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SENATE FILE 340
BY COMMITTEE ON COMMERCE

Motions to reconsider 4/15/03
Raecker
Kuhn

(SUCCESSOR TO SSB 1109)

Motions withdrawn 4/16/03

Passed Senate, Date Passed 3/18/03 Passed House, Date Passed 4/15/03

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved 4/25/03

A BILL FOR

1 An Act relating to business entities, based on revisions related
2 to the Iowa business corporation Act, including addition of a
3 savings clause and addition of provisions related to director
4 and officer liability, duty, and indemnification for certain
5 insurance companies and indemnification for cooperative
6 associations.

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

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SF 340

1 Section 1. Section 490.1701, Code 2003, is amended by
2 adding the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. A corporation organized under
4 chapter 496C may voluntarily elect to adopt the provisions of
5 this chapter by complying with the provisions prescribed by
6 subsection 3.

7 Sec. 2. Section 490.1701, subsection 3, paragraph b, Code
8 2003, is amended to read as follows:

9 b. The instrument shall be delivered to the secretary of
10 state for filing and recording in the secretary of state's
11 office~~7-and~~. If the corporation was organized under chapter
12 176, 524, or 533, the instrument shall also be filed and
13 recorded in the office of the county recorder. The
14 corporation shall at the time it files the instrument with the
15 secretary of state deliver also to the secretary of state for
16 filing in the secretary of state's office any biennial report
17 which is then due.

18 If the county of the initial registered office as stated in
19 the instrument for a corporation organized under chapter 176,
20 524, or 533 is one which is other than the county where the
21 principal place of business of the corporation, as designated
22 in its articles of incorporation, was located, the corporation
23 shall forward to the county recorder of the county in which
24 the principal place of business of the corporation was located
25 a copy of the instrument and the corporation shall forward to
26 the recorder of the county in which the initial registered
27 office of the corporation is located, in addition to a copy of
28 the original instrument, a copy of the articles of
29 incorporation of the corporation together with all amendments
30 to them as then on file in the secretary of state's office.
31 The corporation shall, through an officer or director, certify
32 to the secretary of state that a copy has been sent to each
33 applicable county recorder, including the date each copy was
34 sent.

35 Sec. 3. Section 490.1703, subsection 1, Code 2003, is

1 amended to read as follows:

2 1. Except as provided in subsection 2, the repeal of a
3 statute by 1989 Iowa Acts, chapter 288, and the amendment or
4 repeal of a statute by 2002 Iowa Acts, chapter 1154, does not
5 affect:

6 a. The operation of the statute or any action taken under
7 it before its amendment or repeal.

8 b. Any ratification, right, remedy, privilege, obligation,
9 or liability acquired, accrued, or incurred under the statute
10 before its amendment or repeal.

11 c. Any violation of the statute, or any penalty,
12 forfeiture, or punishment incurred because of the violation,
13 before its amendment or repeal.

14 d. Any proceeding, reorganization, or dissolution
15 commenced under the statute before its amendment or repeal,
16 and the proceeding, reorganization, or dissolution may be
17 completed in accordance with the statute as if it had not been
18 amended or repealed.

19 Sec. 4. Section 490A.707, Code 2003, is amended to read as
20 follows:

21 490A.707 LIMITATION OF LIABILITY OF MANAGERS.

22 The articles of organization may contain a provision
23 eliminating or limiting the personal liability of a manager to
24 the limited liability company or to its members or of the
25 members with whom the management of the limited liability
26 company is vested pursuant to section 490A.702, to the limited
27 liability company or to its members for monetary money damages
28 for-breach-of-fiduciary-duty for any action taken, or any
29 failure to take action, as a manager or a member with whom
30 management of the limited liability company is vested, ~~if the~~
31 ~~provision does not eliminate or limit the liability of a~~
32 ~~manager or a member with whom management of the limited~~
33 ~~liability company is vested for~~ except for liability for any
34 of the following:

35 1. ~~Breach of the manager's or member's duty of loyalty to~~

1 ~~the limited liability company or to its members~~ The amount of
2 a financial benefit received by a manager or member to which
3 the manager or member is not entitled.

4 2. ~~Acts or omissions not in good faith or which involve~~
5 ~~intentional misconduct or a knowing violation of law~~ An
6 intentional infliction of harm on the limited liability
7 company or its members.

8 3. ~~Transaction from which the manager or member derives an~~
9 ~~improper personal benefit or a wrongful distribution in~~
10 ~~violation of section~~ A violation of section 490A.807.

11 4. An intentional violation of criminal law.

12 A provision shall not eliminate or limit the liability of a
13 manager or member with whom management of the limited
14 liability company is vested for an act or omission occurring
15 prior to the date when the provision in the articles of
16 organization becomes effective.

