 Sec. 16. Section 501.403, subsection 3, Code 1997, is
30 amended to read as follows:

31 3. A director may waive any notice required by this
32 chapter, the articles, or the bylaws before or after the date
33 and time stated in the notice. The waiver must be in writing,
34 signed by the director entitled to the notice, and filed with
35 the minutes or corporate records of the cooperative. A

1 director's attendance at or participation in a meeting waives
2 any required notice to that director of the meeting unless the
3 director at the beginning of the meeting or promptly upon the
4 director's arrival objects to holding the meeting or
5 transacting business at the meeting and does not thereafter
6 vote for or assent to action taken at the meeting.

7 Sec. 17. Section 501.404, subsection 1, paragraph b, Code
8 Supplement 1997, is amended to read as follows:

9 b. The material facts of the transaction and the
10 director's interest were disclosed or known to the
11 ~~shareholders~~ members entitled to vote and they authorized,
12 approved, or ratified the transaction. For purposes of this
13 paragraph, a conflict of interest transaction is authorized,
14 approved, or ratified if it receives a majority of the votes
15 entitled to be counted under this paragraph. Shares Voting
16 interests owned by or voted under the control of a director
17 who has a direct or indirect interest in the transaction, and
18 ~~shares voting interests~~ owned by or voted under the control of
19 an entity described in subsection 2, paragraph "a", shall not
20 be counted in a vote of members to determine whether to
21 authorize, approve, or ratify a conflict of interest
22 transaction under this paragraph. The vote of those ~~shares~~
23 voting interests, however, is counted in determining whether
24 the transaction is approved under other sections of this
25 chapter. A majority of the votes, whether or not the
26 ~~shareholders~~ members are present, that are entitled to be
27 counted in a vote on the transaction under this paragraph
28 constitutes a quorum for the purpose of taking action under
29 this paragraph.

30 Sec. 18. Section 501.407, unnumbered paragraph 1, Code
31 1997, is amended to read as follows:

32 The articles may contain a provision eliminating or
33 limiting the personal liability of a director, officer, or
34 ~~shareholder~~ interest holder of the cooperative for monetary
35 damages for breach of a fiduciary duty as a director, officer,

1 or shareholder interest holder, provided that the provision
2 does not eliminate or limit liability for any of the
3 following:

4 Sec. 19. Section 501.407, subsections 1 and 3, Code 1997,
5 are amended to read as follows:

6 1. A breach of the duty of loyalty to the cooperative or
7 its shareholders interest holders.

8 3. A transaction from which the director, officer, or
9 shareholder interest holder derives an improper personal
10 benefit.

11 PART B

12 INDEMNIFICATION

13 Sec. 20. NEW SECTION. 501.411 DEFINITIONS.

14 As used in this part, unless the context otherwise
15 requires:

16 1. "Cooperative" includes any domestic or foreign
17 predecessor entity of a cooperative in a merger or other
18 transaction in which the predecessor's existence ceased upon
19 consummation of the transaction.

20 2. "Director" means an individual who is or was a director
21 of a cooperative or an individual who, while a director of a
22 cooperative, is or was serving at the cooperative's request as
23 a director, officer, partner, trustee, employee, or agent of
24 another foreign or domestic cooperative, corporation,
25 partnership, joint venture, trust, employee benefit plan, or
26 other enterprise. A director is considered to be serving an
27 employee benefit plan at the cooperative's request if the
28 director's duties to the cooperative also impose duties on, or
29 otherwise involve services by, that director to the plan or to
30 participants in or beneficiaries of the plan. "Director"
31 includes, unless the context requires otherwise, the estate or
32 personal representative of a director.

33 3. "Expenses" include counsel fees.

34 4. "Liability" means the obligation to pay a judgment,
35 settlement, penalty, fine, including an excise tax assessed

1 with respect to an employee benefit plan, or reasonable
2 expenses incurred with respect to a proceeding.

3 5. "Official capacity" means:

4 a. When used with respect to a director, the office of
5 director in a cooperative.

6 b. When used with respect to an individual other than a
7 director, as contemplated in section 501.417, the office in a
8 cooperative held by the officer or the employment or agency
9 relationship undertaken by the employee or agent on behalf of
10 the cooperative.

11 "Official capacity" does not include service for any other
12 foreign or domestic cooperative or any corporation,
13 partnership, joint venture, trust, employee benefit plan, or
14 other enterprise.

15 6. "Party" includes an individual who was, is, or is
16 threatened to be made a named defendant or respondent in a
17 proceeding.

18 7. "Proceeding" means any threatened, pending, or
19 completed action, suit, or proceeding, whether civil,
20 criminal, administrative, or investigative and whether formal
21 or informal.

22 Sec. 21. NEW SECTION. 501.412 AUTHORITY TO INDEMNIFY.

23 1. Except as provided in subsection 4, a cooperative may
24 indemnify an individual made a party to a proceeding because
25 the individual is or was a director against liability incurred
26 in the proceeding if all of the following apply:

27 a. The individual acted in good faith.

28 b. The individual reasonably believed either of the
29 following:

30 (1) In the case of conduct in the individual's official
31 capacity with the cooperative, that the individual's conduct
32 was in the cooperative's best interests.

33 (2) In all other cases, that the individual's conduct was
34 at least not opposed to the cooperative's best interests.

35 c. In the case of any criminal proceeding, the individual

1 had no reasonable cause to believe the individual's conduct
2 was unlawful.

3 2. A director's conduct with respect to an employee
4 benefit plan for a purpose the director reasonably believed to
5 be in the interests of the participants in and beneficiaries
6 of the plan is conduct that satisfies the requirement of
7 subsection 1, paragraph "b", subparagraph (2).

8 3. The termination of a proceeding by judgment, order,
9 settlement, conviction, or upon a plea of nolo contendere or
10 its equivalent is not, of itself, determinative that the
11 director did not meet the standard of conduct described in
12 this section.

13 4. A cooperative shall not indemnify a director under this
14 section in either of the following circumstances:

15 a. In connection with a proceeding by or in the right of
16 the cooperative in which the director was adjudged liable to
17 the cooperative.

18 b. In connection with any other proceeding charging
19 improper personal benefit to the director, whether or not
20 involving action in the director's official capacity, in which
21 the director was adjudged liable on the basis that personal
22 benefit was improperly received by the director.

23 5. Indemnification permitted under this section in
24 connection with a proceeding by or in the right of the
25 cooperative is limited to reasonable expenses incurred in
26 connection with the proceeding.

27 Sec. 22. NEW SECTION. 501.413 MANDATORY INDEMNIFICATION.

28 Unless limited by its articles of association, a
29 cooperative shall indemnify a director who was wholly
30 successful, on the merits or otherwise, in the defense of any
31 proceeding to which the director was a party because the
32 director is or was a director of the cooperative against
33 reasonable expenses incurred by the director in connection
34 with the proceeding.

35 Sec. 23. NEW SECTION. 501.414 ADVANCE FOR EXPENSES.

1 1. A cooperative may pay for or reimburse the reasonable
2 expenses incurred by a director who is a party to a proceeding
3 in advance of final disposition of the proceeding if any of
4 the following apply:

5 a. The director furnishes the cooperative a written
6 affirmation of the director's good faith belief that the
7 director has met the standard of conduct described in section
8 501.412.

9 b. The director furnishes the cooperative a written
10 undertaking, executed personally or on the director's behalf,
11 to repay the advance if it is ultimately determined that the
12 director did not meet the standard of conduct described in
13 section 501.412.

14 c. A determination is made pursuant to section 501.416
15 that the facts then known to those making the determination
16 would not preclude indemnification under this part.

17 2. The undertaking required by subsection 1, paragraph
18 "b", must be an unlimited general obligation of the director
19 but need not be secured and may be accepted without reference
20 to financial ability to make repayment.

21 3. Determinations and authorizations of payments under
22 this section shall be made in the manner specified in section
23 501.416.

24 Sec. 24. NEW SECTION. 501.415 COURT-ORDERED
25 INDEMNIFICATION.

26 Unless a cooperative's articles of association provide
27 otherwise, a director of the cooperative who is a party to a
28 proceeding may apply for indemnification to the court
29 conducting the proceeding or to another court of competent
30 jurisdiction. On receipt of an application, the court after
31 giving any notice the court considers necessary may order
32 indemnification if it determines either of the following:

33 1. The director is entitled to mandatory indemnification
34 under section 501.413, in which case the court shall also
35 order the cooperative to pay the director's reasonable

1 expenses incurred to obtain court-ordered indemnification.

2 2. The director is fairly and reasonably entitled to
3 indemnification in view of all the relevant circumstances,
4 whether or not the director met the standard of conduct set
5 forth in section 501.412 or was adjudged liable as described
6 in section 501.412, subsection 4, but if the director was
7 adjudged so liable the director's indemnification is limited
8 to reasonable expenses incurred.

9 Sec. 25. NEW SECTION. 501.416 DETERMINATION AND
10 AUTHORIZATION OF INDEMNIFICATION.

11 1. A cooperative shall not indemnify a director under
12 section 501.412 unless authorized in the specific case after a
13 determination has been made that indemnification of the
14 director is permissible in the circumstances because the
15 director has met the standard of conduct set forth in section
16 501.412.

17 2. The determination shall be made by any of the
18 following:

19 a. By the board of directors by majority vote of a quorum
20 consisting of directors not at the time parties to the
21 proceeding.

22 b. If a quorum cannot be obtained under paragraph "a", by
23 majority vote of a committee duly designated by the board of
24 directors, in which designation directors who are parties may
25 participate, consisting solely of two or more directors not at
26 the time parties to the proceeding.

27 c. By special legal counsel.

28 (1) The special legal counsel shall be selected by the
29 board of directors or its committee in the manner prescribed
30 in paragraph "a" or "b".

31 (2) If a quorum of the board of directors cannot be
32 obtained under paragraph "a" and a committee cannot be
33 designated under paragraph "b", the special legal counsel
34 shall be selected by majority vote of the full board of
35 directors, in which selection directors who are parties may

1 participate.

2 d. By the members, but voting interests owned by or voted
3 under the control of directors who are at the time parties to
4 the proceeding shall not be voted on the determination.

5 3. Authorization of indemnification and evaluation as to
6 reasonableness of expenses shall be made in the same manner as
7 the determination that indemnification is permissible, except
8 that if the determination is made by special legal counsel,
9 authorization of indemnification and evaluation as to
10 reasonableness of expenses shall be made by those entitled
11 under subsection 2, paragraph "c", to select counsel.

12 Sec. 26. NEW SECTION. 501.417 INDEMNIFICATION OF
13 OFFICERS, EMPLOYEES, AND AGENTS.

14 Unless a cooperative's articles of association provide
15 otherwise, all of the following apply:

16 1. An officer of the cooperative who is not a director is
17 entitled to mandatory indemnification under section 501.413,
18 and is entitled to apply for court-ordered indemnification
19 under section 501.415, in each case to the same extent as a
20 director.

21 2. The cooperative may indemnify and advance expenses
22 under this part to an officer, employee, or agent of the
23 cooperative who is not a director to the same extent as to a
24 director.

25 3. A cooperative may also indemnify and advance expenses
26 to an officer, employee, or agent who is not a director to the
27 extent consistent with law that may be provided by its
28 articles of association, bylaws, general or specific action of
29 its board of directors, or contract.

30 Sec. 27. NEW SECTION. 501.418 INSURANCE.

31 A cooperative may purchase and maintain insurance on behalf
32 of an individual who is or was a director, officer, employee,
33 or agent of the cooperative, or who, while a director,
34 officer, employee, or agent of the cooperative, is or was
35 serving at the request of the cooperative as a director,

1 officer, partner, trustee, employee, or agent of another
2 foreign or domestic cooperative, corporation, partnership,
3 joint venture, trust, employee benefit plan, or other
4 enterprise, against liability asserted against or incurred by
5 that individual in that capacity or arising from the
6 individual's status as a director, officer, employee, or
7 agent, whether or not the cooperative would have power to
8 indemnify that individual against the same liability under
9 section 501.412 or 501.413.

10 Sec. 28. NEW SECTION. 501.419 APPLICATION OF THIS PART.

11 Except as limited in section 501.412, subsection 4,
12 paragraph "a", and subsection 5 with respect to proceedings by
13 or in the right of the cooperative, the indemnification and
14 advancement of expenses provided by, or granted pursuant to,
15 sections 501.411 through 501.418 are not exclusive of any
16 other rights to which persons seeking indemnification or
17 advancement of expenses are entitled under a provision in the
18 articles of association or bylaws, agreements, vote of the
19 members or disinterested directors, or otherwise, both as to
20 action in a person's official capacity and as to action in
21 another capacity while holding the office. However, such
22 provisions, agreements, votes, or other actions shall not
23 provide indemnification for a breach of a director's duty of
24 loyalty to the cooperative or its interest holders, for acts
25 or omissions not in good faith or which involve intentional
26 misconduct or knowing violation of the law, or for a
27 transaction from which the person seeking indemnification
28 derives an improper personal benefit.

29 Sec. 29. Section 501.501, Code Supplement 1997, is amended
30 to read as follows:

31 501.501 ISSUANCE AND TRANSFER OF STOCK INTERESTS.

32 1. A cooperative may issue the number of shares interests
33 of each class authorized by its articles. A cooperative may
34 issue fractional shares interests. Stock Interests may be
35 represented by certificates or by entry on the cooperative's

1 stock interest record books.

2 2. A member shall not sell or otherwise transfer voting
3 stock interests to any person. A member may be restricted or
4 limited from selling or otherwise transferring any other class
5 of stock interests of the cooperative as provided by the
6 cooperative's articles of incorporation association or bylaws
7 or an agreement executed between the cooperative and the
8 member.

9 3. A cooperative may acquire its own stock interests, and
10 shares interests so acquired constitute authorized but
11 unissued shares interests.

12 Sec. 30. Section 501.502, subsection 2, paragraph a, Code
13 Supplement 1997, is amended to read as follows:

14 a. The member has attempted to transfer stock any interest
15 to a person who is not a member and has not been approved for
16 membership.

17 Sec. 31. Section 501.502, subsection 4, Code Supplement
18 1997, is amended to read as follows:

19 4. The cooperative shall redeem, without interest, the
20 voting stock interest of a terminated member within one year
21 after the termination of the membership for the fair market
22 value of the stock interest. If the amount originally paid by
23 the member for the voting stock interest was less than ten
24 percent of the total amount the member paid for all classes of
25 stock interests, the cooperative may redeem the voting stock
26 interest for its issue price if the cooperative's articles of
27 incorporation association grant the cooperative this
28 authority.

29 Sec. 32. Section 501.502, subsection 5, unnumbered
30 paragraph 1, Code Supplement 1997, is amended to read as
31 follows:

32 The cooperative shall redeem, without interest, all of the
33 terminated member's allocated patronage refunds and preferred
34 stock interests originally issued as allocated patronage
35 refunds for the issue price as follows:

1 Sec. 33. Section 501.503, subsections 1 and 4, Code 1997, as amended
2 are amended to read as follows:

3 1. If the articles authorize the payment of dividends
4 distributions on a class of stock interests, then the
5 directors may declare dividends a distribution pursuant to the
6 articles. ~~Dividends may~~ Distributions shall not exceed eight
7 percent of the value of the stock interest in each fiscal
8 year. The members may control the amount that is allocated
9 under this subsection.

10 4. The cooperative shall have an unconditional binding
11 obligation to distribute to the members all remaining net
12 savings as determined under the United States Internal Revenue
13 Code. These net savings shall be allocated to each member in
14 proportion to the business the member did with the cooperative
15 during the preceding fiscal year. The net savings may be
16 separately calculated for two or more categories of business,
17 and allocated to the members on the basis of business done
18 within each of these categories. Net savings shall be
19 distributed in the form of cash or stock interests, or a
20 combination of cash and stock interests, as determined by the
21 board.

22 Sec. 34. Section 501.603, subsection 2, Code 1997, is
23 amended to read as follows:

24 2. A cooperative may sell, lease, exchange, or otherwise
25 dispose of all, or substantially all, of its property, with or
26 without the good will, on the terms and conditions and for the
27 consideration determined by the board, which consideration may
28 include the preferred-stock interests of another cooperative,
29 if the board recommends the proposed transaction to the
30 members, and the members approve it by the vote of two-thirds
31 of the votes cast on a ballot in which a majority of all votes
32 are cast. The board may condition its submission of the
33 proposed transaction on any basis.

34

PART B

35

MERGER AND CONSOLIDATION BETWEEN COOPERATIVES

1 ORGANIZED UNDER THIS CHAPTER

2 Sec. 35. NEW SECTION. 501.611 DEFINITIONS.

3 When used in this part, unless the context otherwise
4 requires:

5 1. "Consolidation" means the uniting of two or more
6 cooperatives organized under this chapter into one cooperative
7 organized under this chapter, in such manner that a new
8 cooperative is formed, and the new cooperative absorbs the
9 others, which cease to exist as separate entities.

10 2. "Dissenting member" means a voting member who votes in
11 opposition to the plan of merger or consolidation and who
12 makes a demand for payment of the fair value under section
13 501.615.

14 3. "Fair value" means the cash price that would be paid by
15 a willing buyer to a willing seller, neither being under any
16 compulsion to buy or sell.

17 4. "Issue price" means the amount paid for an interest in
18 the old cooperative or the amount stated in a notice of
19 allocation of patronage distributions.

20 5. "Merger" means the uniting of two or more cooperatives
21 organized under this chapter into one cooperative organized
22 under this chapter, in such manner that one of the merging
23 associations continues to exist and absorbs the others, which
24 cease to exist as entities. "Merger" does not include the
25 acquisition, by purchase or otherwise, of the assets of one
26 cooperative by another, unless the acquisition only becomes
27 effective by the filing of articles of merger by the
28 cooperatives and the issuance of a certificate of merger
29 pursuant to sections 501.617 and 501.618.

30 6. "New cooperative" is the cooperative resulting from the
31 consolidation of two or more cooperatives organized under this
32 chapter.

33 7. "Old cooperative" means the cooperative in which the
34 member owns or owned a membership prior to merger or
35 consolidation.

1 8. "Surviving cooperative" is the cooperative resulting
2 from the merger of two or more cooperatives organized under
3 this chapter.

4 Sec. 36. NEW SECTION. 501.612 MERGER.

5 Any two or more cooperatives may merge into one cooperative
6 in the manner provided in this section. The board of
7 directors of each cooperative shall, by resolution adopted by
8 a majority vote of all members of each board, approve a plan
9 of merger which shall set forth all of the following:

10 1. The names of the cooperatives proposing to merge and
11 the name of the surviving cooperative.

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

13 3. A statement of any changes in the articles of
14 association of the surviving cooperative.

15 4. Other provisions deemed necessary or desirable.

16 Sec. 37. NEW SECTION. 501.613 CONSOLIDATION.

17 Any two or more cooperatives may be consolidated into a new
18 cooperative as provided in this section. The board of
19 directors of each cooperative shall, by resolution adopted by
20 a majority vote of all members of each board, approve a plan
21 of consolidation setting forth:

22 1. The names of the cooperatives proposing to consolidate
23 and the name of the new cooperative.

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

25 3. With respect to the new cooperative, all of the
26 statements required to be set forth in articles of association
27 for cooperatives.

28 4. Other provisions deemed necessary or desirable.

29 Sec. 38. NEW SECTION. 501.614 VOTE OF MEMBERS.

30 1. The board of directors of a cooperative, upon approving
31 a plan of merger or consolidation, shall, by motion or
32 resolution, direct that the plan be submitted to a vote at a
33 meeting of members, which may be either an annual or special
34 meeting. Written notice shall be given not less than twenty
35 days prior to the meeting, either personally or by mail, to

1 each voting member of record. The notice shall state the
2 time, place, and purpose of the meeting, and a summary of the
3 plan of merger or consolidation shall be included in or
4 enclosed with the notice.

5 2. At the meeting, a ballot of the members who are
6 entitled to vote in the affairs of the association shall be
7 taken on the proposed plan of merger or consolidation. The
8 plan of merger or consolidation shall be approved if two-
9 thirds of the members vote affirmatively on a ballot in which
10 a majority of all voting members participate. Voting may be
11 by mail ballot notwithstanding any contrary provision in the
12 articles of association or bylaws.

13 Sec. 39. NEW SECTION. 501.615 OBJECTION OF MEMBERS --
14 PURCHASE OF INTERESTS UPON DEMAND.

15 1. If a member of a cooperative which is a party to a
16 merger or consolidation files with the cooperative, prior to
17 or at the meeting of members at which the plan is submitted to
18 a vote, a written objection to the plan of merger or
19 consolidation, and votes in opposition to the plan, and the
20 member, within twenty days after the merger or consolidation
21 is approved by the other members, makes written demand on the
22 surviving or new cooperative for payment of the fair value of
23 that member's interest as of the day prior to the date on
24 which the vote was taken approving the merger or
25 consolidation, the surviving or new cooperative shall pay to
26 the member, upon surrender of that person's certificate of
27 membership or interests in the cooperative, the fair value of
28 that person's interest as provided in section 501.616. A
29 member who fails to make demand within the twenty-day period
30 is conclusively presumed to have consented to the merger or
31 consolidation and is bound by its terms.

32 2. In the event that a dissenting member does business
33 with the surviving or new cooperative before payment has been
34 made for that person's membership, the dissenting member is
35 deemed to have consented to the merger or consolidation and to

1 have waived all further rights as a dissenting member.

2 Sec. 40. NEW SECTION. 501.616 VALUE DETERMINED.

3 1. Within twenty days after the merger or consolidation is
4 effected, the surviving or new cooperative shall make a
5 written offer to each dissenting member to pay a specified sum
6 deemed by the surviving or new cooperative to be the fair
7 value of that dissenting member's interest in the old
8 cooperative. This offer shall be accompanied by a balance
9 sheet of the old cooperative as of the latest available date,
10 a profit and loss statement of the old cooperative for the
11 twelve-month period ending on the date of the balance sheet,
12 and a list of the dissenting member's interests in the old
13 cooperative. If the dissenting member does not agree that the
14 sum stated in the notice represents the fair value of the
15 member's interest, then the member may file a written
16 objection with the surviving or new cooperative within twenty
17 days after receiving the notice. A dissenting member who
18 fails to file the objection within the twenty-day period is
19 conclusively presumed to have consented to the fair value
20 stated in the notice.

21 2. If the surviving or new cooperative receives any
22 objections to fair values, then within ninety days after the
23 merger or consolidation is effected, the surviving or new
24 cooperative shall file a petition in district court asking for
25 a finding and determination of the fair value of each type of
26 equity. The action shall be tried as an equitable action.

27 3. The fair value of a dissenting member's interest in the
28 old cooperative shall be determined as of the day preceding
29 the merger or consolidation by taking the lesser of either the
30 issue price of the dissenting member's membership, deferred
31 patronage, and any other interests in the cooperative, or the
32 amount determined by subtracting the old cooperative's debts
33 from the fair market value of the old cooperative's assets,
34 dividing the remainder by the total issue price of all
35 memberships, deferred patronage and all other interests, and

1 then multiplying the quotient from this division by the total
2 issue price of a dissenting member's membership, deferred
3 patronage, and other interests.

4 4. The surviving or new cooperative shall pay to each
5 dissenting member in cash within sixty days after the merger
6 or consolidation the amount paid in cash by the dissenting
7 member for that member's interest in the old cooperative. The
8 surviving or new cooperative shall pay the remainder of each
9 dissenting member's fair value in ten annual equal payments.
10 The final payment must be made not later than fifteen years
11 after the merger or consolidation. The value of the deferred
12 patronage or interests issued to evidence deferred patronage
13 shall be considered a liability of the surviving or new
14 cooperative as reflected in the accounts of the surviving or
15 new cooperative until the value of the deferred patronage or
16 interests issued to evidence deferred patronage is paid in
17 full to the dissenting member. A dissenting member who is a
18 natural person who dies before receiving the fair value shall
19 have all of the person's fair value paid with the same
20 priority as if the person was a member at the time of death.

21 Sec. 41. NEW SECTION. 501.617 ARTICLES OF MERGER OR
22 CONSOLIDATION.

23 Upon approval, articles of merger or articles of
24 consolidation shall be executed by each cooperative as
25 provided in section 501.105. The articles must include the
26 following:

- 27 1. The plan of merger or the plan of consolidation.
- 28 2. As to each cooperative, the number of members.
- 29 3. As to each cooperative, the number of members who voted
30 for and against the plan at the meeting called for that
31 purpose.

32 The articles of merger or articles of consolidation shall
33 be delivered to the secretary of state for filing.

34 The secretary of state, upon the filing of articles of
35 merger or articles of consolidation, shall issue a certificate

1 of merger or a certificate of consolidation and send the
2 certificate to the surviving or new cooperative, or to its
3 representative.

4 Sec. 42. NEW SECTION. 501.618 WHEN EFFECTIVE -- EFFECT.

5 A merger or consolidation shall become effective upon the
6 date that the certificate of merger or the certificate of
7 consolidation is issued by the secretary of state, or the
8 effective date specified in the articles of merger or articles
9 of consolidation, whichever is later.

10 When a merger or consolidation has become effective:

11 1. The several cooperatives which are parties to the plan
12 of merger or consolidation shall be a single cooperative,
13 which, in the case of a merger, shall be that cooperative
14 designated in the plan of merger as the surviving cooperative,
15 and, in the case of consolidation, shall be that cooperative
16 designated in the plan of consolidation as the new
17 cooperative.

18 2. The separate existence of all cooperatives which are
19 parties to the plan of merger or consolidation, except the
20 surviving or new cooperative, shall cease.

21 3. The surviving or new cooperative shall have all the
22 rights, privileges, immunities, and powers and shall be
23 subject to all the duties and liabilities of a cooperative
24 organized under this chapter.

25 4. The surviving or new cooperative shall possess all the
26 rights, privileges, immunities, and franchises, public as well
27 as private, of each of the merging or consolidating
28 cooperatives.

29 5. All property, real, personal, and mixed, and all debts
30 due on whatever account, including all choses in action, and
31 all and every other interest, of or belonging to or due to
32 each of the cooperatives merged or consolidated, shall be
33 transferred to and vested in the surviving or new cooperative
34 without further act or deed. The title to any real estate, or
35 any interest in real estate vested in any of the cooperatives

1 merged or consolidated, shall not revert or be in any way
2 impaired by reason of the merger or consolidation.

3 6. A surviving or new cooperative shall be responsible and
4 liable for all obligations and liabilities of each of the
5 cooperatives merged or consolidated.

6 7. Any claim existing or action or proceeding pending by
7 or against any of the cooperatives merged or consolidated may
8 be prosecuted as if the merger or consolidation had not taken
9 place, or the surviving or new cooperative may be substituted
10 for the merged or consolidated cooperative. Neither the
11 rights of creditors nor any liens upon the property of any
12 cooperative shall be impaired by a merger or consolidation.

13 8. In the case of a merger, the articles of association of
14 the surviving cooperative shall be deemed to be amended to the
15 extent that changes in its articles of association are stated
16 in the plan of merger. In the case of a consolidation, the
17 statements set forth in the articles of consolidation which
18 are required or permitted to be set forth in the articles of
19 association of a cooperative shall be deemed to be the
20 original articles of association of the new cooperative.

21 9. The aggregate amount of the net assets of the merging
22 or consolidating cooperative which was available for the
23 payment of distributions immediately prior to the merger or
24 consolidation, to the extent that the amount is not
25 transferred to stated capital by the issuance of interests or
26 otherwise, shall continue to be available for the payment of
27 distributions by the surviving or new cooperative.

28 Sec. 43. NEW SECTION. 501.619 ABANDONMENT BEFORE FILING.

29 At any time prior to the filing of the articles of merger
30 or consolidation, the merger or consolidation may be abandoned
31 pursuant to provisions set forth in the plan of merger or
32 consolidation.

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SUBCHAPTER VII
RECORDS AND REPORTS
PART A

1 RECORDS

2 Sec. 44. NEW SECTION. 501.701 RECORDS.

3 1. A cooperative shall keep as permanent records minutes
4 of all meetings of its members and board of directors, a
5 record of all actions taken by the members or board of
6 directors without a meeting, and a record of all actions taken
7 by a committee of the board of directors in place of the board
8 of directors on behalf of the cooperative.

9 2. A cooperative shall maintain appropriate accounting
10 records.

11 3. A cooperative or its agent shall maintain a record of
12 its interest holders in a form that permits preparation of a
13 list of the names and addresses of all interest holders in
14 alphabetical order by class of interests showing the number
15 and class of interests held by each.

16 4. A cooperative shall maintain its records in written
17 form or in another form capable of conversion into written
18 form within a reasonable time.

19 5. A cooperative shall keep a copy of the following
20 records:

21 a. Its articles or restated articles of association and
22 all amendments to them currently in effect.

23 b. Its bylaws or restated bylaws and all amendments to
24 them currently in effect.

25 c. Resolutions adopted by its board of directors creating
26 one or more classes or series of interests, and fixing their
27 relative rights, preferences, and limitations, if the
28 interests issued pursuant to those resolutions are
29 outstanding.

30 d. The minutes of all members' meetings, and records of
31 all action taken by members without a meeting, for the past
32 three years.

33 e. All written communications to interest holders
34 generally within the past three years, including the financial
35 statements furnished for the past three years under section

1 501.711.

2 f. A list of the names and business addresses of its
3 current directors and officers.

4 g. Its most recent biennial report delivered to the
5 secretary of state under section 501.713.