17 Sec. 5. Section 491.5, subsection 8, Code 2003, is amended
18 by striking the subsection and inserting in lieu thereof the
19 following:

20 8. Any provision eliminating or limiting the personal
21 liability of a director to the corporation or its shareholders
22 or members for money damages as provided in section 490.202,
23 subsection 2, paragraph "d", except that section 490.202,
24 subsection 2, paragraph "d", subparagraph (3), shall have no
25 application.

26 Sec. 6. Section 491.5, Code 2003, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 9. Any provision permitting or making
29 obligatory indemnification of a director as provided in
30 section 490.202, subsection 2, paragraph "e", except that
31 section 490.202, subsection 2, paragraph "e", subparagraph
32 (3), shall have no application.

33 Sec. 7. NEW SECTION. 491.16A DIRECTORS AND OFFICERS --
34 DUTIES AND LIABILITIES.

35 Sections 490.830 through 490.842 apply to corporations

1 organized under or subject to this chapter.

2 Sec. 8. Section 496C.14, unnumbered paragraph 7, Code
3 2003, is amended to read as follows:

4 Notwithstanding the foregoing provisions of this section,
5 purchase by the corporation is not required upon the
6 occurrence of any event other than death of a shareholder if
7 the corporation is dissolved or voluntarily elects to adopt
8 the provisions of the Iowa business corporation Act, as
9 provided in section 490.1701, subsection 2, within sixty days
10 after the occurrence of the event. The articles of
11 incorporation or bylaws may provide that purchase is not
12 required upon the death of a shareholder if the corporation is
13 dissolved within sixty days after the death. Notwithstanding
14 the foregoing provisions of this section, purchase by the
15 corporation is not required upon the death of a shareholder,
16 if the corporation voluntarily elects to adopt the provisions
17 of the Iowa business corporation Act, as provided in section
18 490.1701, subsection 2, within sixty days after death.

19 Sec. 9. Section 496C.16, Code 2003, is amended to read as
20 follows:

21 496C.16 MANAGEMENT.

22 All directors of a professional corporation and all
23 officers of a professional corporation except assistant
24 officers, shall at all times be individuals who are licensed
25 to practice in this state a profession which the corporation
26 is authorized to practice. ~~No person who is not licensed~~
27 ~~shall have any authority or duties in the management or~~
28 ~~control of the corporation. If any director or any officer~~
29 ~~ceases to have this qualification, the director or officer~~
30 ~~shall immediately and automatically cease to hold the~~
31 ~~directorship or office.~~ However, upon the occurrence of any
32 event that requires the corporation either to be dissolved or
33 to elect to adopt the provisions of the Iowa business
34 corporation Act, as provided in section 496C.19, provided the
35 corporation ceases to practice the profession that the

1 corporation is authorized to practice, as provided in section
2 496C.19, then individuals who are not licensed to practice in
3 this state a profession that the corporation is authorized to
4 practice may be appointed as officers and directors for the
5 sole purpose of carrying out the dissolution of the
6 corporation or, if applicable, the voluntary election of the
7 corporation to adopt the provisions of the Iowa business
8 corporation Act, as provided in section 496C.19.

9 Sec. 10. Section 496C.19, Code 2003, is amended to read as
10 follows:

11 496C.19 DISSOLUTION OR LIQUIDATION.

12 Violation of any provision of this chapter by a
13 professional corporation or any of its shareholders,
14 directors, or officers shall be cause for its involuntary
15 dissolution, or liquidation of its assets and business by the
16 district court, as provided in the Iowa business corporation
17 Act, chapter 490. Upon the death of the last remaining
18 shareholder of a professional corporation, or whenever the
19 last remaining shareholder is not licensed or ceases to be
20 licensed to practice in this state a profession which the
21 corporation is authorized to practice, or whenever any person
22 other than the shareholder of record becomes entitled to have
23 all shares of the last remaining shareholder of the
24 corporation transferred into that person's name or to exercise
25 voting rights, except as a proxy, with respect to such shares,
26 the corporation shall not practice any profession and it shall
27 either be promptly dissolved or shall promptly elect to adopt
28 the provisions of the Iowa business corporation Act, as
29 provided in section 490.1701, subsection 2. However, if prior
30 to such dissolution all outstanding shares of the corporation
31 are acquired by one or more persons licensed to practice in
32 this state a profession which the corporation is authorized to
33 practice, the corporation need not be dissolved and may
34 practice the profession as provided in this chapter.

35 Sec. 11. Section 497.33, Code 2003, is amended to read as

1 follows:

2 497.33 PERSONAL LIABILITY.