6 Sec. 45. NEW SECTION. 501.702 INSPECTION OF RECORDS BY
7 INTEREST HOLDERS.

8 1. An interest holder of a cooperative is entitled to
9 inspect and copy, during regular business hours at the
10 cooperative's principal office, any of the records of the
11 cooperative described in section 501.701, subsection 5, if the
12 interest holder gives the cooperative written notice of the
13 interest holder's demand at least five business days before
14 the date on which the interest holder wishes to inspect and
15 copy.

16 2. An interest holder of a cooperative is entitled to
17 inspect and copy, during regular business hours at a
18 reasonable location specified by the cooperative, any of the
19 following records of the cooperative if the interest holder
20 meets the requirements of subsection 3 and gives the
21 cooperative written notice of the interest holder's demand at
22 least five business days before the date on which the interest
23 holder wishes to inspect and copy any of the following:

24 a. Excerpts from minutes of any meeting of the board of
25 directors, records of any action of a committee of the board
26 of directors while acting in place of the board of directors
27 on behalf of the cooperative, minutes of any meeting of the
28 members, and records of action taken by the members or board
29 of directors without a meeting, to the extent not subject to
30 inspection under subsection 1 of this section.

31 b. Accounting records of the cooperative.

32 c. The record of interest holders.

33 3. An interest holder may inspect and copy the records
34 described in subsection 2 only if:

35 a. The interest holder's demand is made in good faith and

1 for a proper purpose.

2 b. The interest holder describes with reasonable
3 particularity the interest holder's purpose and the records
4 the interest holder desires to inspect.

5 c. The records are directly connected with the interest
6 holder's purpose.

7 4. The right of inspection granted by this section shall
8 not be abolished or limited by a cooperative's articles of
9 association or bylaws.

10 5. This section does not affect either of the following:

11 a. The right of a member to obtain information under
12 section 501.702 or the right of an interest holder to obtain
13 information, if the interest holder is in litigation with the
14 cooperative, to the same extent as any other litigant.

15 b. The power of a court, independently of this chapter, to
16 compel the production of cooperative records for examination.

17 Sec. 46. NEW SECTION. 501.703 SCOPE OF INSPECTION RIGHT.

18 1. An interest holder's agent or attorney has the same
19 inspection and copying rights as the interest holder the agent
20 or attorney represents.

21 2. The right to copy records under section 501.702
22 includes, if reasonable, the right to receive copies made by
23 photographic, xerographic, or other technological means.

24 3. The cooperative may impose a reasonable charge,
25 covering the costs of labor and material, for copies of any
26 documents provided to the interest holder. The charge shall
27 not exceed the estimated cost of production or reproduction of
28 the records.

29 4. The cooperative may comply with an interest holder's
30 demand to inspect the record of interest holders under section
31 501.702, subsection 2, paragraph "c", by providing the
32 interest holder with a list of its interest holders that was
33 compiled no earlier than the date of the interest holder's
34 demand.

35 Sec. 47. NEW SECTION. 501.704 COURT-ORDERED INSPECTION.

1 1. If a cooperative does not allow an interest holder who
2 complies with section 501.702, subsection 1, to inspect and
3 copy any records required by that subsection to be available
4 for inspection, the district court of the county where the
5 cooperative's principal office or, if none in this state, its
6 registered office is located may summarily order inspection
7 and copying of the records demanded at the cooperative's
8 expense upon application of the interest holder.

9 2. If a cooperative does not within a reasonable time
10 allow an interest holder to inspect and copy any other
11 records, the interest holder who complies with section
12 501.702, subsections 2 and 3, may apply to the district court
13 in the county where the cooperative's principal office or, if
14 not in this state, its registered office is located for an
15 order to permit inspection and copying of the records
16 demanded. The court shall dispose of an application under
17 this subsection on an expedited basis.

18 3. If the court orders inspection and copying of the
19 records demanded, it shall also order the cooperative to pay
20 the interest holder's costs, including reasonable counsel
21 fees, incurred to obtain the order unless the cooperative
22 proves that it refused inspection in good faith because it had
23 a reasonable basis for doubt about the right of the interest
24 holder to inspect the records demanded.

25 4. If the court orders inspection and copying of the
26 records demanded, it may impose reasonable restrictions on the
27 use or distribution of the records by the demanding interest
28 holder.

29 PART B

30 REPORTS

31 Sec. 48. NEW SECTION. 501.711 FINANCIAL STATEMENTS FOR
32 INTEREST HOLDERS.

33 A cooperative shall prepare annual financial statements,
34 which may be consolidated or combined statements of the
35 cooperative and one or more of its subsidiaries, as

1 appropriate, that include a balance sheet as of the end of the
2 fiscal year and an income statement for that year. Upon
3 written request from an interest holder, a cooperative, at its
4 expense, shall furnish to that interest holder the financial
5 statements requested. If the annual financial statements are
6 reported upon by a public accountant, the report must
7 accompany the financial statements.

8 Sec. 49. NEW SECTION. 501.712 OTHER REPORTS TO INTEREST
9 HOLDERS.

10 1. If a cooperative indemnifies or advances expenses to a
11 director under sections 501.412 through 501.415 in connection
12 with a proceeding by or in the right of the cooperative, the
13 cooperative shall report the indemnification or advance in
14 writing to the members with or before the notice of the next
15 members' meeting.

16 2. If a cooperative issues or authorizes the issuance of
17 interests for promissory notes or for promises to render
18 services in the future, the cooperative shall report in
19 writing to the members the number of interests authorized or
20 issued, and the consideration received by the cooperative,
21 with or before the notice of the next members' meeting.

22 Sec. 50. NEW SECTION. 501.713 ANNUAL REPORT FOR
23 SECRETARY OF STATE.

24 1. Each cooperative authorized to transact business in
25 this state shall deliver to the secretary of state for filing
26 an annual report that sets forth all of the following:

27 a. The name of the cooperative.

28 b. The address of its registered office and the name of
29 its registered agent at that office in this state, together
30 with the consent of any new registered agent.

31 c. The address of its principal office.

32 d. The names and addresses of the president, secretary,
33 treasurer, and one member of the board of directors.

34 2. Information in the annual report must be current as of
35 the first day of January of the year in which the report is

1 due. The report shall be executed on behalf of the
2 cooperative and signed as provided in section 501.105 or by
3 any other person authorized by the board of directors of the
4 cooperative.

5 3. The first annual report shall be delivered to the
6 secretary of state between January 1 and April 1 of the first
7 even-numbered year following the calendar year in which a
8 cooperative was organized. Subsequent annual reports must be
9 delivered to the secretary of state between January 1 and
10 April 1 of the following calendar years. A filing fee for the
11 annual report shall be determined by the secretary of state.

12 4. If an annual report does not contain the information
13 required by this section, the secretary of state shall
14 promptly notify the reporting cooperative in writing and
15 return the report to the cooperative for correction.

16 5. The secretary of state may provide for the change of
17 registered office or registered agent on the form prescribed
18 by the secretary of state for the annual report, provided that
19 the form contains the information required in section 501.106.
20 If the secretary of state determines that an annual report
21 does not contain the information required by this section but
22 otherwise meets the requirements of section 501.106 for the
23 purpose of changing the registered office or registered agent,
24 the secretary of state shall file the statement of change of
25 registered office or registered agent, effective as provided
26 in section 501.105, before returning the biennial report to
27 the cooperative as provided in this section. A statement of
28 change of registered office or agent pursuant to this
29 subsection shall be executed by a person authorized to execute
30 the annual report.

31 DIVISION VIII

32 DISSOLUTION

33 PART A

34 GENERAL

35 Sec. 501.101. GENERAL PROVISIONS. 501.102. DISSOLUTION OF A COOPERATIVE.

1 OR INITIAL DIRECTORS.

2 A majority of the organizers or initial directors of a
3 cooperative that has not issued interests or has not commenced
4 business may dissolve the cooperative by delivering to the
5 secretary of state for filing articles of dissolution that set
6 forth all of the following:

- 7 1. The name of the cooperative.
- 8 2. The date of its organization.
- 9 3. Either of the following:
 - 10 a. That none of the cooperative's interests have been
11 issued.
 - 12 b. That the cooperative has not commenced business.
- 13 4. That no debt of the cooperative remains unpaid.
- 14 5. That the net assets of the cooperative remaining after
15 winding up have been distributed in accordance with this
16 chapter and the articles of association of the cooperative.
- 17 6. That a majority of the organizers or initial directors
18 authorized the dissolution.

19 Sec. 52. NEW SECTION. 501.802 DISSOLUTION BY BOARD OF
20 DIRECTORS AND MEMBERS.

- 21 1. A cooperative's board of directors may propose
22 dissolution for submission to the members.
- 23 2. For a proposal to dissolve to be adopted both of the
24 following must apply:
 - 25 a. The board of directors must recommend dissolution to
26 the members unless the board of directors determines that
27 because of conflict of interest or other special circumstances
28 it should make no recommendation and communicates the basis
29 for its determination to the members.
 - 30 b. The members entitled to vote must approve the proposal
31 to dissolve as provided in subsection 5.
- 32 3. The board of directors may condition its submission of
33 the proposal for dissolution on any basis.
- 34 4. The cooperative shall notify each member of a meeting
35 to consider dissolution in accordance with section 501.302.

1 The notice must also state that the purpose, or one of the
2 purposes, of the meeting is to consider dissolving the
3 cooperative.

4 5. Unless the articles of association or the board of
5 directors acting pursuant to subsection 3 require a greater
6 vote or a vote by voting groups, the proposal to dissolve must
7 be approved by a majority of all the votes entitled to be cast
8 on that proposal in order to be adopted.

9 Sec. 53. NEW SECTION. 501.803 ARTICLES OF DISSOLUTION.

10 1. At any time after dissolution is authorized, the
11 cooperative may dissolve by delivering to the secretary of
12 state for filing articles of dissolution setting forth all of
13 the following:

- 14 a. The name of the cooperative.
- 15 b. The date dissolution was authorized.
- 16 c. If dissolution was approved by the members, both of the
17 following:

18 (1) The number of votes entitled to be cast on the
19 proposal to dissolve.

20 (2) Either the total number of votes cast for and against
21 dissolution or the total number of undisputed votes cast for
22 dissolution and a statement that the number cast for
23 dissolution was sufficient for approval.

24 2. A cooperative is dissolved upon the effective date of
25 its articles of dissolution.

26 Sec. 54. NEW SECTION. 501.804 REVOCATION OF DISSOLUTION.

27 1. A cooperative may revoke its dissolution within one
28 hundred twenty days of the effective date of the dissolution.

29 2. Revocation of dissolution must be authorized in the
30 same manner as the dissolution was authorized unless that
31 authorization permitted revocation by action of the board of
32 directors alone, in which event the board of directors may
33 revoke the dissolution without member action.

34 3. After the revocation of dissolution is authorized, the
35 cooperative may revoke the dissolution by delivering to the

1 secretary of state for filing articles of revocation of
2 dissolution, together with a copy of its articles of
3 dissolution, that set forth all of the following:

4 a. The name of the cooperative.
5 b. The effective date of the dissolution that was revoked.
6 c. The date that the revocation of dissolution was
7 authorized.

8 d. If the cooperative's board of directors or organizers
9 revoked the dissolution, a statement to that effect.

10 e. If the cooperative's board of directors revoked a
11 dissolution authorized by the members, a statement that
12 revocation was permitted by action by the board of directors
13 alone pursuant to that authorization.

14 f. If member action was required to revoke the
15 dissolution, the information required by section 501.803,
16 subsection 1, paragraph "c".

17 4. Revocation of dissolution is effective upon the
18 effective date of the articles of revocation of dissolution.

19 5. When the revocation of dissolution is effective, it
20 relates back to and takes effect as of the effective date of
21 the dissolution as if the dissolution had never occurred.

22 Sec. 55. NEW SECTION. 501.805 EFFECT OF DISSOLUTION.

23 1. A dissolved cooperative continues its existence but
24 shall not carry on any business except that appropriate to
25 wind up and liquidate its business and affairs, including any
26 of the following:

27 a. Collecting its assets.

28 b. Disposing of its properties that will not be
29 distributed in kind in accordance with this chapter and the
30 cooperative's articles of association.

31 c. Discharging or making provision for discharging its
32 liabilities.

33 d. Distributing its remaining property in accordance with
34 this chapter and the cooperative's articles of association.

35 e. Doing every other act necessary to wind up and

1 liquidate its business and affairs.

2 2. Dissolution of a cooperative does not do any of the
3 following:

4 a. Transfer title to the cooperative's property.

5 b. Prevent transfer of its interests, although the
6 authorization to dissolve may provide for closing the
7 cooperative's interest transfer records.

8 c. Subject its directors or officers to standards of
9 conduct different from those prescribed in section 501.406.

10 d. Change quorum or voting requirements for its board of
11 directors or members; change provisions for selection,
12 resignation, or removal of its directors or officers or both;
13 or change provisions for amending its bylaws.

14 e. Prevent commencement of a proceeding by or against the
15 cooperative in its name.

16 f. Abate or suspend a proceeding pending by or against the
17 cooperative on the effective date of dissolution.

18 g. Terminate the authority of the registered agent of the
19 cooperative.

20 Sec. 56. NEW SECTION. 501.805A DISTRIBUTION OF ASSETS.

21 Upon the cooperative's dissolution, the cooperative's
22 assets shall first be used to pay expenses necessary to carry
23 out the dissolution and liquidation of assets, then be used to
24 pay the cooperative's obligations other than the payment of
25 deferred patronage or interests issued as deferred patronage,
26 and the remainder shall be paid in the manner set forth in the
27 cooperative's articles of association.

28 Sec. 57. NEW SECTION. 501.806 KNOWN CLAIMS AGAINST
29 DISSOLVED COOPERATIVE.

30 1. A dissolved cooperative may dispose of the known claims
31 against it by following the procedure described in this
32 section.

33 2. The dissolved cooperative shall notify its known
34 claimants in writing of the dissolution at any time after the
35 effective date of the dissolution. The notice shall be in writing

1 all of the following:

2 a. Describe information that must be included in a claim.

3 b. Provide a mailing address where a claim may be sent.

4 c. State the deadline, which shall not be fewer than one
5 hundred twenty days from the effective date of the written
6 notice, by which the dissolved cooperative must receive the
7 claim.

8 d. State that the claim will be barred if not received by
9 the deadline.

10 3. A claim against the dissolved cooperative is barred if
11 either of the following occur:

12 a. A claimant who was given written notice under
13 subsection 2 does not deliver the claim to the dissolved
14 cooperative by the deadline.

15 b. A claimant whose claim was rejected by the dissolved
16 cooperative does not commence a proceeding to enforce the
17 claim within ninety days from the effective date of the
18 rejection notice.

19 4. For purposes of this section, "claim" does not include
20 a contingent liability or a claim based on an event occurring
21 after the effective date of dissolution.

22 Sec. 58. NEW SECTION. 501.807 UNKNOWN CLAIMS AGAINST
23 DISSOLVED COOPERATIVE.

24 1. A dissolved cooperative may also publish notice of its
25 dissolution and request that persons with claims against the
26 cooperative present them in accordance with the notice.

27 2. The notice must meet all of the following requirements:

28 a. Be published one time in a newspaper of general
29 circulation in the county where the dissolved cooperative's
30 principal office or, if not in this state, its registered
31 office is or was last located.

32 b. Describe the information that must be included in a
33 claim and provide a mailing address where the claim may be
34 sent.

35 c. State that a claim against the cooperative will be

1 barred unless a proceeding to enforce the claim is commenced
2 within five years after the publication of the notice.

3 3. If the dissolved cooperative publishes a newspaper
4 notice in accordance with subsection 2, the claim of each of
5 the following claimants is barred unless the claimant
6 commences a proceeding to enforce the claim against the
7 dissolved cooperative within five years after the publication
8 date of the newspaper notice:

9 a. A claimant who did not receive written notice under
10 section 501.806.

11 b. A claimant whose claim was timely sent to the dissolved
12 cooperative but not acted on.

13 c. A claimant whose claim is contingent or based on an
14 event occurring after the effective date of dissolution.

15 4. A claim may be enforced under this section in either of
16 the following ways:

17 a. Against the dissolved cooperative, to the extent of its
18 undistributed assets.

19 b. If the assets have been distributed in liquidation,
20 against an interest holder of the dissolved cooperative to the
21 extent of the interest holder's pro rata share of the claim or
22 the cooperative assets distributed to the interest holder in
23 liquidation, whichever is less, but an interest holder's total
24 liability for all claims under this section shall not exceed
25 the total amount of assets distributed to the interest holder
26 in liquidation.

27

PART B

28

ADMINISTRATIVE DISSOLUTION

29 Sec. 59. NEW SECTION. 501.811 GROUNDS FOR ADMINISTRATIVE
30 DISSOLUTION.

31 The secretary of state may commence a proceeding under
32 section 501.812 to administratively dissolve a cooperative if
33 any of the following apply:

34 1. The cooperative has not delivered an annual report to
35 the secretary of state in a form that meets the requirements

1 of section 501.713, within sixty days after it is due, or has
2 not paid the filing fee as determined by the secretary of
3 state, within sixty days after it is due.

4 2. The cooperative is without a registered agent or
5 registered office in this state for sixty days or more.

6 3. The cooperative does not notify the secretary of state
7 within sixty days that its registered agent or registered
8 office has been changed, that its registered agent has
9 resigned, or that its registered office has been discontinued.

10 4. The cooperative's period of duration stated in its
11 articles of association expires.

12 Sec. 60. NEW SECTION. 501.812 PROCEDURE FOR AND EFFECT
13 OF ADMINISTRATIVE DISSOLUTION.

14 1. If the secretary of state determines that one or more
15 grounds exist under section 501.811 for dissolving a
16 cooperative, the secretary of state shall serve the
17 cooperative with written notice of the secretary of state's
18 determination under section 501.106.

19 2. If the cooperative does not correct each ground for
20 dissolution or demonstrate to the reasonable satisfaction of
21 the secretary of state that each ground determined by the
22 secretary of state does not exist within sixty days after
23 service of the notice is perfected under section 501.106, the
24 secretary of state shall administratively dissolve the
25 cooperative by signing a certificate of dissolution that
26 recites the ground or grounds for dissolution and its
27 effective date. The secretary of state shall file the
28 original of the certificate and serve a copy on the
29 cooperative under section 501.106.

30 3. A cooperative administratively dissolved continues its
31 existence but shall not carry on any business except that
32 necessary to wind up and liquidate its business and affairs
33 under section 501.805 and notify claimants under sections
34 501.806 and 501.807.

35 4. The administrative dissolution of a cooperative does

1 not terminate the authority of its registered agent.

2 5. The secretary of state's administrative dissolution of
3 a cooperative pursuant to this section appoints the secretary
4 of state the cooperative's agent for service of process in any
5 proceeding based on a cause of action which arose during the
6 time the cooperative was authorized to transact business in
7 this state. Service of process on the secretary of state
8 under this subsection is service on the cooperative. Upon
9 receipt of process, the secretary of state shall serve a copy
10 of the process on the cooperative as provided in section
11 501.106. This subsection does not preclude service on the
12 cooperative's registered agent, if any.

13 Sec. 61. NEW SECTION. 501.813 REINSTATEMENT FOLLOWING
14 ADMINISTRATIVE DISSOLUTION.

15 1. A cooperative administratively dissolved under section
16 501.812 may apply to the secretary of state for reinstatement
17 within two years after the effective date of dissolution. The
18 application must meet all of the following requirements:

19 a. Recite the name of the cooperative at its date of
20 dissolution and the effective date of its administrative
21 dissolution.

22 b. State that the ground or grounds for dissolution have
23 been eliminated.

24 c. State a name that satisfies the requirements of section
25 501.104.

26 d. State the federal tax identification number of the
27 cooperative.

28 2. a. The secretary of state shall refer the federal tax
29 identification number contained in the application for
30 reinstatement to the department of revenue and finance. The
31 department of revenue and finance shall report to the
32 secretary of state the tax status of the cooperative. If the
33 department reports to the secretary of state that a filing
34 delinquency or liability exists against the cooperative, the
35 secretary of state shall not cancel the certificate of

1 dissolution until the filing delinquency or liability is
2 satisfied.

3 b. If the secretary of state determines that the
4 application contains the information required by subsection 1,
5 and that a delinquency or liability reported pursuant to
6 paragraph "a" has been satisfied, and that the information is
7 correct, the secretary of state shall cancel the certificate
8 of dissolution and prepare a certificate of reinstatement that
9 recites the secretary of state's determination and the
10 effective date of reinstatement, file the original of the
11 certificate, and serve a copy on the cooperative under section
12 501.106. If the name of the cooperative as provided in
13 subsection 1, paragraph "c", is different than the name in
14 subsection 1, paragraph "a", the certificate of reinstatement
15 shall constitute an amendment to the articles of association
16 insofar as it pertains to the name.

17 3. When the reinstatement is effective, it relates back to
18 and takes effect as of the effective date of the
19 administrative dissolution as if the administrative
20 dissolution had never occurred.

21 Sec. 62. NEW SECTION. 501.814 APPEAL FROM DENIAL OF
22 REINSTATEMENT.

23 1. If the secretary of state denies a cooperative's
24 application for reinstatement following administrative
25 dissolution, the secretary of state shall serve the
26 cooperative under section 501.106 with a written notice that
27 explains the reason or reasons for denial.

28 2. The cooperative may appeal the denial of reinstatement
29 to the district court within thirty days after service of the
30 notice of denial is perfected. The cooperative appeals by
31 petitioning the court to set aside the dissolution and
32 attaching to the petition copies of the secretary of state's
33 certificate of dissolution, the cooperative's application for
34 reinstatement, and the secretary of state's notice of denial.

35 3. The court may summarily order the secretary of state to

1 reinstate the dissolved cooperative or may take other action
2 the court considers appropriate.

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

5 PART C

6 JUDICIAL DISSOLUTION

7 Sec. 63. NEW SECTION. 501.821 GROUNDS FOR JUDICIAL
8 DISSOLUTION.

9 The district court may dissolve a cooperative in any of the
10 following ways:

11 1. A proceeding by the attorney general, if it is
12 established that either of the following apply:

13 a. The cooperative obtained its articles of association
14 through fraud.

15 b. The cooperative has continued to exceed or abuse the
16 authority conferred upon it by law.

17 2. A proceeding by a member if it is established that any
18 of the following conditions exist:

19 a. The directors are deadlocked in the management of the
20 cooperative's affairs, the members are unable to break the
21 deadlock, and either irreparable injury to the cooperative is
22 threatened or being suffered, or the business and affairs of
23 the cooperative can no longer be conducted to the advantage of
24 the interest holders generally, because of the deadlock.

25 b. The directors or those in control of the cooperative
26 have acted, are acting, or will act in a manner that is
27 illegal, oppressive, or fraudulent.

28 c. The members are deadlocked in voting power and have
29 failed, for a period that includes at least two consecutive
30 annual meeting dates, to elect successors to directors whose
31 terms have expired.

32 d. The cooperative's assets are being misapplied or
33 wasted.

34 3. A proceeding by a creditor if it is established that
35 either of the following apply:

1 a. The creditor's claim has been reduced to judgment, and
2 execution on the judgment returned unsatisfied, and the
3 cooperative is insolvent.

4 b. The cooperative has admitted in writing that the
5 creditor's claim is due and owing and the cooperative is
6 insolvent.

7 4. A proceeding by the cooperative to have its voluntary
8 dissolution continued under court supervision.

9 Sec. 64. NEW SECTION. 501.822 PROCEDURE FOR JUDICIAL
10 DISSOLUTION.

11 1. Venue for a proceeding by the attorney general to
12 dissolve a cooperative lies in Polk county district court.
13 Venue for a proceeding brought by any other party named in
14 section 501.821 lies in the county where a cooperative's
15 principal office or, if not in this state, its registered
16 office is or was last located.

17 2. It is not necessary to make interest holders parties to
18 a proceeding to dissolve a cooperative unless relief is sought
19 against them individually.

20 3. A court in a proceeding brought to dissolve a
21 cooperative may issue injunctions, appoint a receiver or
22 custodian pendente lite with all powers and duties the court
23 directs, take other action required to preserve the
24 cooperative's assets wherever located, and carry on the
25 business of the cooperative until a full hearing can be held.

26 Sec. 65. NEW SECTION. 501.823 RECEIVERSHIP OR
27 CUSTODIANSHIP.

28 1. A court in a judicial proceeding brought to dissolve a
29 cooperative may appoint one or more receivers to wind up and
30 liquidate, or one or more custodians to manage, the business
31 and affairs of the cooperative. The court shall hold a
32 hearing, after notifying all parties to the proceeding and any
33 interested persons designated by the court, before appointing
34 a receiver or custodian. The court appointing a receiver or
35 custodian has exclusive jurisdiction over the cooperative and

1 all its property wherever located.

2 2. The court may appoint an individual or a domestic or
3 foreign corporation authorized to transact business in this
4 state as a receiver or custodian. The court may require the
5 receiver or custodian to post bond, with or without sureties,
6 in an amount the court directs.

7 3. The court shall describe the powers and duties of the
8 receiver or custodian in its appointing order, which may be
9 amended from time to time.

10 a. Among other powers, the receiver may do any of the
11 following:

12 (1) Dispose of all or any part of the assets of the
13 cooperative wherever located, at a public or private sale, if
14 authorized by the court.

15 (2) Sue and defend in the receiver's own name as receiver
16 of the cooperative in all courts of this state.

17 b. The custodian may exercise all of the powers of the
18 cooperative, through or in place of its board of directors or
19 officers, to the extent necessary to manage the affairs of the
20 cooperative in the best interests of its interest holders and
21 creditors.

22 4. The court during a receivership may redesignate the
23 receiver a custodian, and during a custodianship may
24 redesignate the custodian a receiver, if doing so is in the
25 best interests of the cooperative, its interest holders, and
26 creditors.

27 5. The court from time to time during the receivership or
28 custodianship may order compensation paid and expense
29 disbursements or reimbursements made to the receiver or
30 custodian and the receiver's or custodian's counsel from the
31 assets of the cooperative or proceeds from the sale of the
32 assets.

33 Sec. 66. NEW SECTION. 501.824 DECREE OF DISSOLUTION.

34 1. If after a hearing the court determines that one or
35 more grounds for judicial dissolution described in section

1 501.821 exist, it may enter a decree dissolving the
2 cooperative and specifying the effective date of the
3 dissolution, and the clerk of the district court shall deliver
4 a certified copy of the decree to the secretary of state, who
5 shall file it.

6 2. After entering the decree of dissolution, the court
7 shall direct the winding up and liquidation of the
8 cooperative's business and affairs in accordance with section
9 501.805 and the notification of claimants in accordance with
10 sections 501.806 and 501.807.

11 PART D

12 STATE TREASURER

13 Sec. 67. NEW SECTION. 501.831 DEPOSIT WITH STATE
14 TREASURER.

15 Assets of a dissolved cooperative that should be
16 transferred to a creditor, claimant, or interest holder of the
17 cooperative who cannot be found or who is not competent to
18 receive them shall be reduced to cash and deposited with the
19 treasurer of state or other appropriate state official for
20 safekeeping. When the creditor, claimant, or interest holder
21 furnishes satisfactory proof of entitlement to the amount
22 deposited, the treasurer of state or other appropriate state
23 official shall pay the creditor, claimant, or interest holder
24 or that person's representative the amount.

25 Sec. 68. Sections 501.107 and 501.602, Code 1997, are
26 repealed. Sections 501.408 and 501.604, Code Supplement 1997,
27 are repealed.

28 EXPLANATION

29 This bill amends Code chapter 501 which provides for
30 cooperative corporations which may hold agricultural land in
31 this state. This type of entity is a hybrid between a
32 cooperative association organized under Code chapter 499 and a
33 corporation organized under Code chapter 490. The bill amends
34 a number of provisions.

35 First, the bill changes a number of terms used in the

1 chapter. The bill changes "cooperative corporations" to
2 "cooperatives". It changes a number of other terms to more
3 closely resemble terms describing the business activities of
4 cooperative associations rather than corporations. For
5 example, a cooperative must be organized as an association
6 rather than a corporation. The bill changes "articles of
7 incorporation" to "articles of association". The bill changes
8 "shareholders" to "interest holders" or "members" in the
9 cooperatives. It changes "voting stock" to "voting interest".
10 An "interest holder" is defined to mean a person who holds a
11 voting or nonvoting interest in a cooperative. A "member" is
12 a person who holds a voting interest in the cooperative.
13 References to "dividends" are changed to "distributions".

14 Second, the bill provides that a general partner that is
15 authorized to hold an interest in a cooperative must include
16 all natural persons.

17 Third, the bill increases the number of acres of
18 agricultural land that a cooperative may hold from 640 to
19 1,500.

20 Fourth, the bill amends Code section 501.106 which provides
21 for maintaining a registered office or registered agent in
22 this state for purpose of service. The bill adds provisions
23 taken from Code sections 490.503 and 490.504 which provide
24 procedures for the resignation of a registered agent and
25 delivery of service when a registered agent is not available.
26 The bill changes the term "corporation" to "cooperative".

27 Fifth, the bill incorporates a number of provisions that
28 were included by reference in the chapter. These sections
29 refer to provisions in both Code chapter 490 governing
30 corporations and Code chapter 499 governing cooperative
31 associations. The bill redrafts these provisions expressly as
32 part of Code chapter 501 and changes references to
33 "corporation" or "association" to "cooperative" and corrects
34 internal references.

35 Code section 501.102 provides that a cooperative has the

1 same powers as a corporation as provided in Code sections
2 490.302 and 490.303. Those powers include the power to sue
3 and be sued, have a seal, make and amend bylaws, acquire
4 property, sell or dispose of property, enter into purchase
5 security arrangements, make contracts, incur liabilities,
6 issue notes and bonds, lend money, invest money, become an
7 investor in another enterprise, conduct business, elect
8 directors, appoint officers and hire employees, pay pensions,
9 and make donations. This bill repeals Code section 501.107
10 and provides those same powers expressly to cooperatives.

11 Code section 501.107 provides that Code sections 499.1601
12 through 499.1622 apply to cooperatives organized under Code
13 chapter 501. The sections provide for keeping corporate
14 records, the right of shareholders to inspect those records,
15 the authority of courts to order inspections, the preparation
16 of financial statements for shareholders, and the submission
17 of reports to the secretary of state. This bill repeals Code
18 section 501.107 and rewrites those provisions into new Code
19 sections in Code chapter 501.

20 Code section 501.408 provides that a cooperative may
21 indemnify an officer, employee, or agent who is a party to a
22 legal proceeding in the same way that a corporation may
23 indemnify a director in the same circumstances. The section
24 provides for definitions, grants authority to a corporation to
25 indemnify a director under circumstances, requires
26 indemnification in certain circumstances, allows for advancing
27 a director moneys for legal expenses, allows for
28 indemnification pursuant to court order, provides procedures
29 for indemnification, provides for indemnification of officers,
30 employees, and agents, and allows a corporation to purchase
31 insurance. The bill repeals Code section 501.408 and
32 expressly drafts those provisions into Code chapter 501.

33 Code section 501.602 provides for mergers and
34 consolidations among cooperatives organized under Code chapter
35 501. The section provides that Code sections 499.31 through

1 499.70 apply to the mergers or consolidations. Those sections
2 provide for definitions, allow for merger and consolidation,
3 require a vote of the membership, provide for objections by
4 members and the payment of fair market value to dissenters,
5 provide for articles of merger or consolidation and the
6 issuance of a certificate of merger or consolidation, and
7 authorize abandonment prior to filing the articles of merger
8 or consolidation. This bill repeals Code section 501.602 and,
9 with some exceptions, rewrites the same provisions in Code
10 chapter 501.

11 Code section 501.604 provides for the dissolution of a
12 cooperative based on the same provisions which apply to
13 corporations under Code sections 490.1401 through 490.1440.
14 Those sections provide for dissolution by incorporators,
15 initial directors who have not issued stock, or a board of
16 directors operating a functioning corporation; the filing of
17 articles of dissolution, a revocation of a dissolution, and
18 the effect of the dissolution; procedures for disposing of
19 known and unknown claims against the corporation; grounds for
20 administrative dissolution, procedures for and the effect of
21 an administrative dissolution, and reinstatement, including
22 appeal from a denial of reinstatement; grounds for judicial
23 dissolution, procedures for judicial dissolution, and
24 procedures for appointing a receiver or custodian; entering a
25 decree of dissolution; and depositing creditor assets with the
26 treasurer of state. This bill repeals Code section 501.604
27 and rewrites those provisions expressly for cooperatives as
28 part of Code chapter 501 with limited exceptions. The bill
29 does not include a provision requiring information in the
30 articles to be separately provided for each voting group
31 entitled to vote separately on the plan to dissolve.

32
33
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35

SENATE FILE 2404
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 2157)

(AS AMENDED AND PASSED BY THE SENATE MARCH 12, 1998)

~~_____~~ - New Language by the Senate

Passed Senate, ^(P. 1165) Date 4/9/98 Passed House, ^(P. 1299) Date 4-6-98
Vote: Ayes 47 Nays 0 Vote: Ayes 100 Nays 0
Approved April 23, 1998

A BILL FOR

1 An Act relating to cooperatives organized under Code chapter 501.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3

HOUSE AMENDMENT TO
SENATE FILE 2404

S-5537

1 Amend Senate File 2404, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 42, by inserting after line 26 the
4 following:

5 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
6 of immediate importance, takes effect upon enactment."

7 2. Title page, line 1, by inserting after the
8 figure "501" the following: "and providing an
9 effective date".

10 *Senate Concurred 4/9/98* RECEIVED FROM THE HOUSE
11 S-5537 FILED APRIL 6, 1998 (P. 1164)

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SF 2404

da/cc/26

S.F. 2404

1 Section 1. Section 501.101, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. "Articles" means the cooperative's articles of
4 incorporation association.

5 Sec. 2. Section 501.101, subsection 2, paragraph b, Code
6 1997, is amended to read as follows:

7 ~~b. An individual or general partnership that~~ A person who
8 owns at least one hundred fifty acres of agricultural land and
9 receives as rent a share of the crops or the animals raised on
10 the land if these crops or animals are a significant component
11 of the cooperative's business operations that person is a
12 natural person or a general partnership as organized under
13 chapter 486 in which all partners are natural persons.

14 Sec. 3. Section 501.101, subsection 4, Code 1997, is
15 amended to read as follows:

16 4. "Cooperative" means a cooperative ~~corporation~~
17 association organized under this chapter or converted to this
18 chapter pursuant to section 501.601.

19 Sec. 4. Section 501.101, subsection 6, Code 1997, is
20 amended by adding the following new paragraph:

21 NEW PARAGRAPH. c. A general partnership as organized
22 under chapter 486 in which all the partners are natural
23 persons actively engaged in farming as provided in section
24 9H.1.

25 Sec. 5. Section 501.101, subsections 7 through 9, Code
26 1997, are amended to read as follows:

27 7. "Member" means a person who owns a voting stock
28 interest in a cooperative.

29 8. "Shareholder" "Interest holder" means a person who owns
30 stock an interest in a cooperative, whether or not that stock
31 interest has voting rights.

32 9. "Voting stock interest" means stock an interest in a
33 cooperative that has voting rights.

34 Sec. 6. Section 501.101, Code 1997, is amended by adding
35 the following new subsections:

1 NEW SUBSECTION. 6A. "Interest" means a voting interest or
2 other interest in a cooperative as described in the
3 cooperative's articles of association.

4 NEW SUBSECTION. 7A. "Membership" means the interest
5 established by a member owning a voting interest.

6 Sec. 7. Section 501.102, subsection 2, Code 1997, is
7 amended to read as follows:

8 2. Unless its articles provide otherwise, a cooperative
9 has perpetual duration and succession in its corporate
10 cooperative name and has the same powers as an individual to
11 do all things necessary or convenient to carry out its
12 business and affairs, including, ~~without limitation, all of~~
13 ~~the powers enumerated in sections 490.302 and 490.303~~ but not
14 limited to, all of the following:

15 a. Sue and be sued, complain, and defend in its name.

16 b. Have a seal, which may be altered at will, and use it,
17 or a facsimile of it, by impressing or affixing it or in any
18 other manner reproducing it.

19 c. Make and amend bylaws, not inconsistent with its
20 articles of association or with the laws of this state, for
21 managing the business and regulating the affairs of the
22 cooperative.

23 d. Purchase, receive, lease, or otherwise acquire, and
24 own, hold, improve, use, and otherwise deal with, real or
25 personal property, or any legal or equitable interest in
26 property, wherever located.

27 e. Sell, convey, mortgage, pledge, lease, exchange, and
28 otherwise dispose of all or any part of its property.

29 f. Purchase, receive, subscribe for, or otherwise acquire,
30 own, hold, vote, use, sell, mortgage, lend, pledge, or
31 otherwise dispose of, and deal in and with shares or other
32 interests in, or obligations of, any other entity.

33 g. Make contracts and guarantees, incur liabilities,
34 borrow money, issue its notes, bonds, and other obligations,
35 which may be convertible into or include the option to

1 purchase other interests of the cooperative, and secure any of
2 its obligations by mortgage or pledge of any of its property,
3 franchises, or income.

4 h. Lend money, invest and reinvest its funds, and receive
5 and hold real and personal property as security for repayment.

6 i. Be a promoter, partner, member, associate, or manager
7 of any partnership, joint venture, trust, or other entity.

8 j. Conduct its business, locate offices, and exercise the
9 powers granted by this chapter within or without this state.

10 k. Elect directors and appoint officers, employees, and
11 agents of the cooperative, define their duties, fix their
12 compensation, and lend them money and credit.

13 l. Pay pensions and establish pension plans, pension
14 trusts, profit-sharing plans, bonus plans, and benefit or
15 incentive plans for any or all of its current or former
16 directors, officers, employees, and agents.

17 m. Make donations for the public welfare or for
18 charitable, scientific, or educational purposes.

19 n. Transact any lawful business that will aid governmental
20 policy.

21 o. Make payments or donations, or do any other act, not
22 inconsistent with law, that furthers the business and affairs
23 of the cooperative.

24 Sec. 8. Section 501.103, subsections 1, 2, and 5, Code
25 Supplement 1997, are amended to read as follows:

26 1. Notwithstanding section 9H.4, any person or entity,
27 subject to the limitations set forth in section 501.305, and
28 subject to the cooperative's articles and bylaws, is permitted
29 to own stock interests, including voting stock interests, in a
30 cooperative.

31 2. Notwithstanding section 9H.4, a cooperative may,
32 directly or indirectly, acquire or otherwise obtain or lease
33 agricultural land in this state, for as long as the
34 cooperative continues to meet the following requirements:

35 a. Farming entities own sixty percent of the stock

1 interests and are eligible to cast sixty percent of the votes
2 at member meetings.

3 b. Authorized persons own at least seventy-five percent of
4 the stock interests and are eligible to cast at least seventy-
5 five percent of the votes at member meetings.

6 c. The cooperative does not, either directly or
7 indirectly, acquire or otherwise obtain or lease agricultural
8 land, if the total agricultural land either directly or
9 indirectly owned or leased by the cooperative would then
10 exceed six hundred forty acres.

11 5. In the event of a transfer of stock an interest in a
12 cooperative by operation of law as a result of death, divorce,
13 bankruptcy, or pursuant to a security interest, the
14 cooperative may disregard the transfer for purposes of
15 determining compliance with subsection 2 for a period of two
16 years after the transfer.

17 Sec. 9. Section 501.105, subsection 2, Code 1997, is
18 amended to read as follows:

19 2. Articles must be signed by all of the incorporators
20 organizers; and all other documents filed with the secretary
21 of state must be signed by one of the cooperative's officers.
22 The printed name and capacity of each signatory must appear in
23 proximity to the signatory's signature. The secretary of
24 state may accept a document containing a copy of the
25 signature. A document is not required to contain a corporate
26 seal, an acknowledgment, or a verification.

27 Sec. 10. Section 501.106, subsection 2, unnumbered
28 paragraph 1, Code 1997, is amended to read as follows:

29 A ~~corporation~~ cooperative may change its registered office
30 or registered agent by delivering to the secretary of state
31 for filing a statement of change that sets forth all of the
32 following:

33 Sec. 11. Section 501.106, Code 1997, is amended by adding
34 the following new subsections:

35 NEW SUBSECTION. 5. a. A registered agent may resign the

1 agent's agency appointment by signing and delivering to the
2 secretary of state for filing the signed original statement of
3 resignation. The statement may include a statement that the
4 registered office is also discontinued. The registered agent
5 shall send a copy of the statement of resignation by certified
6 mail to the cooperative at its principal office and to the
7 registered office, if not discontinued. The registered agent
8 shall certify to the secretary of state that the copies have
9 been sent to the cooperative, including the date the copies
10 were sent.

11 b. The agency appointment is terminated, and the
12 registered office discontinued if so provided, on the date on
13 which the statement was filed.

14 NEW SUBSECTION. 6. a. A cooperative's registered agent
15 is the cooperative's agent for service of process, notice, or
16 demand required or permitted by law to be served on the
17 cooperative.

18 b. If a cooperative has no registered agent, or the agent
19 cannot with reasonable diligence be served, the cooperative
20 may be served by registered or certified mail, return receipt
21 requested, addressed to the secretary of the cooperative at
22 its principal office. Service is perfected under this
23 paragraph at the earliest of any of the following:

24 (1) The date that the cooperative receives the mail.

25 (2) The date shown on the return receipt, if signed on
26 behalf of the cooperative.

27 (3) Five days after its deposit in the United States mail,
28 as evidenced by the postmark, if mailed postpaid and correctly
29 addressed.

30 c. A cooperative may be served pursuant to this section or
31 as provided in other provisions of this chapter, unless the
32 manner of service is otherwise specifically provided for by
33 statute.

34 Sec. 12. Section 501.202, subsection 1, paragraph a, Code
35 1997, is amended to read as follows:

1 a. The name, address, and occupation of each incorporator
2 organizer.

3 Sec. 13. Section 501.202, subsection 2, paragraph d, Code
4 1997, is amended to read as follows:

5 d. The classes of stock interests and the authorized
6 number of shares interests of each class.

7 Sec. 14. Section 501.306, Code 1997, is amended to read as
8 follows:

9 501.306 NUMBER OF VOTES.

10 A person who is a member ~~or-shareholder~~ shall not own more
11 than one membership ~~or-share-of-voting-stock~~. The person
12 shall be entitled to cast not more than one vote regarding any
13 matter in which a vote is conducted, including any matter
14 subject to a vote during a cooperative meeting.

15 Sec. 15. Section 501.403, subsection 2, paragraph e, Code
16 1997, is amended to read as follows:

17 e. Action required or permitted by this chapter to be
18 taken at a board meeting may be taken without a meeting if the
19 action is taken by all members of the board. The action must
20 be evidenced by one or more written consents describing the
21 action taken, signed by each director, and included in the
22 minutes or filed with the corporate cooperative's records
23 reflecting the action taken. Action taken under this section
24 is effective when the last director signs the consent, unless
25 the consent specifies a different effective date. A consent
26 signed under this section has the effect of a meeting vote and
27 may be described as such in any document.

28 Sec. 16. Section 501.403, subsection 3, Code 1997, is
29 amended to read as follows:

30 3. A director may waive any notice required by this
31 chapter, the articles, or the bylaws before or after the date
32 and time stated in the notice. The waiver must be in writing,
33 signed by the director entitled to the notice, and filed with
34 the minutes or corporate records of the cooperative. A
35 director's attendance at or participation in a meeting waives

1 any required notice to that director of the meeting unless the
2 director at the beginning of the meeting or promptly upon the
3 director's arrival objects to holding the meeting or
4 transacting business at the meeting and does not thereafter
5 vote for or assent to action taken at the meeting.

6 Sec. 17. Section 501.404, subsection 1, paragraph b, Code
7 Supplement 1997, is amended to read as follows:

8 b. The material facts of the transaction and the
9 director's interest were disclosed or known to the
10 ~~shareholders~~ members entitled to vote and they authorized,
11 approved, or ratified the transaction. For purposes of this
12 paragraph, a conflict of interest transaction is authorized,
13 approved, or ratified if it receives a majority of the votes
14 entitled to be counted under this paragraph. Shares Voting
15 interests owned by or voted under the control of a director
16 who has a direct or indirect interest in the transaction, and
17 shares voting interests owned by or voted under the control of
18 an entity described in subsection 2, paragraph "a", shall not
19 be counted in a vote of members to determine whether to
20 authorize, approve, or ratify a conflict of interest
21 transaction under this paragraph. The vote of those shares
22 voting interests, however, is counted in determining whether
23 the transaction is approved under other sections of this
24 chapter. A majority of the votes, whether or not the
25 ~~shareholders~~ members are present, that are entitled to be
26 counted in a vote on the transaction under this paragraph
27 constitutes a quorum for the purpose of taking action under
28 this paragraph.

29 Sec. 18. Section 501.407, unnumbered paragraph 1, Code
30 1997, is amended to read as follows:

31 The articles may contain a provision eliminating or
32 limiting the personal liability of a director, officer, or
33 ~~shareholder~~ interest holder of the cooperative for monetary
34 damages for breach of a fiduciary duty as a director, officer,
35 or ~~shareholder~~ interest holder, provided that the provision

1 does not eliminate or limit liability for any of the
2 following:

3 Sec. 19. Section 501.407, subsections 1 and 3, Code 1997,
4 are amended to read as follows:

5 1. A breach of the duty of loyalty to the cooperative or
6 its ~~shareholders~~ interest holders.

7 3. A transaction from which the director, officer, or
8 ~~shareholder~~ interest holder derives an improper personal
9 benefit.

10 PART B

11 INDEMNIFICATION

12 Sec. 20. NEW SECTION. 501.411 DEFINITIONS.

13 As used in this part, unless the context otherwise
14 requires:

15 1. "Cooperative" includes any domestic or foreign
16 predecessor entity of a cooperative in a merger or other
17 transaction in which the predecessor's existence ceased upon
18 consummation of the transaction.

19 2. "Director" means an individual who is or was a director
20 of a cooperative or an individual who, while a director of a
21 cooperative, is or was serving at the cooperative's request as
22 a director, officer, partner, trustee, employee, or agent of
23 another foreign or domestic cooperative, corporation,
24 partnership, joint venture, trust, employee benefit plan, or
25 other enterprise. A director is considered to be serving an
26 employee benefit plan at the cooperative's request if the
27 director's duties to the cooperative also impose duties on, or
28 otherwise involve services by, that director to the plan or to
29 participants in or beneficiaries of the plan. "Director"
30 includes, unless the context requires otherwise, the estate or
31 personal representative of a director.

32 3. "Expenses" include counsel fees.

33 4. "Liability" means the obligation to pay a judgment,
34 settlement, penalty, fine, including an excise tax assessed
35 with respect to an employee benefit plan, or reasonable

1 expenses incurred with respect to a proceeding.

2 5. "Official capacity" means:

3 a. When used with respect to a director, the office of
4 director in a cooperative.

5 b. When used with respect to an individual other than a
6 director, as contemplated in section 501.417, the office in a
7 cooperative held by the officer or the employment or agency
8 relationship undertaken by the employee or agent on behalf of
9 the cooperative.

10 "Official capacity" does not include service for any other
11 foreign or domestic cooperative or any corporation,
12 partnership, joint venture, trust, employee benefit plan, or
13 other enterprise.

14 6. "Party" includes an individual who was, is, or is
15 threatened to be made a named defendant or respondent in a
16 proceeding.

17 7. "Proceeding" means any threatened, pending, or
18 completed action, suit, or proceeding, whether civil,
19 criminal, administrative, or investigative and whether formal
20 or informal.

21 Sec. 21. NEW SECTION. 501.412 AUTHORITY TO INDEMNIFY.

22 1. Except as provided in subsection 4, a cooperative may
23 indemnify an individual made a party to a proceeding because
24 the individual is or was a director against liability incurred
25 in the proceeding if all of the following apply:

26 a. The individual acted in good faith.

27 b. The individual reasonably believed either of the
28 following:

29 (1) In the case of conduct in the individual's official
30 capacity with the cooperative, that the individual's conduct
31 was in the cooperative's best interests.

32 (2) In all other cases, that the individual's conduct was
33 at least not opposed to the cooperative's best interests.

34 c. In the case of any criminal proceeding, the individual
35 had no reasonable cause to believe the individual's conduct

1 was unlawful.

2 2. A director's conduct with respect to an employee
3 benefit plan for a purpose the director reasonably believed to
4 be in the interests of the participants in and beneficiaries
5 of the plan is conduct that satisfies the requirement of
6 subsection 1, paragraph "b", subparagraph (2).

7 3. The termination of a proceeding by judgment, order,
8 settlement, conviction, or upon a plea of nolo contendere or
9 its equivalent is not, of itself, determinative that the
10 director did not meet the standard of conduct described in
11 this section.

12 4. A cooperative shall not indemnify a director under this
13 section in either of the following circumstances:

14 a. In connection with a proceeding by or in the right of
15 the cooperative in which the director was adjudged liable to
16 the cooperative.

17 b. In connection with any other proceeding charging
18 improper personal benefit to the director, whether or not
19 involving action in the director's official capacity, in which
20 the director was adjudged liable on the basis that personal
21 benefit was improperly received by the director.

22 5. Indemnification permitted under this section in
23 connection with a proceeding by or in the right of the
24 cooperative is limited to reasonable expenses incurred in
25 connection with the proceeding.

26 Sec. 22. NEW SECTION. 501.413 MANDATORY INDEMNIFICATION.

27 Unless limited by its articles of association, a
28 cooperative shall indemnify a director who was wholly
29 successful, on the merits or otherwise, in the defense of any
30 proceeding to which the director was a party because the
31 director is or was a director of the cooperative against
32 reasonable expenses incurred by the director in connection
33 with the proceeding.

34 Sec. 23. NEW SECTION. 501.414 ADVANCE FOR EXPENSES.

35 1. A cooperative may pay for or reimburse the reasonable

1 expenses incurred by a director who is a party to a proceeding
2 in advance of final disposition of the proceeding if any of
3 the following apply:

4 a. The director furnishes the cooperative a written
5 affirmation of the director's good faith belief that the
6 director has met the standard of conduct described in section
7 501.412.

8 b. The director furnishes the cooperative a written
9 undertaking, executed personally or on the director's behalf,
10 to repay the advance if it is ultimately determined that the
11 director did not meet the standard of conduct described in
12 section 501.412.

13 c. A determination is made pursuant to section 501.416
14 that the facts then known to those making the determination
15 would not preclude indemnification under this part.

16 2. The undertaking required by subsection 1, paragraph
17 "b", must be an unlimited general obligation of the director
18 but need not be secured and may be accepted without reference
19 to financial ability to make repayment.

20 3. Determinations and authorizations of payments under
21 this section shall be made in the manner specified in section
22 501.416.

23 Sec. 24. NEW SECTION. 501.415 COURT-ORDERED
24 INDEMNIFICATION.

25 Unless a cooperative's articles of association provide
26 otherwise, a director of the cooperative who is a party to a
27 proceeding may apply for indemnification to the court
28 conducting the proceeding or to another court of competent
29 jurisdiction. On receipt of an application, the court after
30 giving any notice the court considers necessary may order
31 indemnification if it determines either of the following:

32 1. The director is entitled to mandatory indemnification
33 under section 501.413, in which case the court shall also
34 order the cooperative to pay the director's reasonable
35 expenses incurred to obtain court-ordered indemnification.

1 2. The director is fairly and reasonably entitled to
2 indemnification in view of all the relevant circumstances,
3 whether or not the director met the standard of conduct set
4 forth in section 501.412 or was adjudged liable as described
5 in section 501.412, subsection 4, but if the director was
6 adjudged so liable the director's indemnification is limited
7 to reasonable expenses incurred.

8 Sec. 25. NEW SECTION. 501.416 DETERMINATION AND
9 AUTHORIZATION OF INDEMNIFICATION.

10 1. A cooperative shall not indemnify a director under
11 section 501.412 unless authorized in the specific case after a
12 determination has been made that indemnification of the
13 director is permissible in the circumstances because the
14 director has met the standard of conduct set forth in section
15 501.412.

16 2. The determination shall be made by any of the
17 following:

18 a. By the board of directors by majority vote of a quorum
19 consisting of directors not at the time parties to the
20 proceeding.

21 b. If a quorum cannot be obtained under paragraph "a", by
22 majority vote of a committee duly designated by the board of
23 directors, in which designation directors who are parties may
24 participate, consisting solely of two or more directors not at
25 the time parties to the proceeding.

26 c. By special legal counsel.

27 (1) The special legal counsel shall be selected by the
28 board of directors or its committee in the manner prescribed
29 in paragraph "a" or "b".

30 (2) If a quorum of the board of directors cannot be
31 obtained under paragraph "a" and a committee cannot be
32 designated under paragraph "b", the special legal counsel
33 shall be selected by majority vote of the full board of
34 directors, in which selection directors who are parties may
35 participate.

1 d. By the members, but voting interests owned by or voted
2 under the control of directors who are at the time parties to
3 the proceeding shall not be voted on the determination.

4 3. Authorization of indemnification and evaluation as to
5 reasonableness of expenses shall be made in the same manner as
6 the determination that indemnification is permissible, except
7 that if the determination is made by special legal counsel,
8 authorization of indemnification and evaluation as to
9 reasonableness of expenses shall be made by those entitled
10 under subsection 2, paragraph "c", to select counsel.

11 Sec. 26. NEW SECTION. 501.417 INDEMNIFICATION OF
12 OFFICERS, EMPLOYEES, AND AGENTS.

13 Unless a cooperative's articles of association provide
14 otherwise, all of the following apply:

15 1. An officer of the cooperative who is not a director is
16 entitled to mandatory indemnification under section 501.413,
17 and is entitled to apply for court-ordered indemnification
18 under section 501.415, in each case to the same extent as a
19 director.

20 2. The cooperative may indemnify and advance expenses
21 under this part to an officer, employee, or agent of the
22 cooperative who is not a director to the same extent as to a
23 director.

24 3. A cooperative may also indemnify and advance expenses
25 to an officer, employee, or agent who is not a director to the
26 extent consistent with law that may be provided by its
27 articles of association, bylaws, general or specific action of
28 its board of directors, or contract.

29 Sec. 27. NEW SECTION. 501.418 INSURANCE.

30 A cooperative may purchase and maintain insurance on behalf
31 of an individual who is or was a director, officer, employee,
32 or agent of the cooperative, or who, while a director,
33 officer, employee, or agent of the cooperative, is or was
34 serving at the request of the cooperative as a director,
35 officer, partner, trustee, employee, or agent of another

1 foreign or domestic cooperative, corporation, partnership,
2 joint venture, trust, employee benefit plan, or other
3 enterprise, against liability asserted against or incurred by
4 that individual in that capacity or arising from the
5 individual's status as a director, officer, employee, or
6 agent, whether or not the cooperative would have power to
7 indemnify that individual against the same liability under
8 section 501.412 or 501.413.

9 Sec. 28. NEW SECTION. 501.419 APPLICATION OF THIS PART.

10 Except as limited in section 501.412, subsection 4,
11 paragraph "a", and subsection 5 with respect to proceedings by
12 or in the right of the cooperative, the indemnification and
13 advancement of expenses provided by, or granted pursuant to,
14 sections 501.411 through 501.418 are not exclusive of any
15 other rights to which persons seeking indemnification or
16 advancement of expenses are entitled under a provision in the
17 articles of association or bylaws, agreements, vote of the
18 members or disinterested directors, or otherwise, both as to
19 action in a person's official capacity and as to action in
20 another capacity while holding the office. However, such
21 provisions, agreements, votes, or other actions shall not
22 provide indemnification for a breach of a director's duty of
23 loyalty to the cooperative or its interest holders, for acts
24 or omissions not in good faith or which involve intentional
25 misconduct or knowing violation of the law, or for a
26 transaction from which the person seeking indemnification
27 derives an improper personal benefit.

28 Sec. 29. Section 501.501, Code Supplement 1997, is amended
29 to read as follows:

30 501.501 ISSUANCE AND TRANSFER OF STOCK INTERESTS.

31 1. A cooperative may issue the number of shares interests
32 of each class authorized by its articles. A cooperative may
33 issue fractional shares interests. Stock Interests may be
34 represented by certificates or by entry on the cooperative's
35 stock interest record books.

1 2. A member shall not sell or otherwise transfer voting
2 stock interests to any person. A member may be restricted or
3 limited from selling or otherwise transferring any other class
4 of stock interests of the cooperative as provided by the
5 cooperative's articles of incorporation association or bylaws
6 or an agreement executed between the cooperative and the
7 member.

8 3. A cooperative may acquire its own stock interests, and
9 shares interests so acquired constitute authorized but
10 unissued shares interests.

11 Sec. 30. Section 501.502, subsection 2, paragraph a, Code
12 Supplement 1997, is amended to read as follows:

13 a. The member has attempted to transfer stock any interest
14 to a person who is not a member and has not been approved for
15 membership.

16 Sec. 31. Section 501.502, subsection 4, Code Supplement
17 1997, is amended to read as follows:

18 4. The cooperative shall redeem, without interest, the
19 voting stock interest of a terminated member within one year
20 after the termination of the membership for the fair market
21 value of the stock interest. If the amount originally paid by
22 the member for the voting stock interest was less than ten
23 percent of the total amount the member paid for all classes of
24 stock interests, the cooperative may redeem the voting stock
25 interest for its issue price if the cooperative's articles of
26 incorporation association grant the cooperative this
27 authority.

28 Sec. 32. Section 501.502, subsection 5, unnumbered
29 paragraph 1, Code Supplement 1997, is amended to read as
30 follows:

31 The cooperative shall redeem, without interest, all of the
32 terminated member's allocated patronage refunds and preferred
33 stock interests originally issued as allocated patronage
34 refunds for the issue price as follows:

35 Sec. 33. Section 501.503, subsections 1 and 4, Code 1997,

1 are amended to read as follows:

2 1. If the articles authorize the payment of dividends
3 distributions on a class of stock interests, then the
4 directors may declare dividends a distribution pursuant to the
5 articles. Dividends-may Distributions shall not exceed eight
6 percent of the value of the stock interest in each fiscal
7 year. The members may control the amount that is allocated
8 under this subsection.

9 4. The cooperative shall have an unconditional binding
10 obligation to distribute to the members all remaining net
11 savings as determined under the United States Internal Revenue
12 Code. These net savings shall be allocated to each member in
13 proportion to the business the member did with the cooperative
14 during the preceding fiscal year. The net savings may be
15 separately calculated for two or more categories of business,
16 and allocated to the members on the basis of business done
17 within each of these categories. Net savings shall be
18 distributed in the form of cash or stock interests, or a
19 combination of cash and stock interests, as determined by the
20 board.

21 Sec. 34. Section 501.603, subsection 2, Code 1997, is
22 amended to read as follows:

23 2. A cooperative may sell, lease, exchange, or otherwise
24 dispose of all, or substantially all, of its property, with or
25 without the good will, on the terms and conditions and for the
26 consideration determined by the board, which consideration may
27 include the preferred-stock interests of another cooperative,
28 if the board recommends the proposed transaction to the
29 members, and the members approve it by the vote of two-thirds
30 of the votes cast on a ballot in which a majority of all votes
31 are cast. The board may condition its submission of the
32 proposed transaction on any basis.