3 Except as otherwise provided in this chapter, a director,
4 officer, employee, or member of the corporation is not liable
5 on the corporation's debts or obligations and a director,
6 officer, member, or other volunteer is not personally liable
7 in that capacity, for a claim based upon ~~an act or omission of~~
8 ~~the person performed~~ any action taken, or any failure to take
9 action in the discharge of the person's duties, except for a
10 ~~breach of the duty of loyalty to the corporation, for acts or~~
11 ~~omissions not in good faith or which involve~~ the amount of a
12 financial benefit received by the person to which the person
13 is not entitled, an intentional infliction of harm on the
14 association or its members, or an intentional misconduct or
15 knowing violation of the criminal law, or for a transaction
16 from which the person derives an improper personal benefit.

17 Sec. 12. Section 498.35, Code 2003, is amended to read as
18 follows:

19 498.35 PERSONAL LIABILITY.

20 Except as otherwise provided in this chapter, a director,
21 officer, employee, or member of the association is not liable
22 on the association's debts or obligations and a director,
23 officer, member, or other volunteer is not personally liable
24 in that capacity, for a claim based upon ~~an act or omission of~~
25 ~~the person performed~~ any action taken, or any failure to take
26 action in the discharge of the person's duties, except for a
27 ~~breach of the duty of loyalty to the association, for acts or~~
28 ~~omissions not in good faith or which involve~~ the amount of a
29 financial benefit received by the person to which the person
30 is not entitled, an intentional infliction of harm on the
31 association or its members, or an intentional misconduct or
32 knowing violation of the criminal law, or for a transaction
33 from which the person derives an improper personal benefit.

34 Sec. 13. Section 499.37, Code 2003, amended to read as
35 follows:

1 499.37 OFFICERS AND EMPLOYEES.

2 1. The board of directors of the association shall select
3 ~~from their own number a president, one or more vice~~
4 ~~presidents, a secretary-treasurer or a secretary and a~~
5 ~~treasurer~~ the association's officers as provided in its
6 articles of incorporation or bylaws, and shall fill vacancies
7 in such offices. The articles of incorporation or bylaws
8 shall delegate to an officer the responsibility for all of the
9 following:

10 a. Preparing minutes of meetings of the directors and the
11 shareholders.

12 b. Authenticating the association's records.

13 2. Unless the association's articles of incorporation or
14 bylaws otherwise provide, said the association's officers
15 shall be chosen serve for annual terms beginning at the close
16 of the first regular meeting of members in each year.

17 ~~The directors shall also choose and may remove such other~~
18 ~~officers and employees as they deem proper, or as the articles~~
19 ~~or bylaws may prescribe.~~

20 Sec. 14. Section 499.59, Code 2003, is amended to read as
21 follows:

22 499.59 PERSONAL LIABILITY.

23 Except as otherwise provided in this chapter, a director,
24 officer, employee, or member of the association is not liable
25 on the association's debts or obligations, and a director,
26 officer, member, or other volunteer is not personally liable
27 in that capacity, for a claim based upon ~~an act or omission of~~
28 ~~the person performed~~ any action taken, or any failure to take
29 action in the discharge of the person's duties, except for a
30 ~~breach of the duty of loyalty to the association, for acts or~~
31 ~~omissions not in good faith or which involve~~ the amount of a
32 financial benefit received by the person to which the person
33 is not entitled, an intentional infliction of harm on the
34 association or its members, or an intentional misconduct or
35 knowing violation of the criminal law, or for a transaction

1 ~~from which the person derives an improper personal benefit.~~

2 Sec. 15. Section 501.407, Code 2003, is amended to read as
3 follows:

4 501.407 PERSONAL LIABILITY -- INDEMNIFICATION.

5 1. The articles may contain a provision eliminating or
6 limiting the personal liability of a director, officer, or
7 interest holder of the cooperative for monetary money damages
8 for breach of a fiduciary duty any action taken, or any
9 failure to take action as a director, officer, or interest
10 holder, provided that the provision does not eliminate or
11 limit except liability for any of the following:

12 ~~1- a. A breach of the duty of loyalty to the cooperative~~
13 ~~or its interest holders~~ An intentional infliction of harm on
14 the cooperative or its members.

15 ~~2- b. An act or omission not in good faith or which~~
16 ~~involves intentional misconduct or a knowing~~ An intentional
17 violation of criminal law.

18 ~~3- c. A transaction from which the director, officer, or~~
19 ~~interest holder derives an improper personal benefit~~ The
20 amount of a financial benefit received by the person to which
21 the person is not entitled.

22 ~~4- d. An act or omission occurring prior to the date when~~
23 ~~the provision in the articles becomes effective.~~

24 2. The articles may contain a provision permitting or
25 making obligatory indemnification of a director or officer for
26 liability, as defined in section 501.411, to any person for
27 any action taken, or any failure to take any action, as a
28 director or officer, except liability for any of the
29 following:

30 a. Receipt of a financial benefit to which the person is
31 not entitled.

32 b. An intentional infliction of harm on the corporation or
33 its shareholders.

34 c. An intentional violation of criminal law.