33

PART B

34

MERGER AND CONSOLIDATION BETWEEN COOPERATIVES

35

ORGANIZED UNDER THIS CHAPTER

1 Sec. 35. NEW SECTION. 501.611 DEFINITIONS.

2 When used in this part, unless the context otherwise
3 requires:

4 1. "Consolidation" means the uniting of two or more
5 cooperatives organized under this chapter into one cooperative
6 organized under this chapter, in such manner that a new
7 cooperative is formed, and the new cooperative absorbs the
8 others, which cease to exist as separate entities.

9 2. "Dissenting member" means a voting member who votes in
10 opposition to the plan of merger or consolidation and who
11 makes a demand for payment of the fair value under section
12 501.615.

13 3. "Fair value" means the cash price that would be paid by
14 a willing buyer to a willing seller, neither being under any
15 compulsion to buy or sell.

16 4. "Issue price" means the amount paid for an interest in
17 the old cooperative or the amount stated in a notice of
18 allocation of patronage distributions.

19 5. "Merger" means the uniting of two or more cooperatives
20 organized under this chapter into one cooperative organized
21 under this chapter, in such manner that one of the merging
22 associations continues to exist and absorbs the others, which
23 cease to exist as entities. "Merger" does not include the
24 acquisition, by purchase or otherwise, of the assets of one
25 cooperative by another, unless the acquisition only becomes
26 effective by the filing of articles of merger by the
27 cooperatives and the issuance of a certificate of merger
28 pursuant to sections 501.617 and 501.618.

29 6. "New cooperative" is the cooperative resulting from the
30 consolidation of two or more cooperatives organized under this
31 chapter.

32 7. "Old cooperative" means the cooperative in which the
33 member owns or owned a membership prior to merger or
34 consolidation.

35 8. "Surviving cooperative" is the cooperative resulting

1 from the merger of two or more cooperatives organized under
2 this chapter.

3 Sec. 36. NEW SECTION. 501.612 MERGER.

4 Any two or more cooperatives may merge into one cooperative
5 in the manner provided in this section. The board of
6 directors of each cooperative shall, by resolution adopted by
7 a majority vote of all members of each board, approve a plan
8 of merger which shall set forth all of the following:

9 1. The names of the cooperatives proposing to merge and
10 the name of the surviving cooperative.

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

12 3. A statement of any changes in the articles of
13 association of the surviving cooperative.

14 4. Other provisions deemed necessary or desirable.

15 Sec. 37. NEW SECTION. 501.613 CONSOLIDATION.

16 Any two or more cooperatives may be consolidated into a new
17 cooperative as provided in this section. The board of
18 directors of each cooperative shall, by resolution adopted by
19 a majority vote of all members of each board, approve a plan
20 of consolidation setting forth:

21 1. The names of the cooperatives proposing to consolidate
22 and the name of the new cooperative.

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

24 3. With respect to the new cooperative, all of the
25 statements required to be set forth in articles of association
26 for cooperatives.

27 4. Other provisions deemed necessary or desirable.

28 Sec. 38. NEW SECTION. 501.614 VOTE OF MEMBERS.

29 1. The board of directors of a cooperative, upon approving
30 a plan of merger or consolidation, shall, by motion or
31 resolution, direct that the plan be submitted to a vote at a
32 meeting of members, which may be either an annual or special
33 meeting. Written notice shall be given not less than twenty
34 days prior to the meeting, either personally or by mail, to
35 each voting member of record. The notice shall state the

1 time, place, and purpose of the meeting, and a summary of the
2 plan of merger or consolidation shall be included in or
3 enclosed with the notice.

4 2. At the meeting, a ballot of the members who are
5 entitled to vote in the affairs of the association shall be
6 taken on the proposed plan of merger or consolidation. The
7 plan of merger or consolidation shall be approved if two-
8 thirds of the members vote affirmatively on a ballot in which
9 a majority of all voting members participate. Voting may be
10 by mail ballot notwithstanding any contrary provision in the
11 articles of association or bylaws.

12 Sec. 39. NEW SECTION. 501.615 OBJECTION OF MEMBERS --
13 PURCHASE OF INTERESTS UPON DEMAND.

14 1. If a member of a cooperative which is a party to a
15 merger or consolidation files with the cooperative, prior to
16 or at the meeting of members at which the plan is submitted to
17 a vote, a written objection to the plan of merger or
18 consolidation, and votes in opposition to the plan, and the
19 member, within twenty days after the merger or consolidation
20 is approved by the other members, makes written demand on the
21 surviving or new cooperative for payment of the fair value of
22 that member's interest as of the day prior to the date on
23 which the vote was taken approving the merger or
24 consolidation, the surviving or new cooperative shall pay to
25 the member, upon surrender of that person's certificate of
26 membership or interests in the cooperative, the fair value of
27 that person's interest as provided in section 501.616. A
28 member who fails to make demand within the twenty-day period
29 is conclusively presumed to have consented to the merger or
30 consolidation and is bound by its terms.

31 2. In the event that a dissenting member does business
32 with the surviving or new cooperative before payment has been
33 made for that person's membership, the dissenting member is
34 deemed to have consented to the merger or consolidation and to
35 have waived all further rights as a dissenting member.

1 Sec. 40. NEW SECTION. 501.616 VALUE DETERMINED.

2 1. Within twenty days after the merger or consolidation is
3 effected, the surviving or new cooperative shall make a
4 written offer to each dissenting member to pay a specified sum
5 deemed by the surviving or new cooperative to be the fair
6 value of that dissenting member's interest in the old
7 cooperative. This offer shall be accompanied by a balance
8 sheet of the old cooperative as of the latest available date,
9 a profit and loss statement of the old cooperative for the
10 twelve-month period ending on the date of the balance sheet,
11 and a list of the dissenting member's interests in the old
12 cooperative. If the dissenting member does not agree that the
13 sum stated in the notice represents the fair value of the
14 member's interest, then the member may file a written
15 objection with the surviving or new cooperative within twenty
16 days after receiving the notice. A dissenting member who
17 fails to file the objection within the twenty-day period is
18 conclusively presumed to have consented to the fair value
19 stated in the notice.

20 2. If the surviving or new cooperative receives any
21 objections to fair values, then within ninety days after the
22 merger or consolidation is effected, the surviving or new
23 cooperative shall file a petition in district court asking for
24 a finding and determination of the fair value of each type of
25 equity. The action shall be tried as an equitable action.

26 3. The fair value of a dissenting member's interest in the
27 old cooperative shall be determined as of the day preceding
28 the merger or consolidation by taking the lesser of either the
29 issue price of the dissenting member's membership, deferred
30 patronage, and any other interests in the cooperative, or the
31 amount determined by subtracting the old cooperative's debts
32 from the fair market value of the old cooperative's assets,
33 dividing the remainder by the total issue price of all
34 memberships, deferred patronage and all other interests, and
35 then multiplying the quotient from this division by the total

1 issue price of a dissenting member's membership, deferred
2 patronage, and other interests.

3 4. The surviving or new cooperative shall pay to each
4 dissenting member in cash within sixty days after the merger
5 or consolidation the amount paid in cash by the dissenting
6 member for that member's interest in the old cooperative. The
7 surviving or new cooperative shall pay the remainder of each
8 dissenting member's fair value in ten annual equal payments.
9 The final payment must be made not later than fifteen years
10 after the merger or consolidation. The value of the deferred
11 patronage or interests issued to evidence deferred patronage
12 shall be considered a liability of the surviving or new
13 cooperative as reflected in the accounts of the surviving or
14 new cooperative until the value of the deferred patronage or
15 interests issued to evidence deferred patronage is paid in
16 full to the dissenting member. A dissenting member who is a
17 natural person who dies before receiving the fair value shall
18 have all of the person's fair value paid with the same
19 priority as if the person was a member at the time of death.

20 Sec. 41. NEW SECTION. 501.617 ARTICLES OF MERGER OR
21 CONSOLIDATION.

22 Upon approval, articles of merger or articles of
23 consolidation shall be executed by each cooperative as
24 provided in section 501.105. The articles must include the
25 following:

- 26 1. The plan of merger or the plan of consolidation.
- 27 2. As to each cooperative, the number of members.
- 28 3. As to each cooperative, the number of members who voted
29 for and against the plan at the meeting called for that
30 purpose.

31 The articles of merger or articles of consolidation shall
32 be delivered to the secretary of state for filing.

33 The secretary of state, upon the filing of articles of
34 merger or articles of consolidation, shall issue a certificate
35 of merger or a certificate of consolidation and send the

1 certificate to the surviving or new cooperative, or to its
2 representative.

3 Sec. 42. NEW SECTION. 501.618 WHEN EFFECTIVE -- EFFECT.

4 A merger or consolidation shall become effective upon the
5 date that the certificate of merger or the certificate of
6 consolidation is issued by the secretary of state, or the
7 effective date specified in the articles of merger or articles
8 of consolidation, whichever is later.

9 When a merger or consolidation has become effective:

10 1. The several cooperatives which are parties to the plan
11 of merger or consolidation shall be a single cooperative,
12 which, in the case of a merger, shall be that cooperative
13 designated in the plan of merger as the surviving cooperative,
14 and, in the case of consolidation, shall be that cooperative
15 designated in the plan of consolidation as the new
16 cooperative.

17 2. The separate existence of all cooperatives which are
18 parties to the plan of merger or consolidation, except the
19 surviving or new cooperative, shall cease.

20 3. The surviving or new cooperative shall have all the
21 rights, privileges, immunities, and powers and shall be
22 subject to all the duties and liabilities of a cooperative
23 organized under this chapter.

24 4. The surviving or new cooperative shall possess all the
25 rights, privileges, immunities, and franchises, public as well
26 as private, of each of the merging or consolidating
27 cooperatives.

28 5. All property, real, personal, and mixed, and all debts
29 due on whatever account, including all choses in action, and
30 all and every other interest, of or belonging to or due to
31 each of the cooperatives merged or consolidated, shall be
32 transferred to and vested in the surviving or new cooperative
33 without further act or deed. The title to any real estate, or
34 any interest in real estate vested in any of the cooperatives
35 merged or consolidated, shall not revert or be in any way

1 impaired by reason of the merger or consolidation.

2 6. A surviving or new cooperative shall be responsible and
3 liable for all obligations and liabilities of each of the
4 cooperatives merged or consolidated.

5 7. Any claim existing or action or proceeding pending by
6 or against any of the cooperatives merged or consolidated may
7 be prosecuted as if the merger or consolidation had not taken
8 place, or the surviving or new cooperative may be substituted
9 for the merged or consolidated cooperative. Neither the
10 rights of creditors nor any liens upon the property of any
11 cooperative shall be impaired by a merger or consolidation.

12 8. In the case of a merger, the articles of association of
13 the surviving cooperative shall be deemed to be amended to the
14 extent that changes in its articles of association are stated
15 in the plan of merger. In the case of a consolidation, the
16 statements set forth in the articles of consolidation which
17 are required or permitted to be set forth in the articles of
18 association of a cooperative shall be deemed to be the
19 original articles of association of the new cooperative.

20 9. The aggregate amount of the net assets of the merging
21 or consolidating cooperative which was available for the
22 payment of distributions immediately prior to the merger or
23 consolidation, to the extent that the amount is not
24 transferred to stated capital by the issuance of interests or
25 otherwise, shall continue to be available for the payment of
26 distributions by the surviving or new cooperative.

27 Sec. 43. NEW SECTION. 501.619 ABANDONMENT BEFORE FILING.

28 At any time prior to the filing of the articles of merger
29 or consolidation, the merger or consolidation may be abandoned
30 pursuant to provisions set forth in the plan of merger or
31 consolidation.

32 SUBCHAPTER VII
33 RECORDS AND REPORTS
34 PART A
35 RECORDS

1 Sec. 44. NEW SECTION. 501.701 RECORDS.

2 1. A cooperative shall keep as permanent records minutes
3 of all meetings of its members and board of directors, a
4 record of all actions taken by the members or board of
5 directors without a meeting, and a record of all actions taken
6 by a committee of the board of directors in place of the board
7 of directors on behalf of the cooperative.

8 2. A cooperative shall maintain appropriate accounting
9 records.

10 3. A cooperative or its agent shall maintain a record of
11 its interest holders in a form that permits preparation of a
12 list of the names and addresses of all interest holders in
13 alphabetical order by class of interests showing the number
14 and class of interests held by each.

15 4. A cooperative shall maintain its records in written
16 form or in another form capable of conversion into written
17 form within a reasonable time.

18 5. A cooperative shall keep a copy of the following
19 records:

20 a. Its articles or restated articles of association and
21 all amendments to them currently in effect.

22 b. Its bylaws or restated bylaws and all amendments to
23 them currently in effect.

24 c. Resolutions adopted by its board of directors creating
25 one or more classes or series of interests, and fixing their
26 relative rights, preferences, and limitations, if the
27 interests issued pursuant to those resolutions are
28 outstanding.

29 d. The minutes of all members' meetings, and records of
30 all action taken by members without a meeting, for the past
31 three years.

32 e. All written communications to interest holders
33 generally within the past three years, including the financial
34 statements furnished for the past three years under section
35 501.711.

1 f. A list of the names and business addresses of its
2 current directors and officers.

3 g. Its most recent biennial report delivered to the
4 secretary of state under section 501.713.

5 Sec. 45. NEW SECTION. 501.702 INSPECTION OF RECORDS BY
6 INTEREST HOLDERS.

7 1. An interest holder of a cooperative is entitled to
8 inspect and copy, during regular business hours at the
9 cooperative's principal office, any of the records of the
10 cooperative described in section 501.701, subsection 5, if the
11 interest holder gives the cooperative written notice of the
12 interest holder's demand at least five business days before
13 the date on which the interest holder wishes to inspect and
14 copy.

15 2. An interest holder of a cooperative is entitled to
16 inspect and copy, during regular business hours at a
17 reasonable location specified by the cooperative, any of the
18 following records of the cooperative if the interest holder
19 meets the requirements of subsection 3 and gives the
20 cooperative written notice of the interest holder's demand at
21 least five business days before the date on which the interest
22 holder wishes to inspect and copy any of the following:

23 a. Excerpts from minutes of any meeting of the board of
24 directors, records of any action of a committee of the board
25 of directors while acting in place of the board of directors
26 on behalf of the cooperative, minutes of any meeting of the
27 members, and records of action taken by the members or board
28 of directors without a meeting, to the extent not subject to
29 inspection under subsection 1 of this section.

30 b. Accounting records of the cooperative.

31 c. The record of interest holders.

32 3. An interest holder may inspect and copy the records
33 described in subsection 2 only if:

34 a. The interest holder's demand is made in good faith and
35 for a proper purpose.

1 b. The interest holder describes with reasonable
2 particularity the interest holder's purpose and the records
3 the interest holder desires to inspect.

4 c. The records are directly connected with the interest
5 holder's purpose.

6 4. The right of inspection granted by this section shall
7 not be abolished or limited by a cooperative's articles of
8 association or bylaws.

9 5. This section does not affect either of the following:

10 a. The right of a member to obtain information under
11 section 501.702 or the right of an interest holder to obtain
12 information, if the interest holder is in litigation with the
13 cooperative, to the same extent as any other litigant.

14 b. The power of a court, independently of this chapter, to
15 compel the production of cooperative records for examination.

16 Sec. 46. NEW SECTION. 501.703 SCOPE OF INSPECTION RIGHT.

17 1. An interest holder's agent or attorney has the same
18 inspection and copying rights as the interest holder the agent
19 or attorney represents.

20 2. The right to copy records under section 501.702
21 includes, if reasonable, the right to receive copies made by
22 photographic, xerographic, or other technological means.

23 3. The cooperative may impose a reasonable charge,
24 covering the costs of labor and material, for copies of any
25 documents provided to the interest holder. The charge shall
26 not exceed the estimated cost of production or reproduction of
27 the records.

28 4. The cooperative may comply with an interest holder's
29 demand to inspect the record of interest holders under section
30 501.702, subsection 2, paragraph "c", by providing the
31 interest holder with a list of its interest holders that was
32 compiled no earlier than the date of the interest holder's
33 demand.

34 Sec. 47. NEW SECTION. 501.704 COURT-ORDERED INSPECTION.

35 1. If a cooperative does not allow an interest holder who

1 complies with section 501.702, subsection 1, to inspect and
2 copy any records required by that subsection to be available
3 for inspection, the district court of the county where the
4 cooperative's principal office or, if none in this state, its
5 registered office is located may summarily order inspection
6 and copying of the records demanded at the cooperative's
7 expense upon application of the interest holder.

8 2. If a cooperative does not within a reasonable time
9 allow an interest holder to inspect and copy any other
10 records, the interest holder who complies with section
11 501.702, subsections 2 and 3, may apply to the district court
12 in the county where the cooperative's principal office or, if
13 not in this state, its registered office is located for an
14 order to permit inspection and copying of the records
15 demanded. The court shall dispose of an application under
16 this subsection on an expedited basis.

17 3. If the court orders inspection and copying of the
18 records demanded, it shall also order the cooperative to pay
19 the interest holder's costs, including reasonable counsel
20 fees, incurred to obtain the order unless the cooperative
21 proves that it refused inspection in good faith because it had
22 a reasonable basis for doubt about the right of the interest
23 holder to inspect the records demanded.

24 4. If the court orders inspection and copying of the
25 records demanded, it may impose reasonable restrictions on the
26 use or distribution of the records by the demanding interest
27 holder.

28 PART B

29 REPORTS

30 Sec. 48. NEW SECTION. 501.711 FINANCIAL STATEMENTS FOR
31 INTEREST HOLDERS.

32 A cooperative shall prepare annual financial statements,
33 which may be consolidated or combined statements of the
34 cooperative and one or more of its subsidiaries, as
35 appropriate, that include a balance sheet as of the end of the

1 fiscal year and an income statement for that year. Upon
2 written request from an interest holder, a cooperative, at its
3 expense, shall furnish to that interest holder the financial
4 statements requested. If the annual financial statements are
5 reported upon by a public accountant, the report must
6 accompany the financial statements.

7 Sec. 49. NEW SECTION. 501.712 OTHER REPORTS TO INTEREST
8 HOLDERS.

9 1. If a cooperative indemnifies or advances expenses to a
10 director under sections 501.412 through 501.415 in connection
11 with a proceeding by or in the right of the cooperative, the
12 cooperative shall report the indemnification or advance in
13 writing to the members with or before the notice of the next
14 members' meeting.

15 2. If a cooperative issues or authorizes the issuance of
16 interests for promissory notes or for promises to render
17 services in the future, the cooperative shall report in
18 writing to the members the number of interests authorized or
19 issued, and the consideration received by the cooperative,
20 with or before the notice of the next members' meeting.

21 Sec. 50. NEW SECTION. 501.713 ANNUAL REPORT FOR
22 SECRETARY OF STATE.

23 1. Each cooperative authorized to transact business in
24 this state shall deliver to the secretary of state for filing
25 an annual report that sets forth all of the following:

26 a. The name of the cooperative.

27 b. The address of its registered office and the name of
28 its registered agent at that office in this state, together
29 with the consent of any new registered agent.

30 c. The address of its principal office.

31 d. The names and addresses of the president, secretary,
32 treasurer, and one member of the board of directors.

33 2. Information in the annual report must be current as of
34 the first day of January of the year in which the report is
35 due. The report shall be executed on behalf of the

1 cooperative and signed as provided in section 501.105 or by
2 any other person authorized by the board of directors of the
3 cooperative.

4 3. The first annual report shall be delivered to the
5 secretary of state between January 1 and April 1 of the first
6 even-numbered year following the calendar year in which a
7 cooperative was organized. Subsequent annual reports must be
8 delivered to the secretary of state between January 1 and
9 April 1 of the following calendar years. A filing fee for the
10 annual report shall be determined by the secretary of state.

11 4. If an annual report does not contain the information
12 required by this section, the secretary of state shall
13 promptly notify the reporting cooperative in writing and
14 return the report to the cooperative for correction.

15 5. The secretary of state may provide for the change of
16 registered office or registered agent on the form prescribed
17 by the secretary of state for the annual report, provided that
18 the form contains the information required in section 501.106.
19 If the secretary of state determines that an annual report
20 does not contain the information required by this section but
21 otherwise meets the requirements of section 501.106 for the
22 purpose of changing the registered office or registered agent,
23 the secretary of state shall file the statement of change of
24 registered office or registered agent, effective as provided
25 in section 501.105, before returning the biennial report to
26 the cooperative as provided in this section. A statement of
27 change of registered office or agent pursuant to this
28 subsection shall be executed by a person authorized to execute
29 the annual report.

30 DIVISION VIII

31 DISSOLUTION

32 PART A

33 GENERAL

34 Sec. 51. NEW SECTION. 501.801 DISSOLUTION BY ORGANIZERS
35 OR INITIAL DIRECTORS.

1 A majority of the organizers or initial directors of a
2 cooperative that has not issued interests or has not commenced
3 business may dissolve the cooperative by delivering to the
4 secretary of state for filing articles of dissolution that set
5 forth all of the following:

- 6 1. The name of the cooperative.
- 7 2. The date of its organization.
- 8 3. Either of the following:
 - 9 a. That none of the cooperative's interests have been
10 issued.
 - 11 b. That the cooperative has not commenced business.
- 12 4. That no debt of the cooperative remains unpaid.
- 13 5. That the net assets of the cooperative remaining after
14 winding up have been distributed in accordance with this
15 chapter and the articles of association of the cooperative.
- 16 6. That a majority of the organizers or initial directors
17 authorized the dissolution.

18 Sec. 52. NEW SECTION. 501.802 DISSOLUTION BY BOARD OF
19 DIRECTORS AND MEMBERS.

- 20 1. A cooperative's board of directors may propose
21 dissolution for submission to the members.
- 22 2. For a proposal to dissolve to be adopted both of the
23 following must apply:
 - 24 a. The board of directors must recommend dissolution to
25 the members unless the board of directors determines that
26 because of conflict of interest or other special circumstances
27 it should make no recommendation and communicates the basis
28 for its determination to the members.
 - 29 b. The members entitled to vote must approve the proposal
30 to dissolve as provided in subsection 5.
- 31 3. The board of directors may condition its submission of
32 the proposal for dissolution on any basis.
- 33 4. The cooperative shall notify each member of a meeting
34 to consider dissolution in accordance with section 501.302.
35 The notice must also state that the purpose, or one of the

1 purposes, of the meeting is to consider dissolving the
2 cooperative.

3 5. Unless the articles of association or the board of
4 directors acting pursuant to subsection 3 require a greater
5 vote or a vote by voting groups, the proposal to dissolve must
6 be approved by a majority of all the votes entitled to be cast
7 on that proposal in order to be adopted.

8 Sec. 53. NEW SECTION. 501.803 ARTICLES OF DISSOLUTION.

9 1. At any time after dissolution is authorized, the
10 cooperative may dissolve by delivering to the secretary of
11 state for filing articles of dissolution setting forth all of
12 the following:

13 a. The name of the cooperative.

14 b. The date dissolution was authorized.

15 c. If dissolution was approved by the members, both of the
16 following:

17 (1) The number of votes entitled to be cast on the
18 proposal to dissolve.

19 (2) Either the total number of votes cast for and against
20 dissolution or the total number of undisputed votes cast for
21 dissolution and a statement that the number cast for
22 dissolution was sufficient for approval.

23 2. A cooperative is dissolved upon the effective date of
24 its articles of dissolution.

25 Sec. 54. NEW SECTION. 501.804 REVOCATION OF DISSOLUTION.

26 1. A cooperative may revoke its dissolution within one
27 hundred twenty days of the effective date of the dissolution.

28 2. Revocation of dissolution must be authorized in the
29 same manner as the dissolution was authorized unless that
30 authorization permitted revocation by action of the board of
31 directors alone, in which event the board of directors may
32 revoke the dissolution without member action.

33 3. After the revocation of dissolution is authorized, the
34 cooperative may revoke the dissolution by delivering to the
35 secretary of state for filing articles of revocation of

1 dissolution, together with a copy of its articles of
2 dissolution, that set forth all of the following:

3 a. The name of the cooperative.

4 b. The effective date of the dissolution that was revoked.

5 c. The date that the revocation of dissolution was
6 authorized.

7 d. If the cooperative's board of directors or organizers
8 revoked the dissolution, a statement to that effect.

9 e. If the cooperative's board of directors revoked a
10 dissolution authorized by the members, a statement that
11 revocation was permitted by action by the board of directors
12 alone pursuant to that authorization.

13 f. If member action was required to revoke the
14 dissolution, the information required by section 501.803,
15 subsection 1, paragraph "c".

16 4. Revocation of dissolution is effective upon the
17 effective date of the articles of revocation of dissolution.

18 5. When the revocation of dissolution is effective, it
19 relates back to and takes effect as of the effective date of
20 the dissolution as if the dissolution had never occurred.

21 Sec. 55. NEW SECTION. 501.805 EFFECT OF DISSOLUTION.

22 1. A dissolved cooperative continues its existence but
23 shall not carry on any business except that appropriate to
24 wind up and liquidate its business and affairs, including any
25 of the following:

26 a. Collecting its assets.

27 b. Disposing of its properties that will not be
28 distributed in kind in accordance with this chapter and the
29 cooperative's articles of association.

30 c. Discharging or making provision for discharging its
31 liabilities.

32 d. Distributing its remaining property in accordance with
33 this chapter and the cooperative's articles of association.

34 e. Doing every other act necessary to wind up and
35 liquidate its business and affairs.

1 2. Dissolution of a cooperative does not do any of the
2 following:

3 a. Transfer title to the cooperative's property.

4 b. Prevent transfer of its interests, although the
5 authorization to dissolve may provide for closing the
6 cooperative's interest transfer records.

7 c. Subject its directors or officers to standards of
8 conduct different from those prescribed in section 501.406.

9 d. Change quorum or voting requirements for its board of
10 directors or members; change provisions for selection,
11 resignation, or removal of its directors or officers or both;
12 or change provisions for amending its bylaws.

13 e. Prevent commencement of a proceeding by or against the
14 cooperative in its name.

15 f. Abate or suspend a proceeding pending by or against the
16 cooperative on the effective date of dissolution.

17 g. Terminate the authority of the registered agent of the
18 cooperative.

19 Sec. 56. NEW SECTION. 501.805A DISTRIBUTION OF ASSETS.

20 Upon the cooperative's dissolution, the cooperative's
21 assets shall first be used to pay expenses necessary to carry
22 out the dissolution and liquidation of assets, then be used to
23 pay the cooperative's obligations other than the payment of
24 deferred patronage or interests issued as deferred patronage,
25 and the remainder shall be paid in the manner set forth in the
26 cooperative's articles of association.

27 Sec. 57. NEW SECTION. 501.806 KNOWN CLAIMS AGAINST
28 DISSOLVED COOPERATIVE.

29 1. A dissolved cooperative may dispose of the known claims
30 against it by following the procedure described in this
31 section.

32 2. The dissolved cooperative shall notify its known
33 claimants in writing of the dissolution at any time after the
34 effective date of the dissolution. The written notice must do
35 all of the following:

1 a. Describe information that must be included in a claim.

2 b. Provide a mailing address where a claim may be sent.

3 c. State the deadline, which shall not be fewer than one
4 hundred twenty days from the effective date of the written
5 notice, by which the dissolved cooperative must receive the
6 claim.

7 d. State that the claim will be barred if not received by
8 the deadline.

9 3. A claim against the dissolved cooperative is barred if
10 either of the following occur:

11 a. A claimant who was given written notice under
12 subsection 2 does not deliver the claim to the dissolved
13 cooperative by the deadline.

14 b. A claimant whose claim was rejected by the dissolved
15 cooperative does not commence a proceeding to enforce the
16 claim within ninety days from the effective date of the
17 rejection notice.

18 4. For purposes of this section, "claim" does not include
19 a contingent liability or a claim based on an event occurring
20 after the effective date of dissolution.

21 Sec. 58. NEW SECTION. 501.807 UNKNOWN CLAIMS AGAINST
22 DISSOLVED COOPERATIVE.

23 1. A dissolved cooperative may also publish notice of its
24 dissolution and request that persons with claims against the
25 cooperative present them in accordance with the notice.

26 2. The notice must meet all of the following requirements:

27 a. Be published one time in a newspaper of general
28 circulation in the county where the dissolved cooperative's
29 principal office or, if not in this state, its registered
30 office is or was last located.

31 b. Describe the information that must be included in a
32 claim and provide a mailing address where the claim may be
33 sent.

34 c. State that a claim against the cooperative will be
35 barred unless a proceeding to enforce the claim is commenced

1 within five years after the publication of the notice.

2 3. If the dissolved cooperative publishes a newspaper
3 notice in accordance with subsection 2, the claim of each of
4 the following claimants is barred unless the claimant
5 commences a proceeding to enforce the claim against the
6 dissolved cooperative within five years after the publication
7 date of the newspaper notice:

8 a. A claimant who did not receive written notice under
9 section 501.806.

10 b. A claimant whose claim was timely sent to the dissolved
11 cooperative but not acted on.

12 c. A claimant whose claim is contingent or based on an
13 event occurring after the effective date of dissolution.

14 4. A claim may be enforced under this section in either of
15 the following ways:

16 a. Against the dissolved cooperative, to the extent of its
17 undistributed assets.

18 b. If the assets have been distributed in liquidation,
19 against an interest holder of the dissolved cooperative to the
20 extent of the interest holder's pro rata share of the claim or
21 the cooperative assets distributed to the interest holder in
22 liquidation, whichever is less, but an interest holder's total
23 liability for all claims under this section shall not exceed
24 the total amount of assets distributed to the interest holder
25 in liquidation.

26

PART B

27

ADMINISTRATIVE DISSOLUTION

28 Sec. 59. NEW SECTION. 501.811 GROUNDS FOR ADMINISTRATIVE
29 DISSOLUTION.

30 The secretary of state may commence a proceeding under
31 section 501.812 to administratively dissolve a cooperative if
32 any of the following apply:

33 1. The cooperative has not delivered an annual report to
34 the secretary of state in a form that meets the requirements
35 of section 501.713, within sixty days after it is due, or has

1 not paid the filing fee as determined by the secretary of
2 state, within sixty days after it is due.

3 2. The cooperative is without a registered agent or
4 registered office in this state for sixty days or more.

5 3. The cooperative does not notify the secretary of state
6 within sixty days that its registered agent or registered
7 office has been changed, that its registered agent has
8 resigned, or that its registered office has been discontinued.

9 4. The cooperative's period of duration stated in its
10 articles of association expires.

11 Sec. 60. NEW SECTION. 501.812 PROCEDURE FOR AND EFFECT
12 OF ADMINISTRATIVE DISSOLUTION.

13 1. If the secretary of state determines that one or more
14 grounds exist under section 501.811 for dissolving a
15 cooperative, the secretary of state shall serve the
16 cooperative with written notice of the secretary of state's
17 determination under section 501.106.

18 2. If the cooperative does not correct each ground for
19 dissolution or demonstrate to the reasonable satisfaction of
20 the secretary of state that each ground determined by the
21 secretary of state does not exist within sixty days after
22 service of the notice is perfected under section 501.106, the
23 secretary of state shall administratively dissolve the
24 cooperative by signing a certificate of dissolution that
25 recites the ground or grounds for dissolution and its
26 effective date. The secretary of state shall file the
27 original of the certificate and serve a copy on the
28 cooperative under section 501.106.

29 3. A cooperative administratively dissolved continues its
30 existence but shall not carry on any business except that
31 necessary to wind up and liquidate its business and affairs
32 under section 501.805 and notify claimants under sections
33 501.806 and 501.807.

34 4. The administrative dissolution of a cooperative does
35 not terminate the authority of its registered agent.

1 5. The secretary of state's administrative dissolution of
2 a cooperative pursuant to this section appoints the secretary
3 of state the cooperative's agent for service of process in any
4 proceeding based on a cause of action which arose during the
5 time the cooperative was authorized to transact business in
6 this state. Service of process on the secretary of state
7 under this subsection is service on the cooperative. Upon
8 receipt of process, the secretary of state shall serve a copy
9 of the process on the cooperative as provided in section
10 501.106. This subsection does not preclude service on the
11 cooperative's registered agent, if any.

12 Sec. 61. NEW SECTION. 501.813 REINSTATEMENT FOLLOWING
13 ADMINISTRATIVE DISSOLUTION.

14 1. A cooperative administratively dissolved under section
15 501.812 may apply to the secretary of state for reinstatement
16 within two years after the effective date of dissolution. The
17 application must meet all of the following requirements:

18 a. Recite the name of the cooperative at its date of
19 dissolution and the effective date of its administrative
20 dissolution.

21 b. State that the ground or grounds for dissolution have
22 been eliminated.

23 c. State a name that satisfies the requirements of section
24 501.104.

25 d. State the federal tax identification number of the
26 cooperative.

27 2. a. The secretary of state shall refer the federal tax
28 identification number contained in the application for
29 reinstatement to the department of revenue and finance. The
30 department of revenue and finance shall report to the
31 secretary of state the tax status of the cooperative. If the
32 department reports to the secretary of state that a filing
33 delinquency or liability exists against the cooperative, the
34 secretary of state shall not cancel the certificate of
35 dissolution until the filing delinquency or liability is

1 satisfied.

2 b. If the secretary of state determines that the
3 application contains the information required by subsection 1,
4 and that a delinquency or liability reported pursuant to
5 paragraph "a" has been satisfied, and that the information is
6 correct, the secretary of state shall cancel the certificate
7 of dissolution and prepare a certificate of reinstatement that
8 recites the secretary of state's determination and the
9 effective date of reinstatement, file the original of the
10 certificate, and serve a copy on the cooperative under section
11 501.106. If the name of the cooperative as provided in
12 subsection 1, paragraph "c", is different than the name in
13 subsection 1, paragraph "a", the certificate of reinstatement
14 shall constitute an amendment to the articles of association
15 insofar as it pertains to the name.

16 3. When the reinstatement is effective, it relates back to
17 and takes effect as of the effective date of the
18 administrative dissolution as if the administrative
19 dissolution had never occurred.

20 Sec. 62. NEW SECTION. 501.814 APPEAL FROM DENIAL OF
21 REINSTATEMENT.

22 1. If the secretary of state denies a cooperative's
23 application for reinstatement following administrative
24 dissolution, the secretary of state shall serve the
25 cooperative under section 501.106 with a written notice that
26 explains the reason or reasons for denial.

27 2. The cooperative may appeal the denial of reinstatement
28 to the district court within thirty days after service of the
29 notice of denial is perfected. The cooperative appeals by
30 petitioning the court to set aside the dissolution and
31 attaching to the petition copies of the secretary of state's
32 certificate of dissolution, the cooperative's application for
33 reinstatement, and the secretary of state's notice of denial.

34 3. The court may summarily order the secretary of state to
35 reinstate the dissolved cooperative or may take other action

1 the court considers appropriate.

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

4 PART C
5 JUDICIAL DISSOLUTION

6 Sec. 63. NEW SECTION. 501.821 GROUNDS FOR JUDICIAL
7 DISSOLUTION.

8 The district court may dissolve a cooperative in any of the
9 following ways:

10 1. A proceeding by the attorney general, if it is
11 established that either of the following apply:

12 a. The cooperative obtained its articles of association
13 through fraud.

14 b. The cooperative has continued to exceed or abuse the
15 authority conferred upon it by law.

16 2. A proceeding by a member if it is established that any
17 of the following conditions exist:

18 a. The directors are deadlocked in the management of the
19 cooperative's affairs, the members are unable to break the
20 deadlock, and either irreparable injury to the cooperative is
21 threatened or being suffered, or the business and affairs of
22 the cooperative can no longer be conducted to the advantage of
23 the interest holders generally, because of the deadlock.

24 b. The directors or those in control of the cooperative
25 have acted, are acting, or will act in a manner that is
26 illegal, oppressive, or fraudulent.

27 c. The members are deadlocked in voting power and have
28 failed, for a period that includes at least two consecutive
29 annual meeting dates, to elect successors to directors whose
30 terms have expired.

31 d. The cooperative's assets are being misapplied or
32 wasted.

33 3. A proceeding by a creditor if it is established that
34 either of the following apply:

35 a. The creditor's claim has been reduced to judgment, the

1 execution on the judgment returned unsatisfied, and the
2 cooperative is insolvent.

3 b. The cooperative has admitted in writing that the
4 creditor's claim is due and owing and the cooperative is
5 insolvent.

6 4. A proceeding by the cooperative to have its voluntary
7 dissolution continued under court supervision.

8 Sec. 64. NEW SECTION. 501.822 PROCEDURE FOR JUDICIAL
9 DISSOLUTION.

10 1. Venue for a proceeding by the attorney general to
11 dissolve a cooperative lies in Polk county district court.
12 Venue for a proceeding brought by any other party named in
13 section 501.821 lies in the county where a cooperative's
14 principal office or, if not in this state, its registered
15 office is or was last located.

16 2. It is not necessary to make interest holders parties to
17 a proceeding to dissolve a cooperative unless relief is sought
18 against them individually.

19 3. A court in a proceeding brought to dissolve a
20 cooperative may issue injunctions, appoint a receiver or
21 custodian pendente lite with all powers and duties the court
22 directs, take other action required to preserve the
23 cooperative's assets wherever located, and carry on the
24 business of the cooperative until a full hearing can be held.

25 Sec. 65. NEW SECTION. 501.823 RECEIVERSHIP OR
26 CUSTODIANSHIP.

27 1. A court in a judicial proceeding brought to dissolve a
28 cooperative may appoint one or more receivers to wind up and
29 liquidate, or one or more custodians to manage, the business
30 and affairs of the cooperative. The court shall hold a
31 hearing, after notifying all parties to the proceeding and any
32 interested persons designated by the court, before appointing
33 a receiver or custodian. The court appointing a receiver or
34 custodian has exclusive jurisdiction over the cooperative and
35 all its property wherever located.

1 2. The court may appoint an individual or a domestic or
2 foreign corporation authorized to transact business in this
3 state as a receiver or custodian. The court may require the
4 receiver or custodian to post bond, with or without sureties,
5 in an amount the court directs.

6 3. The court shall describe the powers and duties of the
7 receiver or custodian in its appointing order, which may be
8 amended from time to time.

9 a. Among other powers, the receiver may do any of the
10 following:

11 (1) Dispose of all or any part of the assets of the
12 cooperative wherever located, at a public or private sale, if
13 authorized by the court.

14 (2) Sue and defend in the receiver's own name as receiver
15 of the cooperative in all courts of this state.

16 b. The custodian may exercise all of the powers of the
17 cooperative, through or in place of its board of directors or
18 officers, to the extent necessary to manage the affairs of the
19 cooperative in the best interests of its interest holders and
20 creditors.

21 4. The court during a receivership may redesignate the
22 receiver a custodian, and during a custodianship may
23 redesignate the custodian a receiver, if doing so is in the
24 best interests of the cooperative, its interest holders, and
25 creditors.

26 5. The court from time to time during the receivership or
27 custodianship may order compensation paid and expense
28 disbursements or reimbursements made to the receiver or
29 custodian and the receiver's or custodian's counsel from the
30 assets of the cooperative or proceeds from the sale of the
31 assets.

32 Sec. 66. NEW SECTION. 501.824 DECREE OF DISSOLUTION.

33 1. If after a hearing the court determines that one or
34 more grounds for judicial dissolution described in section
35 501.821 exist, it may enter a decree dissolving the

1 cooperative and specifying the effective date of the
2 dissolution, and the clerk of the district court shall deliver
3 a certified copy of the decree to the secretary of state, who
4 shall file it.

5 2. After entering the decree of dissolution, the court
6 shall direct the winding up and liquidation of the
7 cooperative's business and affairs in accordance with section
8 501.805 and the notification of claimants in accordance with
9 sections 501.806 and 501.807.

10

PART D

11

STATE TREASURER

12

Sec. 67. NEW SECTION. 501.831 DEPOSIT WITH STATE

13

TREASURER.

14

Assets of a dissolved cooperative that should be
15 transferred to a creditor, claimant, or interest holder of the
16 cooperative who cannot be found or who is not competent to
17 receive them shall be reduced to cash and deposited with the
18 treasurer of state or other appropriate state official for
19 safekeeping. When the creditor, claimant, or interest holder
20 furnishes satisfactory proof of entitlement to the amount
21 deposited, the treasurer of state or other appropriate state
22 official shall pay the creditor, claimant, or interest holder
23 or that person's representative the amount.

24

Sec. 68. Sections 501.107 and 501.602, Code 1997, are
25 repealed. Sections 501.408 and 501.604, Code Supplement 1997,
26 are repealed.

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SENATE FILE 2404

H-8887

1 Amend Senate File 2404, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 42, by inserting after line 26 the
4 following:

5 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
6 of immediate importance, takes effect upon enactment."

7 2. Title page, line 1, by inserting after the
8 figure "501" the following: "and providing an
9 effective date".

By VANDE HOEF of Osceola
BRUNKHORST of Bremer
MEYER of Sac

H-8887 FILED APRIL 2, 1998

Adopted 4-6-98
(P.1299)

Rensink
Kibbie
Angelo

SSB 2157

Agriculture
Succeeded By

SENATE FILE (SF) HF 2404
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON RENSINK)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to cooperatives organized under Code chapter 501.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 501.101, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. "Articles" means the cooperative's articles of
4 incorporation association.

5 Sec. 2. Section 501.101, subsection 2, paragraph b, Code
6 1997, is amended to read as follows:

7 b. ~~An individual or general partnership that~~ A person who
8 owns at least one hundred fifty acres of agricultural land and
9 receives as rent a share of the crops or the animals raised on
10 the land if those crops or animals are a significant component
11 of the cooperative's business operations that person is a
12 natural person or a general partnership as organized under
13 chapter 486 in which all persons are natural persons.

14 Sec. 3. Section 501.101, subsection 4, Code 1997, is
15 amended to read as follows:

16 4. "Cooperative" means a cooperative corporation
17 association organized under this chapter or converted to this
18 chapter pursuant to section 501.601.

19 Sec. 4. Section 501.101, subsection 6, Code 1997, is
20 amended by adding the following new paragraph:

21 NEW PARAGRAPH. c. A general partnership as organized
22 under chapter 486 in which all the partners are natural
23 persons actively engaged in farming as provided in section
24 9H.1.

25 Sec. 5. Section 501.101, subsections 7 through 9, Code
26 1997, are amended to read as follows:

27 7. "Member" means a person who owns a voting stock
28 interest in a cooperative.

29 8. ~~"Shareholder"~~ "Interest holder" means a person who owns
30 stock an interest in a cooperative, whether or not that stock
31 interest has voting rights.

32 9. "Voting stock interest" means stock an interest in a
33 cooperative that has voting rights.

34 Sec. 6. Section 501.102, subsection 2, Code 1997, is
35 amended to read as follows:

1 2. Unless its articles provide otherwise, a cooperative
2 has perpetual duration and succession in its corporate
3 cooperative name and has the same powers as an individual to
4 do all things necessary or convenient to carry out its
5 business and affairs, including, ~~without limitation, all of~~
6 ~~the powers enumerated in sections 490-302 and 490-303~~ but not
7 limited to, all of the following:

8 a. Sue and be sued, complain, and defend in its name.

9 b. Have a seal, which may be altered at will, and use it,
10 or a facsimile of it, by impressing or affixing it or in any
11 other manner reproducing it.

12 c. Make and amend bylaws, not inconsistent with its
13 articles of association or with the laws of this state, for
14 managing the business and regulating the affairs of the
15 cooperative.

16 d. Purchase, receive, lease, or otherwise acquire, and
17 own, hold, improve, use, and otherwise deal with, real or
18 personal property, or any legal or equitable interest in
19 property, wherever located.

20 e. Sell, convey, mortgage, pledge, lease, exchange, and
21 otherwise dispose of all or any part of its property.

22 f. Purchase, receive, subscribe for, or otherwise acquire,
23 own, hold, vote, use, sell, mortgage, lend, pledge, or
24 otherwise dispose of, and deal in and with shares or other
25 interests in, or obligations of, any other entity.

26 g. Make contracts and guarantees, incur liabilities,
27 borrow money, issue its notes, bonds, and other obligations,
28 which may be convertible into or include the option to
29 purchase other interests of the cooperative, and secure any of
30 its obligations by mortgage or pledge of any of its property,
31 franchises, or income.

32 h. Lend money, invest and reinvest its funds, and receive
33 and hold real and personal property as security for repayment.

34 i. Be a promoter, partner, member, associate, or manager
35 of any partnership, joint venture, trust, or other entity.

1 j. Conduct its business, locate offices, and exercise the
2 powers granted by this chapter within or without this state.

3 k. Elect directors and appoint officers, employees, and
4 agents of the cooperative, define their duties, fix their
5 compensation, and lend them money and credit.

6 l. Pay pensions and establish pension plans, pension
7 trusts, profit sharing plans, share bonus plans, share option
8 plans, and benefit or incentive plans for any or all of its
9 current or former directors, officers, employees, and agents.

10 m. Make donations for the public welfare or for
11 charitable, scientific, or educational purposes.

12 n. Transact any lawful business that will aid governmental
13 policy.

14 o. Make payments or donations, or do any other act, not
15 inconsistent with law, that furthers the business and affairs
16 of the cooperative.

17 Sec. 7. Section 501.103, subsections 1, 2, and 5, Code
18 Supplement 1997, are amended to read as follows:

19 1. Notwithstanding section 9H.4, any person or entity,
20 subject to the limitations set forth in section 501.305, and
21 subject to the cooperative's articles and bylaws, is permitted
22 to own stock interests, including voting stock interests, in a
23 cooperative.

24 2. Notwithstanding section 9H.4, a cooperative may,
25 directly or indirectly, acquire or otherwise obtain or lease
26 agricultural land in this state, for as long as the
27 cooperative continues to meet the following requirements:

28 a. Farming entities own sixty percent of the stock
29 interests and are eligible to cast sixty percent of the votes
30 at member meetings.

31 b. Authorized persons own at least seventy-five percent of
32 the stock interests and are eligible to cast at least seventy-
33 five percent of the votes at member meetings.

34 c. The cooperative does not, either directly or
35 indirectly, acquire or otherwise obtain or lease agricultural

1 land,--if-the-total-agricultural-land-either-directly-or
2 indirectly-owned-or-leased-by-the-cooperative-would-then
3 exceed-six-hundred-forty in this state in excess of one
4 thousand five hundred acres.

5 5. In the event of a transfer of stock an interest in a
6 cooperative by operation of law as a result of death, divorce,
7 bankruptcy, or pursuant to a security interest, the
8 cooperative may disregard the transfer for purposes of
9 determining compliance with subsection 2 for a period of two
10 years after the transfer.

11 Sec. 8. Section 501.105, subsection 2, Code 1997, is
12 amended to read as follows:

13 2. Articles must be signed by all of the incorporators
14 organizers; and all other documents filed with the secretary
15 of state must be signed by one of the cooperative's officers.
16 The printed name and capacity of each signatory must appear in
17 proximity to the signatory's signature. The secretary of
18 state may accept a document containing a copy of the
19 signature. A document is not required to contain a corporate
20 seal, an acknowledgment, or a verification.

21 Sec. 9. Section 501.106, subsection 2, unnumbered
22 paragraph 1, Code 1997, is amended to read as follows:

23 A corporation cooperative may change its registered office
24 or registered agent by delivering to the secretary of state
25 for filing a statement of change that sets forth all of the
26 following:

27 Sec. 10. Section 501.106, Code 1997, is amended by adding
28 the following new subsections:

29 NEW SUBSECTION. 5. a. A registered agent may resign the
30 agent's agency appointment by signing and delivering to the
31 secretary of state for filing the signed original statement of
32 resignation. The statement may include a statement that the
33 registered office is also discontinued. The registered agent
34 shall send a copy of the statement of resignation by certified
35 mail to the cooperative at its principal office and to the

1 registered office, if not discontinued. The registered agent
2 shall certify to the secretary of state that the copies have
3 been sent to the cooperative, including the date the copies
4 were sent.

5 b. The agency appointment is terminated, and the
6 registered office discontinued if so provided, on the date on
7 which the statement was filed.

8 NEW SUBSECTION. 6. a. A cooperative's registered agent
9 is the cooperative's agent for service of process, notice, or
10 demand required or permitted by law to be served on the
11 cooperative.

12 b. If a cooperative has no registered agent, or the agent
13 cannot with reasonable diligence be served, the cooperative
14 may be served by registered or certified mail, return receipt
15 requested, addressed to the secretary of the cooperative at
16 its principal office. Service is perfected under this
17 paragraph at the earliest of any of the following:

18 (1) The date that the cooperative receives the mail.

19 (2) The date shown on the return receipt, if signed on
20 behalf of the cooperative.

21 (3) Five days after its deposit in the United States mail,
22 as evidenced by the postmark, if mailed postpaid and correctly
23 addressed.

24 c. A cooperative may be served pursuant to this section or
25 as provided in other provisions of this chapter, unless the
26 manner of service is otherwise specifically provided for by
27 statute.

28 Sec. 11. Section 501.202, subsection 1, paragraph a, Code
29 1997, is amended to read as follows:

30 a. The name, address, and occupation of each incorporator
31 organizer.

32 Sec. 12. Section 501.202, subsection 2, paragraph d, Code
33 1997, is amended to read as follows:

34 d. The classes of stock interests and the authorized
35 number of shares interests of each class.

1 Sec. 13. Section 501.306, Code 1997, is amended to read as
2 follows:

3 501.306 NUMBER OF VOTES.

4 A person who is a member ~~or-shareholder~~ shall not own more
5 than one membership ~~or-share-of-voting-stock~~. The person
6 shall be entitled to cast not more than one vote regarding any
7 matter in which a vote is conducted, including any matter
8 subject to a vote during a cooperative meeting.

9 Sec. 14. Section 501.403, subsection 2, paragraph e, Code
10 1997, is amended to read as follows:

11 e. Action required or permitted by this chapter to be
12 taken at a board meeting may be taken without a meeting if the
13 action is taken by all members of the board. The action must
14 be evidenced by one or more written consents describing the
15 action taken, signed by each director, and included in the
16 minutes or filed with the ~~corporate~~ cooperative's records
17 reflecting the action taken. Action taken under this section
18 is effective when the last director signs the consent, unless
19 the consent specifies a different effective date. A consent
20 signed under this section has the effect of a meeting vote and
21 may be described as such in any document.

22 Sec. 15. Section 501.403, subsection 3, Code 1997, is
23 amended to read as follows:

24 3. A director may waive any notice required by this
25 chapter, the articles, or the bylaws before or after the date
26 and time stated in the notice. The waiver must be in writing,
27 signed by the director entitled to the notice, and filed with
28 the minutes or ~~corporate~~ records of the cooperative. A
29 director's attendance at or participation in a meeting waives
30 any required notice to that director of the meeting unless the
31 director at the beginning of the meeting or promptly upon the
32 director's arrival objects to holding the meeting or
33 transacting business at the meeting and does not thereafter
34 vote for or assent to action taken at the meeting.

35 Sec. 16. Section 501.404, subsection 1, paragraph b, Code

1 Supplement 1997, is amended to read as follows:

2 b. The material facts of the transaction and the
3 director's interest were disclosed or known to the
4 ~~shareholders~~ members entitled to vote and they authorized,
5 approved, or ratified the transaction. For purposes of this
6 paragraph, a conflict of interest transaction is authorized,
7 approved, or ratified if it receives a majority of the votes
8 entitled to be counted under this paragraph. Shares Voting
9 interests owned by or voted under the control of a director
10 who has a direct or indirect interest in the transaction, and
11 shares voting interests owned by or voted under the control of
12 an entity described in subsection 2, paragraph "a", shall not
13 be counted in a vote of members to determine whether to
14 authorize, approve, or ratify a conflict of interest
15 transaction under this paragraph. The vote of those shares
16 voting interests, however, is counted in determining whether
17 the transaction is approved under other sections of this
18 chapter. A majority of the votes, whether or not the
19 ~~shareholders~~ members are present, that are entitled to be
20 counted in a vote on the transaction under this paragraph
21 constitutes a quorum for the purpose of taking action under
22 this paragraph.

23 Sec. 17. Section 501.407, unnumbered paragraph 1, Code
24 1997, is amended to read as follows:

25 The articles may contain a provision eliminating or
26 limiting the personal liability of a director, officer, or
27 ~~shareholder~~ interest holder of the cooperative for monetary
28 damages for breach of a fiduciary duty as a director, officer,
29 or ~~shareholder~~ interest holder, provided that the provision
30 does not eliminate or limit liability for any of the
31 following:

32 Sec. 18. Section 501.407, subsections 1 and 3, Code 1997,
33 are amended to read as follows:

34 1. A breach of the duty of loyalty to the cooperative or
35 its ~~shareholders~~ interest holders.

1 3. A transaction from which the director, officer, or
2 shareholder interest holder derives an improper personal
3 benefit.

4 PART B
5 INDEMNIFICATION

6 Sec. 19. NEW SECTION. 501.411 DEFINITIONS.

7 As used in this part, unless the context otherwise
8 requires:

9 1. "Cooperative" includes any domestic or foreign
10 predecessor entity of a cooperative in a merger or other
11 transaction in which the predecessor's existence ceased upon
12 consummation of the transaction.

13 2. "Director" means an individual who is or was a director
14 of a cooperative or an individual who, while a director of a
15 cooperative, is or was serving at the cooperative's request as
16 a director, officer, partner, trustee, employee, or agent of
17 another foreign or domestic cooperative, partnership, joint
18 venture, trust, employee benefit plan, or other enterprise. A
19 director is considered to be serving an employee benefit plan
20 at the cooperative's request if the director's duties to the
21 cooperative also impose duties on, or otherwise involve
22 services by, that director to the plan or to participants in
23 or beneficiaries of the plan. "Director" includes, unless the
24 context requires otherwise, the estate or personal
25 representative of a director.

26 3. "Expenses" include counsel fees.

27 4. "Liability" means the obligation to pay a judgment,
28 settlement, penalty, fine, including an excise tax assessed
29 with respect to an employee benefit plan, or reasonable
30 expenses incurred with respect to a proceeding.

31 5. "Official capacity" means:

32 a. When used with respect to a director, the office of
33 director in a cooperative.

34 b. When used with respect to an individual other than a
35 director, as contemplated in section 501.417, the office in a

1 cooperative held by the officer or the employment or agency
2 relationship undertaken by the employee or agent on behalf of
3 the cooperative.

4 "Official capacity" does not include service for any other
5 foreign or domestic cooperative or any partnership, joint
6 venture, trust, employee benefit plan, or other enterprise.

7 6. "Party" includes an individual who was, is, or is
8 threatened to be made a named defendant or respondent in a
9 proceeding.

10 7. "Proceeding" means any threatened, pending, or
11 completed action, suit, or proceeding, whether civil,
12 criminal, administrative, or investigative and whether formal
13 or informal.

14 Sec. 20. NEW SECTION. 501.412 AUTHORITY TO INDEMNIFY.

15 1. Except as provided in subsection 4, a cooperative may
16 indemnify an individual made a party to a proceeding because
17 the individual is or was a director against liability incurred
18 in the proceeding if all of the following apply:

19 a. The individual acted in good faith.

20 b. The individual reasonably believed either of the
21 following:

22 (1) In the case of conduct in the individual's official
23 capacity with the cooperative, that the individual's conduct
24 was in the cooperative's best interests.

25 (2) In all other cases, that the individual's conduct was
26 at least not opposed to the cooperative's best interests.

27 c. In the case of any criminal proceeding, the individual
28 had no reasonable cause to believe the individual's conduct
29 was unlawful.

30 2. A director's conduct with respect to an employee
31 benefit plan for a purpose the director reasonably believed to
32 be in the interests of the participants in and beneficiaries
33 of the plan is conduct that satisfies the requirement of
34 subsection 1, paragraph "b", subparagraph (2).

35 3. The termination of a proceeding by judgment, order,

1 settlement, conviction, or upon a plea of nolo contendere or
2 its equivalent is not, of itself, determinative that the
3 director did not meet the standard of conduct described in
4 this section.

5 4. A cooperative shall not indemnify a director under this
6 section in either of the following circumstances:

7 a. In connection with a proceeding by or in the right of
8 the cooperative in which the director was adjudged liable to
9 the cooperative.

10 b. In connection with any other proceeding charging
11 improper personal benefit to the director, whether or not
12 involving action in the director's official capacity, in which
13 the director was adjudged liable on the basis that personal
14 benefit was improperly received by the director.

15 5. Indemnification permitted under this section in
16 connection with a proceeding by or in the right of the
17 cooperative is limited to reasonable expenses incurred in
18 connection with the proceeding.

19 Sec. 21. NEW SECTION. 501.413 MANDATORY INDEMNIFICATION.

20 Unless limited by its articles of association, a
21 cooperative shall indemnify a director who was wholly
22 successful, on the merits or otherwise, in the defense of any
23 proceeding to which the director was a party because the
24 director is or was a director of the cooperative against
25 reasonable expenses incurred by the director in connection
26 with the proceeding.

27 Sec. 22. NEW SECTION. 501.414 ADVANCE FOR EXPENSES.

28 1. A cooperative may pay for or reimburse the reasonable
29 expenses incurred by a director who is a party to a proceeding
30 in advance of final disposition of the proceeding if any of
31 the following apply:

32 a. The director furnishes the cooperative a written
33 affirmation of the director's good faith belief that the
34 director has met the standard of conduct described in section
35 501.412.

1 b. The director furnishes the cooperative a written
2 undertaking, executed personally or on the director's behalf,
3 to repay the advance if it is ultimately determined that the
4 director did not meet the standard of conduct described in
5 section 501.412.

6 c. A determination is made pursuant to section 501.416
7 that the facts then known to those making the determination
8 would not preclude indemnification under this part.

9 2. The undertaking required by subsection 1, paragraph
10 "b", must be an unlimited general obligation of the director
11 but need not be secured and may be accepted without reference
12 to financial ability to make repayment.

13 3. Determinations and authorizations of payments under
14 this section shall be made in the manner specified in section
15 501.416.

16 Sec. 23. NEW SECTION. 501.415 COURT-ORDERED
17 INDEMNIFICATION.

18 Unless a cooperative's articles of association provide
19 otherwise, a director of the cooperative who is a party to a
20 proceeding may apply for indemnification to the court
21 conducting the proceeding or to another court of competent
22 jurisdiction. On receipt of an application, the court after
23 giving any notice the court considers necessary may order
24 indemnification if it determines either of the following:

25 1. The director is entitled to mandatory indemnification
26 under section 501.413, in which case the court shall also
27 order the cooperative to pay the director's reasonable
28 expenses incurred to obtain court-ordered indemnification.

29 2. The director is fairly and reasonably entitled to
30 indemnification in view of all the relevant circumstances,
31 whether or not the director met the standard of conduct set
32 forth in section 501.412 or was adjudged liable as described
33 in section 501.412, subsection 4, but if the director was
34 adjudged so liable the director's indemnification is limited
35 to reasonable expenses incurred.