35 Sec. 16. Section 501.411, Code 2003, is amended to read as

1 follows:

2 501.411 DEFINITIONS.

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

5 1. "Cooperative" includes any domestic or foreign
6 predecessor entity of a cooperative in a merger ~~or other~~
7 ~~transaction-in-which-the-predecessor's-existence-ceased-upon~~
8 ~~consummation-of-the-transaction.~~

9 2. "Director" or "officer" means an individual who is or
10 was a director or officer, respectively, of a cooperative or
11 ~~an-individual~~ who, while a director or officer of a the
12 cooperative, is or was serving at the cooperative's request as
13 a director, officer, partner, trustee, employee, or agent of
14 another ~~foreign-or~~ domestic or foreign cooperative,
15 corporation, partnership, joint venture, trust, employee
16 benefit plan, or other enterprise entity. A director or
17 officer is considered to be serving an employee benefit plan
18 at the cooperative's request if the director's or officer's
19 duties to the cooperative also impose duties on, or otherwise
20 involve services by, that director or officer to the plan or
21 to participants in or beneficiaries of the plan. "Director"
22 or "officer" includes, unless the context requires otherwise,
23 the estate or personal representative of a director or
24 officer.

25 3. "Disinterested director" means a director who at the
26 time of a vote referred to in section 501.414, subsection 3,
27 or a vote or selection referred to in section 501.416,
28 subsection 2 or 3, is not either of the following:

29 a. A party to the proceeding.

30 b. An individual having a familial, financial,
31 professional, or employment relationship with the director
32 whose indemnification or advance for expenses is the subject
33 of the decision being made, which relationship would in the
34 circumstances, reasonably be expected to exert an influence on
35 the director's judgment when voting on the decision being

1 made.

2 ~~3~~ 4. "Expenses" includes counsel fees.

3 ~~4~~ 5. "Liability" means the obligation to pay a judgment,
4 settlement, penalty, fine, including an excise tax assessed
5 with respect to an employee benefit plan, or reasonable
6 expenses incurred with respect to a proceeding.

7 ~~5~~ 6. "Official capacity" means:

8 a. When used with respect to a director, the office of
9 director in a cooperative.

10 b. When used with respect to an ~~individual-other-than-a~~
11 ~~director officer~~, as contemplated in section 501.417, the
12 office in a cooperative held by the officer ~~or-the-employment~~
13 ~~or-agency-relationship-undertaken-by-the-employee-or-agent-on~~
14 ~~behalf-of-the-cooperative.~~

15 "Official capacity" does not include service for any other
16 ~~foreign-or domestic~~ or foreign cooperative or any corporation,
17 partnership, joint venture, trust, employee benefit plan, or
18 other enterprise entity.

19 ~~6~~ 7. "Party" ~~includes~~ means an individual who was, is, or
20 is threatened to be made a named defendant or respondent in a
21 proceeding.

22 ~~7~~ 8. "Proceeding" means any threatened, pending, or
23 completed action, suit, or proceeding, whether civil,
24 criminal, administrative, or investigative and whether formal
25 or informal.

26 Sec. 17. Section 501.412, Code 2003, is amended to read as
27 follows:

28 501.412 ~~AUTHORITY-TO-INDEMNIFY~~ PERMISSIBLE
29 INDEMNIFICATION.

30 1. Except as otherwise provided in ~~subsection-4~~ this
31 section, a cooperative may indemnify an individual made who is
32 a party to a proceeding because the individual is ~~or-was~~ a
33 director against liability incurred in the proceeding if ~~all~~
34 either of the following apply:

35 a. All of the following apply:

1 a- (1) The individual acted in good faith.

2 b- (2) The individual reasonably believed ~~either-of-the~~
3 following:

4 {1} (a) In the case of conduct in the individual's
5 official capacity ~~with-the-cooperative~~, that the individual's
6 conduct was in the ~~cooperative's~~ best interests of the
7 cooperative.

8 {2} (b) In all other cases, that the individual's conduct
9 was at least not opposed to the ~~cooperative's~~ best interests
10 of the cooperative.

11 c- (3) In the case of any criminal proceeding, the
12 individual had no reasonable cause to believe the individual's
13 conduct was unlawful.

14 b. The individual engaged in conduct for which broader
15 indemnification has been made permissible or obligatory under
16 a provision of the articles of organization as authorized by
17 section 501.407, subsection 2.

18 2. A director's conduct with respect to an employee
19 benefit plan for a purpose the director reasonably believed to
20 be in the interests of the participants in and beneficiaries
21 of the plan is conduct that satisfies the requirement of
22 subsection 1, paragraph "b" "a", subparagraph (2),
23 subparagraph subdivision (b).

24 3. The termination of a proceeding by judgment, order,
25 settlement, conviction, or upon a plea of nolo contendere or
26 its equivalent is not, of itself, determinative that the
27 director did not meet the relevant standard of conduct
28 described in this section.

29 4. Unless ordered by a court pursuant to section
30 501.415, subsection 1, paragraph "c", a cooperative shall not
31 indemnify a director ~~under-this-section~~ in either of the
32 following circumstances:

33 a. In connection with a proceeding by or in the right of
34 the cooperative, ~~in-which-the-director-was-adjudged-liable-to~~
35 the-cooperative except for reasonable expenses incurred in

1 connection with the proceeding if it is determined that the
2 director has met the relevant standard of conduct under
3 subsection 1, paragraph "a".

4 b. In connection with any other proceeding charging
5 ~~improper-personal-benefit-to-the-director, whether or not~~
6 ~~involving action in the director's official capacity, in~~ with
7 respect to conduct for which the director was adjudged liable
8 on the basis that ~~personal~~ the director received a financial
9 ~~benefit was improperly received by the director to which the~~
10 director was not entitled, whether or not involving action in
11 the director's official capacity.

12 ~~5. Indemnification permitted under this section in~~
13 ~~connection with a proceeding by or in the right of the~~
14 ~~cooperative is limited to reasonable expenses incurred in~~
15 ~~connection with the proceeding.~~

16 Sec. 18. Section 501.413, Code 2003, is amended to read as
17 follows:

18 501.413 MANDATORY INDEMNIFICATION.

19 ~~Unless limited by its articles of association, a~~ A
20 cooperative shall indemnify a director who was wholly
21 successful, on the merits or otherwise, in the defense of any
22 proceeding to which the director was a party because the
23 director is or was a director of the cooperative ~~against~~
24 ~~reasonable expenses incurred by the director in connection~~
25 ~~with the proceeding.~~

26 Sec. 19. Section 501.414, Code 2003, is amended to read as
27 follows:

28 501.414 ADVANCE FOR EXPENSES.

29 1. A cooperative may, before final disposition of a
30 proceeding, advance funds to pay for or reimburse the
31 reasonable expenses incurred by a director who is a party to a
32 proceeding ~~in advance of final disposition of the proceeding~~
33 because the person is a director if any of the person delivers
34 all of the following applies to the cooperative:

35 a. ~~The director furnishes the cooperative a~~ A written

1 affirmation of the director's good faith belief that either
2 the director has met the relevant standard of conduct
3 described in section 501.412 or that the proceeding involves
4 conduct for which liability has been eliminated under a
5 provision of the articles of organization as authorized by
6 section 501.407, subsection 1.

7 ~~b. The director-furnishes-the-cooperative-a~~ director's
8 written undertaking~~7-executed-personally-or-on-the-director's~~
9 ~~behalf7~~ to repay ~~the-advance-if~~ any funds advanced if the
10 director is not entitled to mandatory indemnification under
11 section 501.413 and it is ultimately determined that the
12 director ~~did-not-meet-the~~ has not met the relevant standard of
13 conduct described in 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 the financial ability of the director to make repayment.

21 3. ~~Determinations-and-authorizations-of-payments~~
22 Authorizations under this section shall be made ~~in-the-manner~~
23 ~~specified-in-section-501-416-~~ according to either of the
24 following:

25 a. By the board of directors, according to one of the
26 following:

27 (1) If there are two or more disinterested directors, by a
28 majority vote of all the disinterested directors, a majority
29 of whom shall for such purpose constitute a quorum, or by a
30 majority of the members of a committee of two or more
31 disinterested directors appointed by such a vote.

32 (2) If there are fewer than two disinterested directors,
33 if a quorum is present when the vote is taken, by the
34 affirmative vote of a majority of the directors present,
35 unless the articles or bylaws require the vote of a greater

1 number of directors, in which authorization directors who do
2 not qualify as disinterested directors may participate.

3 b. By the members, but voting interests owned by or voted
4 under the control of a director who at the time does not
5 qualify as a disinterested director shall not be voted on the
6 authorization.

7 Sec. 20. Section 501.415, Code 2003, is amended to read as
8 follows:

9 501.415 COURT-ORDERED INDEMNIFICATION.

10 ~~1. Unless a cooperative's articles of association provide~~
11 ~~otherwise, a~~ A director of the cooperative who is a party to a
12 proceeding because the person is a director may apply for
13 indemnification to the court conducting the proceeding or to
14 another court of competent jurisdiction for indemnification or
15 an advance for expenses. ~~On~~ After receipt of an application,
16 ~~the court~~ and after giving any notice the court considers
17 necessary ~~may order,~~ the court shall proceed according to the
18 following:

19 a. Order indemnification if it the court determines either
20 of the following: that the

21 ~~1. The director is entitled to mandatory indemnification~~
22 ~~under section 501.413, in which case the court shall also~~
23 ~~order the cooperative to pay the director's reasonable~~
24 ~~expenses incurred to obtain court-ordered indemnification.~~

25 ~~2. The director is fairly and reasonably entitled to~~
26 ~~indemnification in view of all the relevant circumstances,~~
27 ~~whether or not the director met the standard of conduct set~~
28 ~~forth in section 501.412 or was adjudged liable as described~~
29 ~~in section 501.412, subsection 4, but if the director was~~
30 ~~adjudged so liable the director's indemnification is limited~~
31 ~~to reasonable expenses incurred.~~

32 b. Order indemnification or advance for expenses if the
33 court determines that the director is entitled to
34 indemnification or advance for expenses pursuant to a
35 provision authorized by section 501.419, subsection 1.