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S.F. _____ H.F. _____

1 Sec. 24. NEW SECTION. 501.416 DETERMINATION AND
2 AUTHORIZATION OF INDEMNIFICATION.

3 1. A cooperative shall not indemnify a director under
4 section 501.412 unless authorized in the specific case after a
5 determination has been made that indemnification of the
6 director is permissible in the circumstances because the
7 director has met the standard of conduct set forth in section
8 501.412.

9 2. The determination shall be made by any of the
10 following:

11 a. By the board of directors by majority vote of a quorum
12 consisting of directors not at the time parties to the
13 proceeding.

14 b. If a quorum cannot be obtained under paragraph "a", by
15 majority vote of a committee duly designated by the board of
16 directors, in which designation directors who are parties may
17 participate, consisting solely of two or more directors not at
18 the time parties to the proceeding.

19 c. By special legal counsel.

20 (1) The special legal counsel shall be selected by the
21 board of directors or its committee in the manner prescribed
22 in paragraph "a" or "b".

23 (2) If a quorum of the board of directors cannot be
24 obtained under paragraph "a" and a committee cannot be
25 designated under paragraph "b", the special legal counsel
26 shall be selected by majority vote of the full board of
27 directors, in which selection directors who are parties may
28 participate.

29 d. By the members, but voting interests owned by or voted
30 under the control of directors who are at the time parties to
31 the proceeding shall not be voted on the determination.

32 3. Authorization of indemnification and evaluation as to
33 reasonableness of expenses shall be made in the same manner as
34 the determination that indemnification is permissible, except
35 that if the determination is made by special legal counsel,

1 authorization of indemnification and evaluation as to
2 reasonableness of expenses shall be made by those entitled
3 under subsection 2, paragraph "c", to select counsel.

4 Sec. 25. NEW SECTION. 501.417 INDEMNIFICATION OF
5 OFFICERS, EMPLOYEES, AND AGENTS.

6 Unless a cooperative's articles of association provide
7 otherwise, all of the following apply:

8 1. An officer of the cooperative who is not a director is
9 entitled to mandatory indemnification under section 501.413,
10 and is entitled to apply for court-ordered indemnification
11 under section 501.415, in each case to the same extent as a
12 director.

13 2. The cooperative may indemnify and advance expenses
14 under this part to an officer, employee, or agent of the
15 cooperative who is not a director to the same extent as to a
16 director.

17 3. A cooperative may also indemnify and advance expenses
18 to an officer, employee, or agent who is not a director to the
19 extent permitted by law and provided by its articles of
20 association, bylaws, general or specific action of its board
21 of directors, or contract.

22 Sec. 26. NEW SECTION. 501.418 INSURANCE.

23 A cooperative may purchase and maintain insurance on behalf
24 of an individual who is or was a director, officer, employee,
25 or agent of the cooperative, or who, while a director,
26 officer, employee, or agent of the cooperative, is or was
27 serving at the request of the cooperative as a director,
28 officer, partner, trustee, employee, or agent of another
29 foreign or domestic cooperative, partnership, joint venture,
30 trust, employee benefit plan, or other enterprise, against
31 liability asserted against or incurred by that individual in
32 that capacity or arising from the individual's status as a
33 director, officer, employee, or agent, whether or not the
34 cooperative would have power to indemnify that individual
35 against the same liability under section 501.412 or 501.413.

1 Sec. 27. NEW SECTION. 501.419 APPLICATION OF THIS PART.
 2 Except as limited in section 501.412, subsection 4,
 3 paragraph "a", and subsection 5 with respect to proceedings by
 4 or in the right of the cooperative, the indemnification and
 5 advancement of expenses provided by, or granted pursuant to,
 6 sections 501.411 through 501.418 are not exclusive of any
 7 other rights to which persons seeking indemnification or
 8 advancement of expenses are entitled under a provision in the
 9 articles of association or bylaws, agreements, vote of the
 10 members or disinterested directors, or otherwise, both as to
 11 action in a person's official capacity and as to action in
 12 another capacity while holding the office. However, such
 13 provisions, agreements, votes, or other actions shall not
 14 provide indemnification for a breach of a director's duty of
 15 loyalty to the cooperative or its interest holders, for acts
 16 or omissions not in good faith or which involve intentional
 17 misconduct or knowing violation of the law, for a transaction
 18 from which the person seeking indemnification derives an
 19 improper personal benefit, or for liability under section
 20 501.407.

21 Sec. 28. Section 501.501, Code Supplement 1997, is amended
 22 to read as follows:

23 501.501 ISSUANCE AND TRANSFER OF STOCK INTERESTS.

24 1. A cooperative may issue the number of shares interests
 25 of each class authorized by its articles. A cooperative may
 26 issue fractional shares interests. Stock Interests may be
 27 represented by certificates or by entry on the cooperative's
 28 stock interest record books.

29 2. A member shall not sell or otherwise transfer voting
 30 stock interests to any person. A member may be restricted or
 31 limited from selling or otherwise transferring any other class
 32 of stock interests of the cooperative as provided by the
 33 cooperative's articles of incorporation association or bylaws
 34 or an agreement executed between the cooperative and the
 35 member.

1 3. A cooperative may acquire its own stock interests, and
2 shares interests so acquired constitute authorized but
3 unissued shares interests.

4 Sec. 29. Section 501.502, subsection 2, paragraph a, Code
5 Supplement 1997, is amended to read as follows:

6 a. The member has attempted to transfer stock any interest
7 to a person who is not a member and has not been approved for
8 membership.

9 Sec. 30. Section 501.502, subsection 4, Code Supplement
10 1997, is amended to read as follows:

11 4. The cooperative shall redeem, without interest, the
12 voting stock interest of a terminated member within one year
13 after the termination of the membership for the fair market
14 value of the stock interest. If the amount originally paid by
15 the member for the voting stock interest was less than ten
16 percent of the total amount the member paid for all classes of
17 stock interests, the cooperative may redeem the voting stock
18 interest for its issue price if the cooperative's articles of
19 incorporation association grant the cooperative this
20 authority.

21 Sec. 31. Section 501.502, subsection 5, unnumbered
22 paragraph 1, Code Supplement 1997, is amended to read as
23 follows:

24 The cooperative shall redeem, without interest, all of the
25 terminated member's allocated patronage refunds and preferred
26 stock interests originally issued as allocated patronage
27 refunds for the issue price as follows:

28 Sec. 32. Section 501.503, subsections 1 and 4, Code 1997,
29 are amended to read as follows:

30 1. If the articles authorize the payment of dividends
31 distributions on a class of stock interests, then the
32 directors may declare dividends a distribution pursuant to the
33 articles. Dividends-may Distributions shall not exceed eight
34 percent of the value of the stock interest in each fiscal
35 year. The members may control the amount that is allocated

1 under this subsection.

2 4. The cooperative shall have an unconditional binding
3 obligation to distribute to the members all remaining net
4 savings as determined under the United States Internal Revenue
5 Code. These net savings shall be allocated to each member in
6 proportion to the business the member did with the cooperative
7 during the preceding fiscal year. The net savings may be
8 separately calculated for two or more categories of business,
9 and allocated to the members on the basis of business done
10 within each of these categories. Net savings shall be
11 distributed in the form of cash or stock interests, or a
12 combination of cash and stock interests, as determined by the
13 board.

14 Sec. 33. Section 501.603, subsection 2, Code 1997, is
15 amended to read as follows:

16 2. A cooperative may sell, lease, exchange, or otherwise
17 dispose of all, or substantially all, of its property, with or
18 without the good will, on the terms and conditions and for the
19 consideration determined by the board, which consideration may
20 include the preferred-stock interests of another cooperative,
21 if the board recommends the proposed transaction to the
22 members, and the members approve it by the vote of two-thirds
23 of the votes cast on a ballot in which a majority of all votes
24 are cast. The board may condition its submission of the
25 proposed transaction on any basis.

26 PART B

27 MERGER AND CONSOLIDATION BETWEEN COOPERATIVES
28 ORGANIZED UNDER THIS CHAPTER

29 Sec. 34. NEW SECTION. 501.611 DEFINITIONS.

30 When used in this part, unless the context otherwise
31 requires:

32 1. "Consolidation" means the uniting of two or more
33 cooperatives organized under this chapter into one cooperative
34 organized under this chapter, in such manner that a new
35 cooperative is formed, and the new cooperative absorbs the

1 others, which cease to exist as separate entities.

2 2. "Dissenting member" means a voting member who votes in
3 opposition to the plan of merger or consolidation and who
4 makes a demand for payment of the fair value under section
5 501.615.

6 3. "Fair value" means the cash price that would be paid by
7 a willing buyer to a willing seller, neither being under any
8 compulsion to buy or sell.

9 4. "Issue price" means the amount paid for an interest in
10 the old cooperative or the amount stated in a notice of
11 allocation of patronage dividends.

12 5. "Merger" means the uniting of two or more cooperatives
13 organized under this chapter into one cooperative organized
14 under this chapter, in such manner that one of the merging
15 associations continues to exist and absorbs the others, which
16 cease to exist as entities. "Merger" does not include the
17 acquisition, by purchase or otherwise, of the assets of one
18 cooperative by another, unless the acquisition only becomes
19 effective by the filing of articles of merger by the
20 cooperatives and the issuance of a certificate of merger
21 pursuant to sections 501.617 and 501.618.

22 6. "New cooperative" is the cooperative resulting from the
23 consolidation of two or more cooperatives organized under this
24 chapter.

25 7. "Old cooperative" means the cooperative in which the
26 member owns or owned a membership prior to merger or
27 consolidation.

28 8. "Surviving cooperative" is the cooperative resulting
29 from the merger of two or more cooperatives organized under
30 this chapter.

31 Sec. 35. NEW SECTION. 501.612 MERGER.

32 Any two or more cooperatives may merge into one cooperative
33 in the manner provided in this section. The board of
34 directors of each cooperative shall, by resolution adopted by
35 a majority vote of all members of each board, approve a plan

1 of merger which shall set forth all of the following:

2 1. The names of the cooperatives proposing to merge and
3 the name of the surviving cooperative.

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

5 3. A statement of any changes in the articles of
6 association of the surviving cooperative.

7 4. Other provisions deemed necessary or desirable.

8 Sec. 36. NEW SECTION. 501.613 CONSOLIDATION.

9 Any two or more cooperatives may be consolidated into a new
10 cooperative as provided in this section. The board of
11 directors of each cooperative shall, by resolution adopted by
12 a majority vote of all members of each board, approve a plan
13 of consolidation setting forth:

14 1. The names of the cooperatives proposing to consolidate
15 and the name of the new cooperative.

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

17 3. With respect to the new cooperative, all of the
18 statements required to be set forth in articles of association
19 for cooperatives.

20 4. Other provisions deemed necessary or desirable.

21 Sec. 37. NEW SECTION. 501.614 VOTE OF MEMBERS.

22 1. The board of directors of a cooperative, upon approving
23 a plan of merger or consolidation, shall, by motion or
24 resolution, direct that the plan be submitted to a vote at a
25 meeting of members, which may be either an annual or special
26 meeting. Written notice shall be given not less than twenty
27 days prior to the meeting, either personally or by mail, to
28 each voting member of record. The notice shall state the
29 time, place, and purpose of the meeting, and a summary of the
30 plan of merger or consolidation shall be included in or
31 enclosed with the notice.

32 2. At the meeting, a ballot of the members who are
33 entitled to vote in the affairs of the association shall be
34 taken on the proposed plan of merger or consolidation. The
35 plan of merger or consolidation shall be approved if two-

1 thirds of the members vote affirmatively on a ballot in which
2 a majority of all voting members participate. Voting may be
3 by mail ballot notwithstanding any contrary provision in the
4 articles of association or bylaws.

5 Sec. 38. NEW SECTION. 501.615 OBJECTION OF MEMBERS --
6 PURCHASE OF INTERESTS UPON DEMAND.

7 1. If a member of a cooperative which is a party to a
8 merger or consolidation files with the cooperative, prior to
9 or at the meeting of members at which the plan is submitted to
10 a vote, a written objection to the plan of merger or
11 consolidation, and votes in opposition to the plan, and the
12 member, within twenty days after the merger or consolidation
13 is approved by the other members, makes written demand on the
14 surviving or new cooperative for payment of the fair value of
15 that member's interest as of the day prior to the date on
16 which the vote was taken approving the merger or
17 consolidation, the surviving or new cooperative shall pay to
18 the member, upon surrender of that person's certificate of
19 membership or interests in the cooperative, the fair value of
20 that person's interest as provided in section 501.616. A
21 member who fails to make demand within the twenty-day period
22 is conclusively presumed to have consented to the merger or
23 consolidation and is bound by its terms.

24 2. In the event that a dissenting member does business
25 with the surviving or new cooperative before payment has been
26 made for that person's membership, the dissenting member is
27 deemed to have consented to the merger or consolidation and to
28 have waived all further rights as a dissenting member.

29 Sec. 39. NEW SECTION. 501.616 VALUE DETERMINED.

30 1. Within twenty days after the merger or consolidation is
31 effected, the surviving or new cooperative shall make a
32 written offer to each dissenting member to pay a specified sum
33 deemed by the surviving or new cooperative to be the fair
34 value of that dissenting member's interest in the old
35 cooperative. This offer shall be accompanied by a balance

1 sheet of the old cooperative as of the latest available date,
 2 a profit and loss statement of the old cooperative for the
 3 twelve-month period ending on the date of the balance sheet,
 4 and a list of the dissenting member's interests in the old
 5 cooperative. If the dissenting member does not agree that the
 6 sum stated in the notice represents the fair value of the
 7 member's interest, then the member may file a written
 8 objection with the surviving or new cooperative within twenty
 9 days after receiving the notice. A dissenting member who
 10 fails to file the objection within the twenty-day period is
 11 conclusively presumed to have consented to the fair value
 12 stated in the notice.

13 2. If the surviving or new cooperative receives any
 14 objections to fair values, then within ninety days after the
 15 merger or consolidation is effected, the surviving or new
 16 cooperative shall file a petition in district court asking for
 17 a finding and determination of the fair value of each type of
 18 equity. The action shall be tried as an equitable action.

19 3. The fair value of a dissenting member's interest in the
 20 old cooperative shall be determined as of the day preceding
 21 the merger or consolidation by taking the lesser of either the
 22 issue price of the dissenting member's membership, deferred
 23 patronage dividends, and any other interests in the
 24 cooperative, or the amount determined by subtracting the old
 25 cooperative's debts from the fair market value of the old
 26 cooperative's assets, dividing the remainder by the total
 27 issue price of all memberships, deferred patronage dividends
 28 and all other interests, and then multiplying the quotient
 29 from this division by the total issue price of a dissenting
 30 member's membership, deferred patronage, and other interests.

31 4. The surviving or new cooperative shall pay to each
 32 dissenting member in cash within sixty days after the merger
 33 or consolidation the amount paid in cash by the dissenting
 34 member for that member's interest in the old cooperative. The
 35 surviving or new cooperative shall pay the remainder of each

1 dissenting member's fair value in ten annual equal payments.
2 The final payment must be made not later than fifteen years
3 after the merger or consolidation. The value of the deferred
4 patronage dividends or interests issued to evidence deferred
5 patronage dividends shall be considered a liability of the
6 surviving or new cooperative as reflected in the accounts of
7 the surviving or new cooperative until the value of the
8 patronage dividends or interests issued to evidence deferred
9 patronage dividends is paid in full to the dissenting member.

10 Sec. 40. NEW SECTION. 501.617 ARTICLES OF MERGER OR
11 CONSOLIDATION.

12 Upon approval, articles of merger or articles of
13 consolidation shall be executed by each cooperative as
14 provided in section 501.105. The articles must include the
15 following:

- 16 1. The plan of merger or the plan of consolidation.
- 17 2. As to each cooperative, the number of individuals or
18 cooperatives entitled to vote.
- 19 3. As to each cooperative, the number of individuals or
20 cooperatives who voted for and against the plan at the meeting
21 called for that purpose.

22 The articles of merger or articles of consolidation shall
23 be delivered to the secretary of state for filing.

24 The secretary of state, upon the filing of articles of
25 merger or articles of consolidation, shall issue a certificate
26 of merger or a certificate of consolidation and send the
27 certificate to the surviving or new cooperative, or to its
28 representative.

29 Sec. 41. NEW SECTION. 501.618 WHEN EFFECTIVE -- EFFECT.

30 A merger or consolidation shall become effective upon the
31 date that the certificate of merger or the certificate of
32 consolidation is issued by the secretary of state, or the
33 effective date specified in the articles of merger or articles
34 of consolidation, whichever is later.

35 When a merger or consolidation has become effective:

1 1. The several cooperatives which are parties to the plan
2 of merger or consolidation shall be a single cooperative,
3 which, in the case of a merger, shall be that cooperative
4 designated in the plan of merger as the surviving cooperative,
5 and, in the case of consolidation, shall be that cooperative
6 designated in the plan of consolidation as the new
7 cooperative.

8 2. The separate existence of all cooperatives which are
9 parties to the plan of merger or consolidation, except the
10 surviving or new cooperative, shall cease.

11 3. The surviving or new cooperative shall have all the
12 rights, privileges, immunities, and powers and shall be
13 subject to all the duties and liabilities of a cooperative
14 organized under this chapter.

15 4. The surviving or new cooperative shall possess all the
16 rights, privileges, immunities, and franchises, public as well
17 as private, of each of the merging or consolidating
18 cooperatives.

19 5. All property, real, personal, and mixed, and all debts
20 due on whatever account, including all choses in action, and
21 all and every other interest, of or belonging to or due to
22 each of the cooperatives merged or consolidated, shall be
23 transferred to and vested in the surviving or new cooperative
24 without further act or deed. The title to any real estate, or
25 any interest in real estate vested in any of the cooperatives
26 merged or consolidated, shall not revert or be in any way
27 impaired by reason of the merger or consolidation.

28 6. A surviving or new cooperative shall be responsible and
29 liable for all obligations and liabilities of each of the
30 cooperatives merged or consolidated.

31 7. Any claim existing or action or proceeding pending by
32 or against any of the cooperatives merged or consolidated may
33 be prosecuted as if the merger or consolidation had not taken
34 place, or the surviving or new cooperative may be substituted
35 for the merged or consolidated cooperative. Neither the

1 rights of creditors nor any liens upon the property of any
2 cooperative shall be impaired by a merger or consolidation.

3 8. In the case of a merger, the articles of association of
4 the surviving cooperative shall be deemed to be amended to the
5 extent that changes in its articles of association are stated
6 in the plan of merger. In the case of a consolidation, the
7 statements set forth in the articles of consolidation which
8 are required or permitted to be set forth in the articles of
9 association of a cooperative shall be deemed to be the
10 original articles of association of the new cooperative.

11 9. The aggregate amount of the net assets of the merging
12 or consolidating cooperative which was available for the
13 payment of distributions immediately prior to the merger or
14 consolidation, to the extent that the amount is not
15 transferred to stated capital by the issuance of interests or
16 otherwise, shall continue to be available for the payment of
17 dividends by the surviving or new cooperative.

18 Sec. 42. NEW SECTION. 501.619 ABANDONMENT BEFORE FILING.

19 At any time prior to the filing of the articles of merger
20 or consolidation, the merger or consolidation may be abandoned
21 pursuant to provisions set forth in the plan of merger or
22 consolidation.

23 SUBCHAPTER VII

24 RECORDS AND REPORTS

25 PART A

26 RECORDS

27 Sec. 43. NEW SECTION. 501.701 RECORDS.

28 1. A cooperative shall keep as permanent records minutes
29 of all meetings of its members and board of directors, a
30 record of all actions taken by the members or board of
31 directors without a meeting, and a record of all actions taken
32 by a committee of the board of directors in place of the board
33 of directors on behalf of the cooperative.

34 2. A cooperative shall maintain appropriate accounting
35 records.

1 3. A cooperative or its agent shall maintain a record of
2 its interest holders in a form that permits preparation of a
3 list of the names and addresses of all interest holders in
4 alphabetical order by class of shares showing the number and
5 class of interests held by each.

6 4. A cooperative shall maintain its records in written
7 form or in another form capable of conversion into written
8 form within a reasonable time.

9 5. A cooperative shall keep a copy of the following
10 records:

11 a. Its articles or restated articles of association and
12 all amendments to them currently in effect.

13 b. Its bylaws or restated bylaws and all amendments to
14 them currently in effect.

15 c. Resolutions adopted by its board of directors creating
16 one or more classes or series of interests, and fixing their
17 relative rights, preferences, and limitations, if the
18 interests issued pursuant to those resolutions are
19 outstanding.

20 d. The minutes of all members' meetings, and records of
21 all action taken by members without a meeting, for the past
22 three years.

23 e. All written communications to interest holders
24 generally within the past three years, including the financial
25 statements furnished for the past three years under section
26 501.711.

27 f. A list of the names and business addresses of its
28 current directors and officers.

29 g. Its most recent biennial report delivered to the
30 secretary of state under section 501.713.

31 Sec. 44. NEW SECTION. 501.702 INSPECTION OF RECORDS BY
32 INTEREST HOLDERS.

33 1. An interest holder of a cooperative is entitled to
34 inspect and copy, during regular business hours at the
35 cooperative's principal office, any of the records of the

1 cooperative described in section 501.701, subsection 5, if the
2 interest holder gives the cooperative written notice of the
3 interest holder's demand at least five business days before
4 the date on which the interest holder wishes to inspect and
5 copy.

6 2. An interest holder of a cooperative is entitled to
7 inspect and copy, during regular business hours at a
8 reasonable location specified by the cooperative, any of the
9 following records of the cooperative if the interest holder
10 meets the requirements of subsection 3 and gives the
11 cooperative written notice of the interest holder's demand at
12 least five business days before the date on which the interest
13 holder wishes to inspect and copy any of the following:

14 a. Excerpts from minutes of any meeting of the board of
15 directors, records of any action of a committee of the board
16 of directors while acting in place of the board of directors
17 on behalf of the cooperative, minutes of any meeting of the
18 members, and records of action taken by the members or board
19 of directors without a meeting, to the extent not subject to
20 inspection under subsection 1 of this section.

21 b. Accounting records of the cooperative.

22 c. The record of interest holders.

23 3. An interest holder may inspect and copy the records
24 described in subsection 2 only if:

25 a. The interest holder's demand is made in good faith and
26 for a proper purpose.

27 b. The interest holder describes with reasonable
28 particularity the interest holder's purpose and the records
29 the interest holder desires to inspect.

30 c. The records are directly connected with the interest
31 holder's purpose.

32 4. The right of inspection granted by this section shall
33 not be abolished or limited by a cooperative's articles of
34 association or bylaws.

35 5. This section does not affect either of the following:

1 a. The right of an interest holder to obtain information
2 under section 501.702 or the right of an interest holder to
3 obtain information, if the interest holder is in litigation
4 with the cooperative, to the same extent as any other
5 litigant.

6 b. The power of a court, independently of this chapter, to
7 compel the production of cooperative records for examination.

8 Sec. 45. NEW SECTION. 501.703 SCOPE OF INSPECTION RIGHT.

9 1. An interest holder's agent or attorney has the same
10 inspection and copying rights as the interest holder the agent
11 or attorney represents.

12 2. The right to copy records under section 501.702
13 includes, if reasonable, the right to receive copies made by
14 photographic, xerographic, or other technological means.

15 3. The cooperative may impose a reasonable charge,
16 covering the costs of labor and material, for copies of any
17 documents provided to the interest holder. The charge shall
18 not exceed the estimated cost of production or reproduction of
19 the records.

20 4. The cooperative may comply with an interest holder's
21 demand to inspect the record of interest holders under section
22 501.702, subsection 2, paragraph "c", by providing the
23 interest holder with a list of its interest holders that was
24 compiled no earlier than the date of the interest holder's
25 demand.

26 Sec. 46. NEW SECTION. 501.704 COURT-ORDERED INSPECTION.

27 1. If a cooperative does not allow an interest holder who
28 complies with section 501.702, subsection 1, to inspect and
29 copy any records required by that subsection to be available
30 for inspection, the district court of the county where the
31 cooperative's principal office or, if none in this state, its
32 registered office is located may summarily order inspection
33 and copying of the records demanded at the cooperative's
34 expense upon application of the interest holder.

35 2. If a cooperative does not within a reasonable time

1 allow an interest holder to inspect and copy any other
2 records, the interest holder who complies with section
3 501.702, subsections 2 and 3, may apply to the district court
4 in the county where the cooperative's principal office or, if
5 not in this state, its registered office is located for an
6 order to permit inspection and copying of the records
7 demanded. The court shall dispose of an application under
8 this subsection on an expedited basis.

9 3. If the court orders inspection and copying of the
10 records demanded, it shall also order the cooperative to pay
11 the interest holder's costs, including reasonable counsel
12 fees, incurred to obtain the order unless the cooperative
13 proves that it refused inspection in good faith because it had
14 a reasonable basis for doubt about the right of the interest
15 holder to inspect the records demanded.

16 4. If the court orders inspection and copying of the
17 records demanded, it may impose reasonable restrictions on the
18 use or distribution of the records by the demanding interest
19 holder.

20 PART B

21 REPORTS

22 Sec. 47. NEW SECTION. 501.711 FINANCIAL STATEMENTS FOR
23 INTEREST HOLDERS.

24 A cooperative shall prepare annual financial statements,
25 which may be consolidated or combined statements of the
26 cooperative and one or more of its subsidiaries, as
27 appropriate, that include a balance sheet as of the end of the
28 fiscal year and an income statement for that year. Upon
29 written request from an interest holder, a cooperative, at its
30 expense, shall furnish to that interest holder the financial
31 statements requested. If the annual financial statements are
32 reported upon by a public accountant, the report must
33 accompany the financial statements.

34 Sec. 48. NEW SECTION. 501.712 OTHER REPORTS TO INTEREST
35 HOLDERS.

1 1. If a cooperative indemnifies or advances expenses to a
2 director under sections 501.412 through 501.415 in connection
3 with a proceeding by or in the right of the cooperative, the
4 cooperative shall report the indemnification or advance in
5 writing to the members with or before the notice of the next
6 members' meeting.

7 2. If a cooperative issues or authorizes the issuance of
8 interests for promissory notes or for promises to render
9 services in the future, the cooperative shall report in
10 writing to the members the number of interests authorized or
11 issued, and the consideration received by the cooperative,
12 with or before the notice of the next members' meeting.

13 Sec. 49. NEW SECTION. 501.713 BIENNIAL REPORT FOR
14 SECRETARY OF STATE.

15 1. Each cooperative authorized to transact business in
16 this state shall deliver to the secretary of state for filing
17 a biennial report that sets forth all of the following:

18 a. The name of the cooperative and under the laws of what
19 state or country organized.

20 b. The address of its registered office and the name of
21 its registered agent at that office in this state, together
22 with the consent of any new registered agent.

23 c. The address of its principal office.

24 d. The names and addresses of the president, secretary,
25 treasurer, and one member of the board of directors.

26 2. Information in the biennial report must be current as
27 of the first day of January of the year in which the report is
28 due. The report shall be executed on behalf of the
29 cooperative and signed as provided in section 501.105 or by
30 any other person authorized by the board of directors of the
31 cooperative.

32 3. The first biennial report shall be delivered to the
33 secretary of state between January 1 and April 1 of the first
34 even-numbered year following the calendar year in which a
35 cooperative was organized. Subsequent biennial reports must

1 be delivered to the secretary of state between January 1 and
2 April 1 of the following even-numbered calendar years. A
3 filing fee for the biennial report shall be determined by the
4 secretary of state. Each biennial report shall contain
5 information related to the two-year period immediately
6 preceding the calendar year in which the report is filed.

7 4. If a biennial report does not contain the information
8 required by this section, the secretary of state shall
9 promptly notify the reporting cooperative in writing and
10 return the report to the cooperative for correction.

11 5. The secretary of state may provide for the change of
12 registered office or registered agent on the form prescribed
13 by the secretary of state for the biennial report, provided
14 that the form contains the information required in section
15 501.106. If the secretary of state determines that a biennial
16 report does not contain the information required by this
17 section but otherwise meets the requirements of section
18 501.106 for the purpose of changing the registered office or
19 registered agent, the secretary of state shall file the
20 statement of change of registered office or registered agent,
21 effective as provided in section 501.105, before returning the
22 biennial report to the cooperative as provided in this
23 section. A statement of change of registered office or agent
24 pursuant to this subsection shall be executed by a person
25 authorized to execute the biennial report.

26 DIVISION VIII

27 DISSOLUTION

28 PART A

29 GENERAL

30 Sec. 50. NEW SECTION. 501.801 DISSOLUTION BY ORGANIZERS
31 OR INITIAL DIRECTORS.

32 A majority of the organizers or initial directors of a
33 cooperative that has not issued interests or has not commenced
34 business may dissolve the cooperative by delivering to the
35 secretary of state for filing articles of dissolution that set

1 forth all of the following:

- 2 1. The name of the cooperative.
- 3 2. The date of its organization.
- 4 3. Either of the following:
- 5 a. That none of the cooperative's interests have been
- 6 issued.
- 7 b. That the cooperative has not commenced business.
- 8 4. That no debt of the cooperative remains unpaid.
- 9 5. That the net assets of the cooperative remaining after
- 10 winding up have been distributed in accordance with this
- 11 chapter and the articles of association of the cooperative.
- 12 6. That a majority of the organizers or initial directors
- 13 authorized the dissolution.