1 c. Order indemnification or advance for expenses if the
2 court determines, in view of all the relevant circumstances,
3 that it is fair and reasonable to do one of the following:

4 (1) To indemnify the director.

5 (2) To advance expenses to the director, even if the
6 director has not met the relevant standard of conduct set
7 forth in section 501.412, subsection 1, failed to comply with
8 section 501.414, or was adjudged liable in a proceeding
9 referred to in subsection 501.412, subsection 4, paragraph "a"
10 or "b", but if the director was adjudged so liable the
11 director's indemnification shall be limited to reasonable
12 expenses incurred in connection with the proceeding.

13 2. If the court determines that the director is entitled
14 to indemnification under subsection 1, paragraph "a", or to
15 indemnification or advance for expenses under subsection 1,
16 paragraph "b", the court shall also order the cooperative to
17 pay the director's reasonable expenses incurred in connection
18 with obtaining court-ordered indemnification or advance for
19 expenses. If the court determines that the director is
20 entitled to indemnification or advance for expenses under
21 subsection 1, paragraph "c", the court may also order the
22 cooperative to pay the director's reasonable expenses to
23 obtain court-ordered indemnification or advance for expenses.

24 Sec. 21. Section 501.416, Code 2003, is amended to read as
25 follows:

26 501.416 DETERMINATION AND AUTHORIZATION OF
27 INDEMNIFICATION.

28 1. A cooperative shall not indemnify a director under
29 section 501.412 unless authorized ~~in-the~~ for a specific case
30 proceeding after a determination has been made that
31 indemnification of the director is permissible ~~in-the~~
32 circumstances because the director has met the relevant
33 standard of conduct set forth in section 501.412.

34 2. The determination shall be made by any one of the
35 following:

1 a. ~~By the board of directors by majority vote of a quorum~~
2 ~~consisting of directors not at the time parties to the~~
3 ~~proceeding~~ If there are two or more disinterested directors,
4 by the board of directors by a majority vote of all the
5 disinterested directors, a majority of whom shall for such
6 purpose constitute a quorum, or by a majority of the members
7 of a committee of two or more disinterested directors
8 appointed by such a vote.

9 ~~b. -- If a quorum cannot be obtained under paragraph "a", by~~
10 ~~majority vote of a committee duly designated by the board of~~
11 ~~directors, in which designation directors who are parties may~~
12 ~~participate, consisting solely of two or more directors not at~~
13 ~~the time parties to the proceeding.~~

14 c. b. By special legal counsel.

15 (1) The special legal counsel shall be selected by the
16 ~~board of directors or its committee~~ in the manner prescribed
17 described in paragraph "a" or "b".

18 (2) If a quorum of the board of ~~there are fewer than two~~
19 disinterested directors cannot be obtained under paragraph "a"
20 and a committee cannot be designated under paragraph "b", the
21 special legal counsel shall be selected by majority vote of
22 the full board of directors, in which selection directors who
23 are parties do not qualify as disinterested directors may
24 participate.

25 d. c. By the members, but voting interests owned by or
26 voted under the control of directors a director who are at the
27 time ~~parties to the proceeding~~ does not qualify as a
28 disinterested director shall not be voted on the
29 determination.

30 3. Authorization of indemnification ~~and evaluation as to~~
31 ~~reasonableness of expenses~~ shall be made in the same manner as
32 the determination that indemnification is permissible, except
33 that if there are fewer than two disinterested directors or if
34 the determination is made by special legal counsel,
35 authorization of indemnification ~~and evaluation as to~~

1 ~~reasonableness-of-expenses~~ shall be made by those entitled
2 under subsection 2, paragraph "c" "b", to select special legal
3 counsel.

4 Sec. 22. Section 501.417, Code 2003, is amended to read as
5 follows:

6 501.417 INDEMNIFICATION OF OFFICERS~~7--EMPLOYEES7--AND~~
7 AGENTS.