14 Sec. 51. NEW SECTION. 501.802 DISSOLUTION BY BOARD OF
15 DIRECTORS AND MEMBERS.

- 16 1. A cooperative's board of directors may propose
- 17 dissolution for submission to the members.
- 18 2. For a proposal to dissolve to be adopted both of the
- 19 following must apply:
- 20 a. The board of directors must recommend dissolution to
- 21 the members unless the board of directors determines that
- 22 because of conflict of interest or other special circumstances
- 23 it should make no recommendation and communicates the basis
- 24 for its determination to the members.
- 25 b. The members entitled to vote must approve the proposal
- 26 to dissolve as provided in subsection 5.
- 27 3. The board of directors may condition its submission of
- 28 the proposal for dissolution on any basis.
- 29 4. The cooperative shall notify each member of a meeting
- 30 to consider dissolution in accordance with section 501.302.
- 31 The notice must also state that the purpose, or one of the
- 32 purposes, of the meeting is to consider dissolving the
- 33 cooperative.
- 34 5. Unless the articles of association or the board of
- 35 directors acting pursuant to subsection 3 require a greater

1 vote or a vote by voting groups, the proposal to dissolve must
2 be approved by a majority of all the votes entitled to be cast
3 on that proposal in order to be adopted.

4 Sec. 52. NEW SECTION. 501.803 ARTICLES OF DISSOLUTION.

5 1. At any time after dissolution is authorized, the
6 cooperative may dissolve by delivering to the secretary of
7 state for filing articles of dissolution setting forth all of
8 the following:

9 a. The name of the cooperative.

10 b. The date dissolution was authorized.

11 c. If dissolution was approved by the members, both of the
12 following:

13 (1) The number of votes entitled to be cast on the
14 proposal to dissolve.

15 (2) Either the total number of votes cast for and against
16 dissolution or the total number of undisputed votes cast for
17 dissolution and a statement that the number cast for
18 dissolution was sufficient for approval.

19 2. A cooperative is dissolved upon the effective date of
20 its articles of dissolution.

21 Sec. 53. NEW SECTION. 501.804 REVOCATION OF DISSOLUTION.

22 1. A cooperative may revoke its dissolution within one
23 hundred twenty days of the effective date of the dissolution.

24 2. Revocation of dissolution must be authorized in the
25 same manner as the dissolution was authorized unless that
26 authorization permitted revocation by action of the board of
27 directors alone, in which event the board of directors may
28 revoke the dissolution without member action.

29 3. After the revocation of dissolution is authorized, the
30 cooperative may revoke the dissolution by delivering to the
31 secretary of state for filing articles of revocation of
32 dissolution, together with a copy of its articles of
33 dissolution, that set forth all of the following:

34 a. The name of the cooperative.

35 b. The effective date of the dissolution that was revoked.

1 c. The date that the revocation of dissolution was
2 authorized.

3 d. If the cooperative's board of directors or organizers
4 revoked the dissolution, a statement to that effect.

5 e. If the cooperative's board of directors revoked a
6 dissolution authorized by the members, a statement that
7 revocation was permitted by action by the board of directors
8 alone pursuant to that authorization.

9 f. If membership action was required to revoke the
10 dissolution, the information required by section 501.803,
11 subsection 1, paragraph "c".

12 4. Revocation of dissolution is effective upon the
13 effective date of the articles of revocation of dissolution.

14 5. When the revocation of dissolution is effective, it
15 relates back to and takes effect as of the effective date of
16 the dissolution as if the dissolution had never occurred.

17 Sec. 54. NEW SECTION. 501.805 EFFECT OF DISSOLUTION.

18 1. A dissolved cooperative continues its existence but
19 shall not carry on any business except that appropriate to
20 wind up and liquidate its business and affairs, including any
21 of the following:

22 a. Collecting its assets.

23 b. Disposing of its properties that will not be
24 distributed in kind in accordance with this chapter and the
25 cooperative's articles of association.

26 c. Discharging or making provision for discharging its
27 liabilities.

28 d. Distributing its remaining property in accordance with
29 this chapter and the cooperative's articles of association.

30 e. Doing every other act necessary to wind up and
31 liquidate its business and affairs.

32 2. Dissolution of a cooperative does not do any of the
33 following:

34 a. Transfer title to the cooperative's property.

35 b. Prevent transfer of its interests, although the

1 authorization to dissolve may provide for closing the
2 cooperative's interest transfer records.

3 c. Subject its directors or officers to standards of
4 conduct different from those prescribed in section 501.406.

5 d. Change quorum or voting requirements for its board of
6 directors or members; change provisions for selection,
7 resignation, or removal of its directors or officers or both;
8 or change provisions for amending its bylaws.

9 e. Prevent commencement of a proceeding by or against the
10 cooperative in its name.

11 f. Abate or suspend a proceeding pending by or against the
12 cooperative on the effective date of dissolution.

13 g. Terminate the authority of the registered agent of the
14 cooperative.

15 Sec. 55. NEW SECTION. 501.805A DISSOLUTION OF ASSETS.

16 Upon the cooperative's dissolution, the cooperative's
17 assets shall first be used to pay expenses necessary to carry
18 out the dissolution and liquidation of assets, then be used to
19 pay the cooperative's obligations other than the payment of
20 patronage dividends or interests issued as patronage
21 dividends, and the remainder shall be paid in the manner set
22 forth in the cooperative's articles of association.

23 Sec. 56. NEW SECTION. 501.806 KNOWN CLAIMS AGAINST
24 DISSOLVED COOPERATIVE.

25 1. A dissolved cooperative may dispose of the known claims
26 against it by following the procedure described in this
27 section.

28 2. The dissolved cooperative shall notify its known
29 claimants in writing of the dissolution at any time after the
30 effective date of the dissolution. The written notice must do
31 all of the following:

32 a. Describe information that must be included in a claim.

33 b. Provide a mailing address where a claim may be sent.

34 c. State the deadline, which shall not be fewer than one
35 hundred twenty days from the effective date of the written

1 notice, by which the dissolved cooperative must receive the
2 claim.

3 d. State that the claim will be barred if not received by
4 the deadline.

5 3. A claim against the dissolved cooperative is barred if
6 either of the following occur:

7 a. A claimant who was given written notice under
8 subsection 2 does not deliver the claim to the dissolved
9 cooperative by the deadline.

10 b. A claimant whose claim was rejected by the dissolved
11 cooperative does not commence a proceeding to enforce the
12 claim within ninety days from the effective date of the
13 rejection notice.

14 4. For purposes of this section, "claim" does not include
15 a contingent liability or a claim based on an event occurring
16 after the effective date of dissolution.

17 Sec. 57. NEW SECTION. 501.807 UNKNOWN CLAIMS AGAINST
18 DISSOLVED COOPERATIVE.

19 1. A dissolved cooperative may also publish notice of its
20 dissolution and request that persons with claims against the
21 cooperative present them in accordance with the notice.

22 2. The notice must meet all of the following requirements:

23 a. Be published one time in a newspaper of general
24 circulation in the county where the dissolved cooperative's
25 principal office or, if not in this state, its registered
26 office is or was last located.

27 b. Describe the information that must be included in a
28 claim and provide a mailing address where the claim may be
29 sent.

30 c. State that a claim against the cooperative will be
31 barred unless a proceeding to enforce the claim is commenced
32 within five years after the publication of the notice.

33 3. If the dissolved cooperative publishes a newspaper
34 notice in accordance with subsection 2, the claim of each of
35 the following claimants is barred unless the claimant

1 commences a proceeding to enforce the claim against the
2 dissolved cooperative within five years after the publication
3 date of the newspaper notice:

4 a. A claimant who did not receive written notice under
5 section 501.806.

6 b. A claimant whose claim was timely sent to the dissolved
7 cooperative but not acted on.

8 c. A claimant whose claim is contingent or based on an
9 event occurring after the effective date of dissolution.

10 4. A claim may be enforced under this section in either of
11 the following ways:

12 a. Against the dissolved cooperative, to the extent of its
13 undistributed assets.

14 b. If the assets have been distributed in liquidation,
15 against an interest holder of the dissolved cooperative to the
16 extent of the interest holder's pro rata share of the claim or
17 the cooperative assets distributed to the interest holder in
18 liquidation, whichever is less, but an interest holder's total
19 liability for all claims under this section shall not exceed
20 the total amount of assets distributed to the interest holder
21 in liquidation.

22 PART B

23 ADMINISTRATIVE DISSOLUTION

24 Sec. 58. NEW SECTION. 501.811 GROUNDS FOR ADMINISTRATIVE
25 DISSOLUTION.

26 The secretary of state may commence a proceeding under
27 section 501.812 to administratively dissolve a cooperative if
28 any of the following apply:

29 1. The cooperative has not delivered a biennial report to
30 the secretary of state in a form that meets the requirements
31 of section 501.713, within sixty days after it is due, or has
32 not paid the filing fee as determined by the secretary of
33 state, within sixty days after it is due.

34 2. The cooperative is without a registered agent or
35 registered office in this state for sixty days or more.

1 3. The cooperative does not notify the secretary of state
2 within sixty days that its registered agent or registered
3 office has been changed, that its registered agent has
4 resigned, or that its registered office has been discontinued.

5 4. The cooperative's period of duration stated in its
6 articles of association expires.

7 Sec. 59. NEW SECTION. 501.812 PROCEDURE FOR AND EFFECT
8 OF ADMINISTRATIVE DISSOLUTION.

9 1. If the secretary of state determines that one or more
10 grounds exist under section 501.811 for dissolving a
11 cooperative, the secretary of state shall serve the
12 cooperative with written notice of the secretary of state's
13 determination under section 501.106.

14 2. If the cooperative does not correct each ground for
15 dissolution or demonstrate to the reasonable satisfaction of
16 the secretary of state that each ground determined by the
17 secretary of state does not exist within sixty days after
18 service of the notice is perfected under section 501.106, the
19 secretary of state shall administratively dissolve the
20 cooperative by signing a certificate of dissolution that
21 recites the ground or grounds for dissolution and its
22 effective date. The secretary of state shall file the
23 original of the certificate and serve a copy on the
24 cooperative under section 501.106.

25 3. A cooperative administratively dissolved continues its
26 existence but shall not carry on any business except that
27 necessary to wind up and liquidate its business and affairs
28 under section 501.805 and notify claimants under sections
29 501.806 and 501.807.

30 4. The administrative dissolution of a cooperative does
31 not terminate the authority of its registered agent.

32 5. The secretary of state's administrative dissolution of
33 a cooperative pursuant to this section appoints the secretary
34 of state the cooperative's agent for service of process in any
35 proceeding based on a cause of action which arose during the

1 time the cooperative was authorized to transact business in
2 this state. Service of process on the secretary of state
3 under this subsection is service on the cooperative. Upon
4 receipt of process, the secretary of state shall serve a copy
5 of the process on the cooperative as provided in section
6 501.106. This subsection does not preclude service on the
7 cooperative's registered agent, if any.

8 Sec. 60. NEW SECTION. 501.813 REINSTATEMENT FOLLOWING
9 ADMINISTRATIVE DISSOLUTION.

10 1. A cooperative administratively dissolved under section
11 501.812 may apply to the secretary of state for reinstatement
12 within two years after the effective date of dissolution. The
13 application must meet all of the following requirements:

14 a. Recite the name of the cooperative at its date of
15 dissolution and the effective date of its administrative
16 dissolution.

17 b. State that the ground or grounds for dissolution have
18 been eliminated.

19 c. State a name that satisfies the requirements of section
20 501.103.

21 d. State the federal tax identification number of the
22 cooperative.

23 2. a. The secretary of state shall refer the federal tax
24 identification number contained in the application for
25 reinstatement to the department of revenue and finance. The
26 department of revenue and finance shall report to the
27 secretary of state the tax status of the cooperative. If the
28 department reports to the secretary of state that a filing
29 delinquency or liability exists against the cooperative, the
30 secretary of state shall not cancel the certificate of
31 dissolution until the filing delinquency or liability is
32 satisfied.

33 b. If the secretary of state determines that the
34 application contains the information required by subsection 1,
35 and that a delinquency or liability reported pursuant to

1 paragraph "a" has been satisfied, and that the information is
 2 correct, the secretary of state shall cancel the certificate
 3 of dissolution and prepare a certificate of reinstatement that
 4 recites the secretary of state's determination and the
 5 effective date of reinstatement, file the original of the
 6 certificate, and serve a copy on the cooperative under section
 7 501.106. If the name of the cooperative as provided in
 8 subsection 1, paragraph "c", is different than the name in
 9 subsection 1, paragraph "a", the certificate of reinstatement
 10 shall constitute an amendment to the articles of association
 11 insofar as it pertains to the name.

12 3. When the reinstatement is effective, it relates back to
 13 and takes effect as of the effective date of the
 14 administrative dissolution as if the administrative
 15 dissolution had never occurred.

16 Sec. 61. NEW SECTION. 501.814 APPEAL FROM DENIAL OF
 17 REINSTATEMENT.

18 1. If the secretary of state denies a cooperative's
 19 application for reinstatement following administrative
 20 dissolution, the secretary of state shall serve the
 21 cooperative under section 501.106 with a written notice that
 22 explains the reason or reasons for denial.

23 2. The cooperative may appeal the denial of reinstatement
 24 to the district court within thirty days after service of the
 25 notice of denial is perfected. The cooperative appeals by
 26 petitioning the court to set aside the dissolution and
 27 attaching to the petition copies of the secretary of state's
 28 certificate of dissolution, the cooperative's application for
 29 reinstatement, and the secretary of state's notice of denial.

30 3. The court may summarily order the secretary of state to
 31 reinstate the dissolved cooperative or may take other action
 32 the court considers appropriate.

33 4. The court's final decision may be appealed as in other
 34 civil proceedings.

35

PART C

JUDICIAL DISSOLUTION

1
2 Sec. 62. NEW SECTION. 501.821 GROUNDS FOR JUDICIAL
3 DISSOLUTION.

4 The district court may dissolve a cooperative in any of the
5 following ways:

6 1. A proceeding by the attorney general, if it is
7 established that either of the following apply:

8 a. The cooperative obtained its articles of association
9 through fraud.

10 b. The cooperative has continued to exceed or abuse the
11 authority conferred upon it by law.

12 2. A proceeding by a member if it is established that any
13 of the following conditions exist:

14 a. The directors are deadlocked in the management of the
15 cooperative's affairs, the members are unable to break the
16 deadlock, and either irreparable injury to the cooperative is
17 threatened or being suffered, or the business and affairs of
18 the cooperative can no longer be conducted to the advantage of
19 the interest holders generally, because of the deadlock.

20 b. The directors or those in control of the cooperative
21 have acted, are acting, or will act in a manner that is
22 illegal, oppressive, or fraudulent.

23 c. The members are deadlocked in voting power and have
24 failed, for a period that includes at least two consecutive
25 annual meeting dates, to elect successors to directors whose
26 terms have expired.

27 d. The cooperative's assets are being misapplied or
28 wasted.

29 3. A proceeding by a creditor if it is established that
30 either of the following apply:

31 a. The creditor's claim has been reduced to judgment, the
32 execution on the judgment returned unsatisfied, and the
33 cooperative is insolvent.

34 b. The cooperative has admitted in writing that the
35 creditor's claim is due and owing and the cooperative is

1 insolvent.

2 4. A proceeding by the cooperative to have its voluntary
3 dissolution continued under court supervision.

4 Sec. 63. NEW SECTION. 501.822 PROCEDURE FOR JUDICIAL
5 DISSOLUTION.

6 1. Venue for a proceeding by the attorney general to
7 dissolve a cooperative lies in Polk county district court.
8 Venue for a proceeding brought by any other party named in
9 section 501.821 lies in the county where a cooperative's
10 principal office or, if not in this state, its registered
11 office is or was last located.

12 2. It is not necessary to make interest holders parties to
13 a proceeding to dissolve a cooperative unless relief is sought
14 against them individually.

15 3. A court in a proceeding brought to dissolve a
16 cooperative may issue injunctions, appoint a receiver or
17 custodian pendente lite with all powers and duties the court
18 directs, take other action required to preserve the
19 cooperative's assets wherever located, and carry on the
20 business of the cooperative until a full hearing can be held.

21 Sec. 64. NEW SECTION. 501.823 RECEIVERSHIP OR
22 CUSTODIANSHIP.

23 1. A court in a judicial proceeding brought to dissolve a
24 cooperative may appoint one or more receivers to wind up and
25 liquidate, or one or more custodians to manage, the business
26 and affairs of the cooperative. The court shall hold a
27 hearing, after notifying all parties to the proceeding and any
28 interested persons designated by the court, before appointing
29 a receiver or custodian. The court appointing a receiver or
30 custodian has exclusive jurisdiction over the cooperative and
31 all its property wherever located.

32 2. The court may appoint an individual or a domestic or
33 foreign corporation authorized to transact business in this
34 state as a receiver or custodian. The court may require the
35 receiver or custodian to post bond, with or without sureties,

1 in an amount the court directs.

2 3. The court shall describe the powers and duties of the
3 receiver or custodian in its appointing order, which may be
4 amended from time to time.

5 a. The receiver may do any of the following:

6 (1) Dispose of all or any part of the assets of the
7 cooperative wherever located, at a public or private sale, if
8 authorized by the court.

9 (2) Sue and defend in the receiver's own name as receiver
10 of the cooperative in all courts of this state.

11 b. The custodian may exercise all of the powers of the
12 cooperative, through or in place of its board of directors or
13 officers, to the extent necessary to manage the affairs of the
14 cooperative in the best interests of its interest holders and
15 creditors.

16 4. The court during a receivership may redesignate the
17 receiver a custodian, and during a custodianship may
18 redesignate the custodian a receiver, if doing so is in the
19 best interests of the cooperative, its interest holders, and
20 creditors.

21 5. The court from time to time during the receivership or
22 custodianship may order compensation paid and expense
23 disbursements or reimbursements made to the receiver or
24 custodian and the receiver's or custodian's counsel from the
25 assets of the cooperative or proceeds from the sale of the
26 assets.

27 Sec. 65. NEW SECTION. 501.824 DECREE OF DISSOLUTION.

28 1. If after a hearing the court determines that one or
29 more grounds for judicial dissolution described in section
30 501.821 exist, it may enter a decree dissolving the
31 cooperative and specifying the effective date of the
32 dissolution, and the clerk of the district court shall deliver
33 a certified copy of the decree to the secretary of state, who
34 shall file it.

35 2. After entering the decree of dissolution, the court

1 shall direct the winding up and liquidation of the
2 cooperative's business and affairs in accordance with section
3 501.805 and the notification of claimants in accordance with
4 sections 501.806 and 501.807.

5 PART D

6 STATE TREASURER

7 Sec. 66. NEW SECTION. 501.831 DEPOSIT WITH STATE
8 TREASURER.

9 Assets of a dissolved cooperative that should be
10 transferred to a creditor, claimant, or interest holder of the
11 cooperative who cannot be found or who is not competent to
12 receive them shall be reduced to cash and deposited with the
13 treasurer of state or other appropriate state official for
14 safekeeping. When the creditor, claimant, or interest holder
15 furnishes satisfactory proof of entitlement to the amount
16 deposited, the treasurer of state or other appropriate state
17 official shall pay the creditor, claimant, or interest holder
18 or that person's representative the amount.

19 Sec. 67. Sections 501.107 and 501.602, Code 1997, are
20 repealed. Sections 501.408 and 501.604, Code Supplement 1997,
21 are repealed.

22 EXPLANATION

23 This bill amends Code chapter 501 which provides for
24 cooperative corporations which may hold agricultural land in
25 this state. This type of entity is a hybrid between a
26 cooperative association organized under Code chapter 499 and a
27 corporation organized under Code chapter 490. The bill amends
28 a number of provisions.

29 First, the bill changes a number of terms used in the
30 chapter. The bill changes "cooperative corporations" to
31 "cooperatives". It changes a number of other terms to more
32 closely resemble terms describing the business activities of
33 cooperative associations rather than corporations. For
34 example, a cooperative must be organized as an association
35 rather than a corporation. The bill changes "articles of

1 incorporation" to "articles of association". The bill changes
2 "shareholders" to "interest holders" or "members" in the
3 cooperatives. It changes "voting stock" to "voting interest".
4 An "interest holder" is defined to mean a person who holds a
5 voting or nonvoting interest in a cooperative. A "member" is
6 a person who holds a voting interest in the cooperative.
7 References to "dividends" are changed to "distributions".

8 Second, the bill provides that a general partner that is
9 authorized to hold an interest in a cooperative must include
10 all natural persons.

11 Third, the bill increases the number of acres of
12 agricultural land that a cooperative may hold from 640 to
13 1,500.

14 Fourth, the bill amends Code section 501.106 which provides
15 for maintaining a registered office or registered agent in
16 this state for purpose of service. The bill adds provisions
17 taken from Code sections 490.503 and 490.504 which provide
18 procedures for the resignation of a registered agent and
19 delivery of service when a registered agent is not available.
20 The bill changes the term "corporation" to "cooperative".

21 Fifth, the bill incorporates a number of provisions that
22 were included by reference in the chapter. These sections
23 refer to provisions in both Code chapter 490 governing
24 corporations and Code chapter 499 governing cooperative
25 associations. The bill redrafts these provisions expressly as
26 part of Code chapter 501 and changes references to
27 "corporation" or "association" to "cooperative" and corrects
28 internal references.

29 Code section 501.102 provides that a cooperative has the
30 same powers as a corporation as provided in Code sections
31 490.302 and 490.303. Those powers include the power to sue
32 and be sued, have a seal, make and amend bylaws, acquire
33 property, sell or dispose of property, enter into purchase
34 security arrangements, make contracts, incur liabilities,
35 issue notes and bonds, lend money, invest money, become an

1 investor in another enterprise, conduct business, elect
2 directors, appoint officers and hire employees, pay pensions,
3 and make donations. This bill repeals Code section 501.102
4 and provides those same powers expressly to cooperatives.

5 Code section 501.107 provides that Code sections 499.1601
6 through 499.1622 apply to cooperatives organized under Code
7 chapter 501. The sections provide for keeping corporate
8 records, the right of shareholders to inspect those records,
9 the authority of courts to order inspections, the preparation
10 of financial statements for shareholders, and the submission
11 of reports to the secretary of state. This bill repeals Code
12 section 501.107 and rewrites those provisions into new Code
13 sections in Code chapter 501.

14 Code section 501.408 provides that a cooperative may
15 indemnify an officer, employee, or agent who is a party to a
16 legal proceeding in the same way that a corporation may
17 indemnify a director in the same circumstances. The section
18 provides for definitions, grants authority to a corporation to
19 indemnify a director under circumstances, requires
20 indemnification in certain circumstances, allows for advancing
21 a director moneys for legal expenses, allows for
22 indemnification pursuant to court order, provides procedures
23 for indemnification, provides for indemnification of officers,
24 employees, and agents, and allows a corporation to purchase
25 insurance. The bill repeals Code section 501.408 and
26 expressly drafts those provisions into Code chapter 501.

27 Code section 501.602 provides for mergers and
28 consolidations among cooperatives organized under Code chapter
29 501. The section provides that Code sections 499.61 through
30 499.70 apply to the mergers or consolidations. Those sections
31 provide for definitions, allow for merger and consolidation,
32 require a vote of the membership, provide for objections by
33 members and the payment of fair market value to dissenters,
34 provide for articles of merger or consolidation and the
35 issuance of a certificate of merger or consolidation, and

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1 authorize abandonment prior to filing the articles of merger
2 or consolidation. This bill repeals Code section 501.602 and,
3 with some exceptions, rewrites the same provisions in Code
4 chapter 501. Code section 499.66 provides that in the case of
5 a cooperative association, a dissenting member who is a
6 natural person and who dies before receiving the fair value
7 must be paid the fair value with the same priority as if the
8 person was a member at the time of death. The bill does not
9 include this provision.

10 Code section 501.604 provides for the dissolution of a
11 cooperative based on the same provisions which apply to
12 corporations under Code sections 490.1401 through 490.1440.
13 Those sections provide for dissolution by incorporators,
14 initial directors who have not issued stock, or a board of
15 directors operating a functioning corporation; the filing of
16 articles of dissolution, a revocation of a dissolution, and
17 the effect of the dissolution; procedures for disposing of
18 known and unknown claims against the corporation; grounds for
19 administrative dissolution, procedures for and the effect of
20 an administrative dissolution, and reinstatement, including
21 appeal from a denial of reinstatement; grounds for judicial
22 dissolution, procedures for judicial dissolution, and
23 procedures for appointing a receiver or custodian; entering a
24 decree of dissolution; and depositing creditor assets with the
25 treasurer of state. This bill repeals Code section 501.604
26 and rewrites those provisions expressly for cooperatives as
27 part of Code chapter 501 with limited exceptions. The bill
28 does not include a provision requiring information in the
29 articles to be separately provided for each voting group
30 entitled to vote separately on the plan to dissolve.

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SENATE FILE 2404

AN ACT
RELATING TO COOPERATIVES ORGANIZED UNDER CODE CHAPTER 501
AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 501.101, subsection 1, Code 1997, is amended to read as follows:

1. "Articles" means the cooperative's articles of incorporation association.

Sec. 2. Section 501.101, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. ~~An individual or general partnership that~~ A person who owns at least one hundred fifty acres of agricultural land and receives as rent a share of the crops or the animals raised on the land if these crops or animals are a significant component of the cooperative's business operations that person is a natural person or a general partnership as organized under chapter 486 in which all partners are natural persons.

Sec. 3. Section 501.101, subsection 4, Code 1997, is amended to read as follows:

4. "Cooperative" means a cooperative corporation association organized under this chapter or converted to this chapter pursuant to section 501.601.

Sec. 4. Section 501.101, subsection 6, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. A general partnership as organized under chapter 486 in which all the partners are natural persons actively engaged in farming as provided in section 9H.1.

Sec. 5. Section 501.101, subsections 7 through 9, Code 1997, are amended to read as follows:

7. "Member" means a person who owns a voting stock interest in a cooperative.

8. "Shareholder" "Interest holder" means a person who owns stock an interest in a cooperative, whether or not that stock interest has voting rights.

9. "Voting stock interest" means stock an interest in a cooperative that has voting rights.

Sec. 6. Section 501.101, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 6A. "Interest" means a voting interest or other interest in a cooperative as described in the cooperative's articles of association.

NEW SUBSECTION. 7A. "Membership" means the interest established by a member owning a voting interest.

Sec. 7. Section 501.102, subsection 2, Code 1997, is amended to read as follows:

2. Unless its articles provide otherwise, a cooperative has perpetual duration and succession in its corporate cooperative name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, ~~without limitation, all of the powers enumerated in sections 490.302 and 490.303~~ but not limited to, all of the following:

a. Sue and be sued, complain, and defend in its name.
b. Have a seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

c. Make and amend bylaws, not inconsistent with its articles of association or with the laws of this state, for managing the business and regulating the affairs of the cooperative.

d. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

e. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

f. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

g. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other interests of the cooperative, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

h. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

i. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

j. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

k. Elect directors and appoint officers, employees, and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit.

l. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

m. Make donations for the public welfare or for charitable, scientific, or educational purposes.

n. Transact any lawful business that will aid governmental policy.

o. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the cooperative.

Sec. 8. Section 501.103, subsections 1, 2, and 5, Code Supplement 1997, are amended to read as follows:

1. Notwithstanding section 9H.4, any person or entity, subject to the limitations set forth in section 501.305, and

subject to the cooperative's articles and bylaws, is permitted to own stock interests, including voting stock interests, in a cooperative.

2. Notwithstanding section 9H.4, a cooperative may, directly or indirectly, acquire or otherwise obtain or lease agricultural land in this state, for as long as the cooperative continues to meet the following requirements:

a. Farming entities own sixty percent of the stock interests and are eligible to cast sixty percent of the votes at member meetings.

b. Authorized persons own at least seventy-five percent of the stock interests and are eligible to cast at least seventy-five percent of the votes at member meetings.

c. The cooperative does not, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the cooperative would then exceed six hundred forty acres.

5. In the event of a transfer of stock an interest in a cooperative by operation of law as a result of death, divorce, bankruptcy, or pursuant to a security interest, the cooperative may disregard the transfer for purposes of determining compliance with subsection 2 for a period of two years after the transfer.

Sec. 9. Section 501.105, subsection 2, Code 1997, is amended to read as follows:

2. Articles must be signed by all of the incorporators organizers; and all other documents filed with the secretary of state must be signed by one of the cooperative's officers. The printed name and capacity of each signatory must appear in proximity to the signatory's signature. The secretary of state may accept a document containing a copy of the signature. A document is not required to contain a corporate seal, an acknowledgment, or a verification.

Sec. 10. Section 501.106, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A corporation cooperative may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

Sec. 11. Section 501.106, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 5. a. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the cooperative at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the cooperative, including the date the copies were sent.

b. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

NEW SUBSECTION. 6. a. A cooperative's registered agent is the cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the cooperative.

b. If a cooperative has no registered agent, or the agent cannot with reasonable diligence be served, the cooperative may be served by registered or certified mail, return receipt requested, addressed to the secretary of the cooperative at its principal office. Service is perfected under this paragraph at the earliest of any of the following:

- (1) The date that the cooperative receives the mail.
- (2) The date shown on the return receipt, if signed on behalf of the cooperative.
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

c. A cooperative may be served pursuant to this section or as provided in other provisions of this chapter, unless the manner of service is otherwise specifically provided for by statute.

Sec. 12. Section 501.202, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. The name, address, and occupation of each incorporator organizer.

Sec. 13. Section 501.202, subsection 2, paragraph d, Code 1997, is amended to read as follows:

d. The classes of stock interests and the authorized number of shares interests of each class.