8 ~~Unless-a-cooperative's-articles-of-association-provide~~
9 ~~otherwise7--all-of-the-following-apply:~~

10 ~~1--An-officer-of-the-cooperative-who-is-not-a-director-is~~
11 ~~entitled-to-mandatory-indemnification-under-section-501-4137~~
12 ~~and-is-entitled-to-apply-for-court-ordered-indemnification~~
13 ~~under-section-501-4157-in-each-case-to-the-same-extent-as-a~~
14 ~~director.~~

15 ~~2-~~ 1. The A cooperative may indemnify and advance expenses
16 under this part to an officer~~7--employee7--or-agent~~ of the
17 cooperative who is ~~not-a-director-to~~ a party to the proceeding
18 because the person is an officer, according to both of the
19 following:

20 a. To the same extent as to a director.

21 ~~3-~~ b. ~~A-cooperative-may-also-indemnify-and-advance~~
22 ~~expenses-to-an-officer7--employee7--or-agent-who-is-not-a~~
23 ~~director-to-the-extent-consistent-with-law-that~~ If the person
24 is an officer but not a director, to such further extent as
25 may be provided by its the articles of association, the
26 bylaws, general-or-specific-action a resolution of its the
27 board of directors, or contract, except for either of the
28 following:

29 (1) Liability in connection with a proceeding by or in the
30 right of the cooperative other than for reasonable expenses
31 incurred in connection with the proceeding.

32 (2) Liability arising out of conduct that constitutes any
33 of the following:

34 (a) Receipt by the officer of a financial benefit to which
35 the officer is not entitled.

1 (b) An intentional infliction of harm on the cooperative
2 or the interest holders.

3 (c) An intentional violation of criminal law.

4 2. The provisions of subsection 1, paragraph "b", shall
5 apply to an officer who is also a director if the basis on
6 which the officer is made a party to a proceeding is an act or
7 omission solely as an officer.

8 3. An officer of a cooperative who is not a director is
9 entitled to mandatory indemnification under section 501.413,
10 and may apply to a court under section 501.415 for
11 indemnification or an advance for expenses, in each case to
12 the same extent to which a director may be entitled to
13 indemnification or an advance for expenses under those
14 provisions.

15 Sec. 23. Section 501.418, Code 2003, is amended to read as
16 follows:

17 501.418 INSURANCE.

18 A cooperative may purchase and maintain insurance on behalf
19 of an individual who is ~~or-was~~ a director, or officer,
20 ~~employee-or-agent~~ of the cooperative, or who, while a
21 director, or officer, ~~employee-or-agent~~ of the cooperative,
22 ~~is-or-was-serving~~ serves at the ~~request-of-the-cooperative~~
23 cooperative's request as a director, officer, partner,
24 trustee, employee, or agent of another ~~foreign-or~~ domestic or
25 foreign cooperative, corporation, partnership, joint venture,
26 trust, employee benefit plan, or other enterprise entity,
27 against liability asserted against or incurred by that
28 individual in that capacity or arising from the individual's
29 status as a director, or officer, ~~employee-or-agent~~, whether
30 or not the cooperative would have power to indemnify or
31 advance expenses to that individual against the same liability
32 under ~~section-501-412-or-501-413~~ this part.

33 Sec. 24. Section 501.419, Code 2003, is amended to read as
34 follows:

35 501.419 VARIATION BY CORPORATE ACTION -- APPLICATION OF

1 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, or for a
18 transaction from which the person seeking indemnification
19 derives an improper personal benefit.

20 1. A cooperative may, by a provision in its articles of
21 organization or bylaws or in a resolution adopted or a
22 contract approved by its board of directors or members,
23 obligate itself in advance of the act or omission giving rise
24 to a proceeding to provide indemnification in accordance with
25 section 501.412 or advance funds to pay for or reimburse
26 expenses in accordance with section 501.414. Any such
27 obligatory provision shall be deemed to satisfy the
28 requirements for authorization referred to in section 501.414,
29 subsection 3, and in section 501.416, subsection 3. Any such
30 provision that obligates the cooperative to provide
31 indemnification to the fullest extent permitted by law shall
32 be deemed to obligate the cooperative to advance funds to pay
33 for or reimburse expenses in accordance with section 501.414
34 to the fullest extent permitted by law, unless the provision
35 specifically provides otherwise.

1 498, 499, and 501, regarding various types of cooperative
2 associations. The bill also makes related additional changes
3 to Code chapter 490, as well as amending the savings provision
4 in Code section 490.1703 with regard to the passage of the
5 2002 amendments to the Iowa business corporation Act.

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Brunkhorst
Kettinger
Wamstadt

Commerce

CP 1109
Succeeded By
SF/HF 340

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON ANGELO)

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

A BILL FOR

1 An Act relating to business entities, based on revisions related
2 to the Iowa business corporation Act, including addition of a
3 savings clause and addition of provisions related to director
4 and officer liability, duty, and indemnification for certain
5 insurance companies and indemnification for cooperative
6 associations.