Sec. 14. Section 501.306, Code 1997, is amended to read as follows:

501.306 NUMBER OF VOTES.

A person who is a member or-shareholder shall not own more than one membership or-share-of-voting-stock. The person shall be entitled to cast not more than one vote regarding any matter in which a vote is conducted, including any matter subject to a vote during a cooperative meeting.

Sec. 15. Section 501.403, subsection 2, paragraph e, Code 1997, is amended to read as follows:

e. Action required or permitted by this chapter to be taken at a board meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate cooperative's records reflecting the action taken. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Sec. 16. Section 501.403, subsection 3, Code 1997, is amended to read as follows:

3. A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records of the cooperative. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Sec. 17. Section 501.404, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The material facts of the transaction and the director's interest were disclosed or known to the ~~shareholders~~ members entitled to vote and they authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives a majority of the votes entitled to be counted under this paragraph. Shares Voting interests owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares voting interests owned by or voted under the control of an entity described in subsection 2, paragraph "a", shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under this paragraph. The vote of those shares voting interests, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the votes, whether or not the ~~shareholders~~ members are present, that are entitled to be counted in a vote on the transaction under this paragraph constitutes a quorum for the purpose of taking action under this paragraph.

Sec. 18. Section 501.407, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or shareholder interest holder of the cooperative for monetary damages for breach of a fiduciary duty as a director, officer, or shareholder interest holder, provided that the provision does not eliminate or limit liability for any of the following:

Sec. 19. Section 501.407, subsections 1 and 3, Code 1997, are amended to read as follows:

1. A breach of the duty of loyalty to the cooperative or its shareholders interest holders.

3. A transaction from which the director, officer, or shareholder interest holder derives an improper personal benefit.

PART B INDEMNIFICATION

Sec. 20. NEW SECTION. 501.411 DEFINITIONS.

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

1. "Cooperative" includes any domestic or foreign predecessor entity of a cooperative in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

2. "Director" means an individual who is or was a director of a cooperative or an individual who, while a director of a cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the cooperative's request if the director's duties to the cooperative also impose duties on, or otherwise involve services by, that director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

3. "Expenses" include counsel fees.

4. "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

5. "Official capacity" means:

a. When used with respect to a director, the office of director in a cooperative.

b. When used with respect to an individual other than a director, as contemplated in section 501.417, the office in a cooperative held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the cooperative.

"Official capacity" does not include service for any other foreign or domestic cooperative or any corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise.

6. "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

7. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Sec. 21. NEW SECTION. 501.412 AUTHORITY TO INDEMNIFY.

1. Except as provided in subsection 4, a cooperative may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed either of the following:

(1) In the case of conduct in the individual's official capacity with the cooperative, that the individual's conduct was in the cooperative's best interests.

(2) In all other cases, that the individual's conduct was at least not opposed to the cooperative's best interests.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph "b", subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

4. A cooperative shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the cooperative in which the director was adjudged liable to the cooperative.

b. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

5. Indemnification permitted under this section in connection with a proceeding by or in the right of the cooperative is limited to reasonable expenses incurred in connection with the proceeding.

Sec. 22. NEW SECTION. 501.413 MANDATORY INDEMNIFICATION.

Unless limited by its articles of association, a cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the cooperative against reasonable expenses incurred by the director in connection with the proceeding.

Sec. 23. NEW SECTION. 501.414 ADVANCE FOR EXPENSES.

1. A cooperative may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if any of the following apply:

a. The director furnishes the cooperative a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 501.412.

b. The director furnishes the cooperative a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in section 501.412.

c. A determination is made pursuant to section 501.416 that the facts then known to those making the determination would not preclude indemnification under this part.

2. The undertaking required by subsection 1, paragraph "b", must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

3. Determinations and authorizations of payments under this section shall be made in the manner specified in section 501.416.

Sec. 24. NEW SECTION. 501.415 COURT-ORDERED INDEMNIFICATION.

Unless a cooperative's articles of association provide otherwise, a director of the cooperative who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines either of the following:

1. The director is entitled to mandatory indemnification under section 501.413, in which case the court shall also order the cooperative to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 501.412 or was adjudged liable as described in section 501.412, subsection 4, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.

Sec. 25. NEW SECTION. 501.416 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

1. A cooperative shall not indemnify a director under section 501.412 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 501.412.

2. The determination shall be made by any of the following:

a. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

b. If a quorum cannot be obtained under paragraph "a", by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding.

c. By special legal counsel.

(1) The special legal counsel shall be selected by the board of directors or its committee in the manner prescribed in paragraph "a" or "b".

(2) If a quorum of the board of directors cannot be obtained under paragraph "a" and a committee cannot be designated under paragraph "b", the special legal counsel shall be selected by majority vote of the full board of directors, in which selection directors who are parties may participate.

d. By the members, but voting interests owned by or voted under the control of directors who are at the time parties to the proceeding shall not be voted on the determination.

3. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection 2, paragraph "c", to select counsel.

Sec. 26. NEW SECTION. 501.417 INDEMNIFICATION OF OFFICERS, EMPLOYEES, AND AGENTS.

Unless a cooperative's articles of association provide otherwise, all of the following apply:

1. An officer of the cooperative who is not a director is entitled to mandatory indemnification under section 501.413, and is entitled to apply for court-ordered indemnification under section 501.415, in each case to the same extent as a director.

2. The cooperative may indemnify and advance expenses under this part to an officer, employee, or agent of the cooperative who is not a director to the same extent as to a director.

3. A cooperative may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent consistent with law that may be provided by its articles of association, bylaws, general or specific action of its board of directors, or contract.

Sec. 27. NEW SECTION. 501.418 INSURANCE.

A cooperative may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the cooperative, or who, while a director, officer, employee, or agent of the cooperative, is or was serving at the request of the cooperative as a director, officer, partner, trustee, employee, or agent of another foreign or domestic cooperative, corporation, partnership,

joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the cooperative would have power to indemnify that individual against the same liability under section 501.412 or 501.413.

Sec. 28. NEW SECTION. 501.419 APPLICATION OF THIS PART.

Except as limited in section 501.412, subsection 4, paragraph "a", and subsection 5 with respect to proceedings by or in the right of the cooperative, the indemnification and advancement of expenses provided by, or granted pursuant to, sections 501.411 through 501.418 are not exclusive of any other rights to which persons seeking indemnification or advancement of expenses are entitled under a provision in the articles of association or bylaws, agreements, vote of the members or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, such provisions, agreements, votes, or other actions shall not provide indemnification for a breach of a director's duty of loyalty to the cooperative or its interest holders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person seeking indemnification derives an improper personal benefit.

Sec. 29. Section 501.501, Code Supplement 1997, is amended to read as follows:

501.501 ISSUANCE AND TRANSFER OF STOCK INTERESTS.

1. A cooperative may issue the number of shares interests of each class authorized by its articles. A cooperative may issue fractional shares interests. Stock Interests may be represented by certificates or by entry on the cooperative's stock interest record books.

2. A member shall not sell or otherwise transfer voting stock interests to any person. A member may be restricted or

limited from selling or otherwise transferring any other class of stock interests of the cooperative as provided by the cooperative's articles of incorporation association or bylaws or an agreement executed between the cooperative and the member.

3. A cooperative may acquire its own stock interests, and shares interests so acquired constitute authorized but unissued shares interests.

Sec. 30. Section 501.502, subsection 2, paragraph a, Code Supplement 1997, is amended to read as follows:

a. The member has attempted to transfer stock any interest to a person who is not a member and has not been approved for membership.

Sec. 31. Section 501.502, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The cooperative shall redeem, without interest, the voting stock interest of a terminated member within one year after the termination of the membership for the fair market value of the stock interest. If the amount originally paid by the member for the voting stock interest was less than ten percent of the total amount the member paid for all classes of stock interests, the cooperative may redeem the voting stock interest for its issue price if the cooperative's articles of incorporation association grant the cooperative this authority.

Sec. 32. Section 501.502, subsection 5, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The cooperative shall redeem, without interest, all of the terminated member's allocated patronage refunds and preferred stock interests originally issued as allocated patronage refunds for the issue price as follows:

Sec. 33. Section 501.503, subsections 1 and 4, Code 1997, are amended to read as follows:

1. If the articles authorize the payment of dividends distributions on a class of stock interests, then the

directors may declare dividends a distribution pursuant to the articles. Dividends-may Distributions shall not exceed eight percent of the value of the stock interest in each fiscal year. The members may control the amount that is allocated under this subsection.

4. The cooperative shall have an unconditional binding obligation to distribute to the members all remaining net savings as determined under the United States Internal Revenue Code. These net savings shall be allocated to each member in proportion to the business the member did with the cooperative during the preceding fiscal year. The net savings may be separately calculated for two or more categories of business, and allocated to the members on the basis of business done within each of these categories. Net savings shall be distributed in the form of cash or stock interests, or a combination of cash and stock interests, as determined by the board.

Sec. 34. Section 501.603, subsection 2, Code 1997, is amended to read as follows:

2. A cooperative may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, on the terms and conditions and for the consideration determined by the board, which consideration may include the preferred-stock interests of another cooperative, if the board recommends the proposed transaction to the members, and the members approve it by the vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast. The board may condition its submission of the proposed transaction on any basis.

PART B

MERGER AND CONSOLIDATION BETWEEN COOPERATIVES ORGANIZED UNDER THIS CHAPTER

Sec. 35. NEW SECTION. 501.611 DEFINITIONS.

When used in this part, unless the context otherwise requires:

1. "Consolidation" means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that a new cooperative is formed, and the new cooperative absorbs the others, which cease to exist as separate entities.

2. "Dissenting member" means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 501.615.

3. "Fair value" means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

4. "Issue price" means the amount paid for an interest in the old cooperative or the amount stated in a notice of allocation of patronage distributions.

5. "Merger" means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that one of the merging associations continues to exist and absorbs the others, which cease to exist as entities. "Merger" does not include the acquisition, by purchase or otherwise, of the assets of one cooperative by another, unless the acquisition only becomes effective by the filing of articles of merger by the cooperatives and the issuance of a certificate of merger pursuant to sections 501.617 and 501.618.

6. "New cooperative" is the cooperative resulting from the consolidation of two or more cooperatives organized under this chapter.

7. "Old cooperative" means the cooperative in which the member owns or owned a membership prior to merger or consolidation.

8. "Surviving cooperative" is the cooperative resulting from the merger of two or more cooperatives organized under this chapter.

Sec. 36. NEW SECTION. 501.612 MERGER.

Any two or more cooperatives may merge into one cooperative in the manner provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth all of the following:

1. The names of the cooperatives proposing to merge and the name of the surviving cooperative.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of association of the surviving cooperative.

4. Other provisions deemed necessary or desirable.

Sec. 37. NEW SECTION. 501.613 CONSOLIDATION.

Any two or more cooperatives may be consolidated into a new cooperative as provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the cooperatives proposing to consolidate and the name of the new cooperative.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new cooperative, all of the statements required to be set forth in articles of association for cooperatives.

4. Other provisions deemed necessary or desirable.

Sec. 38. NEW SECTION. 501.614 VOTE OF MEMBERS.

1. The board of directors of a cooperative, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail, to each voting member of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a ballot of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate. Voting may be by mail ballot notwithstanding any contrary provision in the articles of association or bylaws.

Sec. 39. NEW SECTION. 501.615 OBJECTION OF MEMBERS -- PURCHASE OF INTERESTS UPON DEMAND.

1. If a member of a cooperative which is a party to a merger or consolidation files with the cooperative, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new cooperative for payment of the fair value of that member's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new cooperative shall pay to the member, upon surrender of that person's certificate of membership or interests in the cooperative, the fair value of that person's interest as provided in section 501.616. A member who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.

2. In the event that a dissenting member does business with the surviving or new cooperative before payment has been made for that person's membership, the dissenting member is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member.

Sec. 40. NEW SECTION. 501.616 VALUE DETERMINED.

1. Within twenty days after the merger or consolidation is effected, the surviving or new cooperative shall make a written offer to each dissenting member to pay a specified sum

deemed by the surviving or new cooperative to be the fair value of that dissenting member's interest in the old cooperative. This offer shall be accompanied by a balance sheet of the old cooperative as of the latest available date, a profit and loss statement of the old cooperative for the twelve-month period ending on the date of the balance sheet, and a list of the dissenting member's interests in the old cooperative. If the dissenting member does not agree that the sum stated in the notice represents the fair value of the member's interest, then the member may file a written objection with the surviving or new cooperative within twenty days after receiving the notice. A dissenting member who fails to file the objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

2. If the surviving or new cooperative receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the surviving or new cooperative shall file a petition in district court asking for a finding and determination of the fair value of each type of equity. The action shall be tried as an equitable action.

3. The fair value of a dissenting member's interest in the old cooperative shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, deferred patronage, and any other interests in the cooperative, or the amount determined by subtracting the old cooperative's debts from the fair market value of the old cooperative's assets, dividing the remainder by the total issue price of all memberships, deferred patronage and all other interests, and then multiplying the quotient from this division by the total issue price of a dissenting member's membership, deferred patronage, and other interests.

4. The surviving or new cooperative shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting

member for that member's interest in the old cooperative. The surviving or new cooperative shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage or interests issued to evidence deferred patronage shall be considered a liability of the surviving or new cooperative as reflected in the accounts of the surviving or new cooperative until the value of the deferred patronage or interests issued to evidence deferred patronage is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

Sec. 41. NEW SECTION. 501.617 ARTICLES OF MERGER OR CONSOLIDATION.

Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative as provided in section 501.105. The articles must include the following:

1. The plan of merger or the plan of consolidation.
2. As to each cooperative, the number of members.
3. As to each cooperative, the number of members who voted for and against the plan at the meeting called for that purpose.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation and send the certificate to the surviving or new cooperative, or to its representative.

Sec. 42. NEW SECTION. 501.618 WHEN EFFECTIVE -- EFFECT.

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the

effective date specified in the articles of merger or articles of consolidation, whichever is later.

When a merger or consolidation has become effective:

1. The several cooperatives which are parties to the plan of merger or consolidation shall be a single cooperative, which, in the case of a merger, shall be that cooperative designated in the plan of merger as the surviving cooperative, and, in the case of consolidation, shall be that cooperative designated in the plan of consolidation as the new cooperative.

2. The separate existence of all cooperatives which are parties to the plan of merger or consolidation, except the surviving or new cooperative, shall cease.

3. The surviving or new cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under this chapter.

4. The surviving or new cooperative shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperatives.

5. All property, real, personal, and mixed, and all debts due on whatever account, including all choses in action, and all and every other interest, of or belonging to or due to each of the cooperatives merged or consolidated, shall be transferred to and vested in the surviving or new cooperative without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperatives merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.

6. A surviving or new cooperative shall be responsible and liable for all obligations and liabilities of each of the cooperatives merged or consolidated.

7. Any claim existing or action or proceeding pending by or against any of the cooperatives merged or consolidated may be prosecuted as if the merger or consolidation had not taken

place, or the surviving or new cooperative may be substituted for the merged or consolidated cooperative. Neither the rights of creditors nor any liens upon the property of any cooperative shall be impaired by a merger or consolidation.

8. In the case of a merger, the articles of association of the surviving cooperative shall be deemed to be amended to the extent that changes in its articles of association are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of association of a cooperative shall be deemed to be the original articles of association of the new cooperative.

9. The aggregate amount of the net assets of the merging or consolidating cooperative which was available for the payment of distributions immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of interests or otherwise, shall continue to be available for the payment of distributions by the surviving or new cooperative.

Sec. 43. NEW SECTION. 501.619 ABANDONMENT BEFORE FILING.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

SUBCHAPTER VII
RECORDS AND REPORTS
PART A
RECORDS

Sec. 44. NEW SECTION. 501.701 RECORDS.

1. A cooperative shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the cooperative.

2. A cooperative shall maintain appropriate accounting records.

3. A cooperative or its agent shall maintain a record of its interest holders in a form that permits preparation of a list of the names and addresses of all interest holders in alphabetical order by class of interests showing the number and class of interests held by each.

4. A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A cooperative shall keep a copy of the following records:

a. Its articles or restated articles of association and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of interests, and fixing their relative rights, preferences, and limitations, if the interests issued pursuant to those resolutions are outstanding.

d. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years.

e. All written communications to interest holders generally within the past three years, including the financial statements furnished for the past three years under section 501.711.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 501.713.

Sec. 45. NEW SECTION. 501.702 INSPECTION OF RECORDS BY INTEREST HOLDERS.

1. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at the

cooperative's principal office, any of the records of the cooperative described in section 501.701, subsection 5, if the interest holder gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy.

2. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at a reasonable location specified by the cooperative, any of the following records of the cooperative if the interest holder meets the requirements of subsection 3 and gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the cooperative, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the cooperative.

c. The record of interest holders.

3. An interest holder may inspect and copy the records described in subsection 2 only if:

a. The interest holder's demand is made in good faith and for a proper purpose.

b. The interest holder describes with reasonable particularity the interest holder's purpose and the records the interest holder desires to inspect.

c. The records are directly connected with the interest holder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a cooperative's articles of association or bylaws.

5. This section does not affect either of the following:

a. The right of a member to obtain information under section 501.702 or the right of an interest holder to obtain information, if the interest holder is in litigation with the cooperative, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of cooperative records for examination.

Sec. 46. NEW SECTION. 501.703 SCOPE OF INSPECTION RIGHT.

1. An interest holder's agent or attorney has the same inspection and copying rights as the interest holder the agent or attorney represents.

2. The right to copy records under section 501.702 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

3. The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the interest holder. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The cooperative may comply with an interest holder's demand to inspect the record of interest holders under section 501.702, subsection 2, paragraph "c", by providing the interest holder with a list of its interest holders that was compiled no earlier than the date of the interest holder's demand.

Sec. 47. NEW SECTION. 501.704 COURT-ORDERED INSPECTION.

1. If a cooperative does not allow an interest holder who complies with section 501.702, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the cooperative's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the cooperative's expense upon application of the interest holder.

2. If a cooperative does not within a reasonable time allow an interest holder to inspect and copy any other records, the interest holder who complies with section

501.702, subsections 2 and 3, may apply to the district court in the county where the cooperative's principal office or, if not in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the cooperative to pay the interest holder's costs, including reasonable counsel fees, incurred to obtain the order unless the cooperative proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the interest holder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding interest holder.

PART B
REPORTS

Sec. 48. NEW SECTION. 501.711 FINANCIAL STATEMENTS FOR INTEREST HOLDERS.

A cooperative shall prepare annual financial statements, which may be consolidated or combined statements of the cooperative and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from an interest holder, a cooperative, at its expense, shall furnish to that interest holder the financial statements requested. If the annual financial statements are reported upon by a public accountant, the report must accompany the financial statements.

Sec. 49. NEW SECTION. 501.712 OTHER REPORTS TO INTEREST HOLDERS.

1. If a cooperative indemnifies or advances expenses to a director under sections 501.412 through 501.415 in connection with a proceeding by or in the right of the cooperative, the

cooperative shall report the indemnification or advance in writing to the members with or before the notice of the next members' meeting.

2. If a cooperative issues or authorizes the issuance of interests for promissory notes or for promises to render services in the future, the cooperative shall report in writing to the members the number of interests authorized or issued, and the consideration received by the cooperative, with or before the notice of the next members' meeting.

Sec. 50. NEW SECTION. 501.713 ANNUAL REPORT FOR SECRETARY OF STATE.

1. Each cooperative authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that sets forth all of the following:

- a. The name of the cooperative.
- b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.
- c. The address of its principal office.
- d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the annual report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative and signed as provided in section 501.105 or by any other person authorized by the board of directors of the cooperative.

3. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative was organized. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years. A filing fee for the annual report shall be determined by the secretary of state.

4. If an annual report does not contain the information required by this section, the secretary of state shall

promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report, provided that the form contains the information required in section 501.106. If the secretary of state determines that an annual report does not contain the information required by this section but otherwise meets the requirements of section 501.106 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 501.105, before returning the biennial report to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the annual report.

DIVISION VIII
DISSOLUTION
PART A
GENERAL

Sec. 51. NEW SECTION. 501.801 DISSOLUTION BY ORGANIZERS OR INITIAL DIRECTORS.

A majority of the organizers or initial directors of a cooperative that has not issued interests or has not commenced business may dissolve the cooperative by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the cooperative.
2. The date of its organization.
3. Either of the following:
 - a. That none of the cooperative's interests have been issued.
 - b. That the cooperative has not commenced business.
4. That no debt of the cooperative remains unpaid.

5. That the net assets of the cooperative remaining after winding up have been distributed in accordance with this chapter and the articles of association of the cooperative.

6. That a majority of the organizers or initial directors authorized the dissolution.

Sec. 52. NEW SECTION. 501.802 DISSOLUTION BY BOARD OF DIRECTORS AND MEMBERS.

1. A cooperative's board of directors may propose dissolution for submission to the members.

2. For a proposal to dissolve to be adopted both of the following must apply:

a. The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members.

b. The members entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

4. The cooperative shall notify each member of a meeting to consider dissolution in accordance with section 501.302. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the cooperative.

5. Unless the articles of association or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by a majority of all the votes entitled to be cast on that proposal in order to be adopted.

Sec. 53. NEW SECTION. 501.803 ARTICLES OF DISSOLUTION.

1. At any time after dissolution is authorized, the cooperative may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

- a. The name of the cooperative.

b. The date dissolution was authorized.

c. If dissolution was approved by the members, both of the following:

(1) The number of votes entitled to be cast on the proposal to dissolve.

(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

2. A cooperative is dissolved upon the effective date of its articles of dissolution.

Sec. 54. NEW SECTION. 501.804 REVOCATION OF DISSOLUTION.

1. A cooperative may revoke its dissolution within one hundred twenty days of the effective date of the dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

3. After the revocation of dissolution is authorized, the cooperative may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the cooperative.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the cooperative's board of directors or organizers revoked the dissolution, a statement to that effect.

e. If the cooperative's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If member action was required to revoke the dissolution, the information required by section 501.803, subsection 1, paragraph "c".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

Sec. 55. NEW SECTION. 501.805 EFFECT OF DISSOLUTION.

1. A dissolved cooperative continues its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind in accordance with this chapter and the cooperative's articles of association.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property in accordance with this chapter and the cooperative's articles of association.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a cooperative does not do any of the following:

a. Transfer title to the cooperative's property.

b. Prevent transfer of its interests, although the authorization to dissolve may provide for closing the cooperative's interest transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in section 501.406.

d. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the cooperative in its name.

f. Abate or suspend a proceeding pending by or against the cooperative on the effective date of dissolution.

g. Terminate the authority of the registered agent of the cooperative.

Sec. 56. NEW SECTION. 501.805A DISTRIBUTION OF ASSETS.

Upon the cooperative's dissolution, the cooperative's assets shall first be used to pay expenses necessary to carry out the dissolution and liquidation of assets, then be used to pay the cooperative's obligations other than the payment of deferred patronage or interests issued as deferred patronage, and the remainder shall be paid in the manner set forth in the cooperative's articles of association.

Sec. 57. NEW SECTION. 501.806 KNOWN CLAIMS AGAINST DISSOLVED COOPERATIVE.

1. A dissolved cooperative may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved cooperative shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do all of the following:

a. Describe information that must be included in a claim.
b. Provide a mailing address where a claim may be sent.
c. State the deadline, which shall not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved cooperative must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved cooperative is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved cooperative by the deadline.

b. A claimant whose claim was rejected by the dissolved cooperative does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Sec. 58. NEW SECTION. 501.807 UNKNOWN CLAIMS AGAINST DISSOLVED COOPERATIVE.

1. A dissolved cooperative may also publish notice of its dissolution and request that persons with claims against the cooperative present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved cooperative's principal office or, if not in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the cooperative will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved cooperative publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved cooperative within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 501.806.

b. A claimant whose claim was timely sent to the dissolved cooperative but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved cooperative, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against an interest holder of the dissolved cooperative to the extent of the interest holder's pro rata share of the claim or the cooperative assets distributed to the interest holder in liquidation, whichever is less, but an interest holder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the interest holder in liquidation.

PART B

ADMINISTRATIVE DISSOLUTION

Sec. 59. NEW SECTION. 501.811 GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The secretary of state may commence a proceeding under section 501.812 to administratively dissolve a cooperative if any of the following apply:

1. The cooperative has not delivered an annual report to the secretary of state in a form that meets the requirements of section 501.713, within sixty days after it is due, or has not paid the filing fee as determined by the secretary of state, within sixty days after it is due.
2. The cooperative is without a registered agent or registered office in this state for sixty days or more.
3. The cooperative does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
4. The cooperative's period of duration stated in its articles of association expires.

Sec. 60. NEW SECTION. 501.812 PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

1. If the secretary of state determines that one or more grounds exist under section 501.811 for dissolving a cooperative, the secretary of state shall serve the cooperative with written notice of the secretary of state's determination under section 501.106.

2. If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 501.106, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative under section 501.106.

3. A cooperative administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 501.805 and notify claimants under sections 501.806 and 501.807.

4. The administrative dissolution of a cooperative does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a cooperative pursuant to this section appoints the secretary of state the cooperative's agent for service of process in any proceeding based on a cause of action which arose during the time the cooperative was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the cooperative. Upon receipt of process, the secretary of state shall serve a copy of the process on the cooperative as provided in section 501.106. This subsection does not preclude service on the cooperative's registered agent, if any.

Sec. 61. NEW SECTION. 501.813 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A cooperative administratively dissolved under section 501.812 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

- a. Recite the name of the cooperative at its date of dissolution and the effective date of its administrative dissolution.
 - b. State that the ground or grounds for dissolution have been eliminated.
 - c. State a name that satisfies the requirements of section 501.104.
 - d. State the federal tax identification number of the cooperative.
2. a. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of revenue and finance. The department of revenue and finance shall report to the secretary of state the tax status of the cooperative. If the department reports to the secretary of state that a filing delinquency or liability exists against the cooperative, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.
- b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph "a" has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the cooperative under section 501.106. If the name of the cooperative as provided in subsection 1, paragraph "c", is different than the name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of association insofar as it pertains to the name.
3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

Sec. 62. NEW SECTION. 501.814 APPEAL FROM DENIAL OF REINSTATEMENT.

1. If the secretary of state denies a cooperative's application for reinstatement following administrative dissolution, the secretary of state shall serve the cooperative under section 501.106 with a written notice that explains the reason or reasons for denial.
2. The cooperative may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The cooperative appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the cooperative's application for reinstatement, and the secretary of state's notice of denial.
3. The court may summarily order the secretary of state to reinstate the dissolved cooperative or may take other action the court considers appropriate.
4. The court's final decision may be appealed as in other civil proceedings.

PART C
JUDICIAL DISSOLUTION

Sec. 63. NEW SECTION. 501.821 GROUNDS FOR JUDICIAL DISSOLUTION.

The district court may dissolve a cooperative in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:
 - a. The cooperative obtained its articles of association through fraud.
 - b. The cooperative has continued to exceed or abuse the authority conferred upon it by law.
2. A proceeding by a member if it is established that any of the following conditions exist:
 - a. The directors are deadlocked in the management of the cooperative's affairs, the members are unable to break the deadlock, and either irreparable injury to the cooperative is

threatened or being suffered, or the business and affairs of the cooperative can no longer be conducted to the advantage of the interest holders generally, because of the deadlock.

b. The directors or those in control of the cooperative have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The cooperative's assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the cooperative is insolvent.

b. The cooperative has admitted in writing that the creditor's claim is due and owing and the cooperative is insolvent.

4. A proceeding by the cooperative to have its voluntary dissolution continued under court supervision.

Sec. 64. NEW SECTION. 501.822 PROCEDURE FOR JUDICIAL DISSOLUTION.

1. Venue for a proceeding by the attorney general to dissolve a cooperative lies in Polk county district court. Venue for a proceeding brought by any other party named in section 501.821 lies in the county where a cooperative's principal office or, if not in this state, its registered office is or was last located.

2. It is not necessary to make interest holders parties to a proceeding to dissolve a cooperative unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a cooperative may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court

directs, take other action required to preserve the cooperative's assets wherever located, and carry on the business of the cooperative until a full hearing can be held.

Sec. 65. NEW SECTION. 501.823 RECEIVERSHIP OR CUSTODIANSHIP.

1. A court in a judicial proceeding brought to dissolve a cooperative may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the cooperative. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the cooperative and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time.

a. Among other powers, the receiver may do any of the following:

(1) Dispose of all or any part of the assets of the cooperative wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the cooperative in all courts of this state.

b. The custodian may exercise all of the powers of the cooperative, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its interest holders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may

redesignate the custodian a receiver, if doing so is in the best interests of the cooperative, its interest holders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the cooperative or proceeds from the sale of the assets.

Sec. 66. NEW SECTION. 501.824 DECREE OF DISSOLUTION.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 501.821 exist, it may enter a decree dissolving the cooperative and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the cooperative's business and affairs in accordance with section 501.805 and the notification of claimants in accordance with sections 501.806 and 501.807.

PART D
STATE TREASURER

Sec. 67. NEW SECTION. 501.831 DEPOSIT WITH STATE TREASURER.

Assets of a dissolved cooperative that should be transferred to a creditor, claimant, or interest holder of the cooperative who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or interest holder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or interest holder or that person's representative the amount.

Sec. 68. Sections 501.107 and 501.602, Code 1997, are repealed. Sections 501.408 and 501.604, Code Supplement 1997, are repealed.

Sec. 69. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2404, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved April 23, 1998

TERRY E. BRANSTAD
Governor