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

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1 Section 1. Section 490.1701, Code 2003, is amended by
2 adding the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. A corporation organized under
4 chapter 496C may voluntarily elect to adopt the provisions of
5 this chapter by complying with the provisions prescribed by
6 subsection 3.

7 Sec. 2. Section 490.1701, subsection 3, paragraph b, Code
8 2003, is amended to read as follows:

9 b. The instrument shall be delivered to the secretary of
10 state for filing and recording in the secretary of state's
11 office, ~~and.~~ If the corporation was organized under chapter
12 176, 524, or 533, the instrument shall also be filed and
13 recorded in the office of the county recorder. The
14 corporation shall at the time it files the instrument with the
15 secretary of state deliver also to the secretary of state for
16 filing in the secretary of state's office any biennial report
17 which is then due.

18 If the county of the initial registered office as stated in
19 the instrument for a corporation organized under chapter 176,
20 524, or 533 is one which is other than the county where the
21 principal place of business of the corporation, as designated
22 in its articles of incorporation, was located, the corporation
23 shall forward to the county recorder of the county in which
24 the principal place of business of the corporation was located
25 a copy of the instrument and the corporation shall forward to
26 the recorder of the county in which the initial registered
27 office of the corporation is located, in addition to a copy of
28 the original instrument, a copy of the articles of
29 incorporation of the corporation together with all amendments
30 to them as then on file in the secretary of state's office.
31 The corporation shall, through an officer or director, certify
32 to the secretary of state that a copy has been sent to each
33 applicable county recorder, including the date each copy was
34 sent.

35 Sec. 3. Section 490.1703, subsection 1, Code 2003, is

1 amended to read as follows:

2 1. Except as provided in subsection 2, the repeal of a
3 statute by 1989 Iowa Acts, chapter 288, and the amendment or
4 repeal of a statute by 2002 Iowa Acts, chapter 1154, does not
5 affect:

6 a. The operation of the statute or any action taken under
7 it before its amendment or repeal.

8 b. Any ratification, right, remedy, privilege, obligation,
9 or liability acquired, accrued, or incurred under the statute
10 before its amendment or repeal.

11 c. Any violation of the statute, or any penalty,
12 forfeiture, or punishment incurred because of the violation,
13 before its amendment or repeal.

14 d. Any proceeding, reorganization, or dissolution
15 commenced under the statute before its amendment or repeal,
16 and the proceeding, reorganization, or dissolution may be
17 completed in accordance with the statute as if it had not been
18 amended or repealed.

19 Sec. 4. Section 491.5, subsection 8, Code 2003, is amended
20 by striking the subsection and inserting in lieu thereof the
21 following:

22 8. Any provision eliminating or limiting the personal
23 liability of a director to the corporation or its shareholders
24 or members for money damages as provided in section 490.202,
25 subsection 2, paragraph "d", except that section 490.202,
26 subsection 2, paragraph "d", subparagraph (3), shall have no
27 application.

28 Sec. 5. Section 491.5, Code 2003, is amended by adding the
29 following new subsection:

30 NEW SUBSECTION. 9. Any provision permitting or making
31 obligatory indemnification of a director as provided in
32 section 490.202, subsection 2, paragraph "e", except that
33 section 490.202, subsection 2, paragraph "e", subparagraph
34 (3), shall have no application.

35 Sec. 6. NEW SECTION. 491.16A DIRECTORS AND OFFICERS --

1 DUTIES AND LIABILITIES.

2 Sections 490.830 through 490.842 apply to corporations
3 organized under or subject to this chapter.

4 Sec. 7. Section 496C.14, unnumbered paragraph 7, Code
5 2003, is amended to read as follows:

6 Notwithstanding the foregoing provisions of this section,
7 purchase by the corporation is not required upon the
8 occurrence of any event other than death of a shareholder if
9 the corporation is dissolved or voluntarily elects to adopt
10 the provisions of the Iowa business corporation Act, as
11 provided in section 490.1701, subsection 2, within sixty days
12 after the occurrence of the event. The articles of
13 incorporation or bylaws may provide that purchase is not
14 required upon the death of a shareholder if the corporation is
15 dissolved within sixty days after the death. Notwithstanding
16 the foregoing provisions of this section, purchase by the
17 corporation is not required upon the death of a shareholder,
18 if the corporation voluntarily elects to adopt the provisions
19 of the Iowa business corporation Act, as provided in section
20 490.1701, subsection 2, within sixty days after death.

21 Sec. 8. Section 496C.16, Code 2003, is amended to read as
22 follows:

23 496C.16 MANAGEMENT.

24 All directors of a professional corporation and all
25 officers of a professional corporation except assistant
26 officers, shall at all times be individuals who are licensed
27 to practice in this state a profession which the corporation
28 is authorized to practice. ~~No person who is not licensed~~
29 ~~shall have any authority or duties in the management or~~
30 ~~control of the corporation. If any director or any officer~~
31 ~~ceases to have this qualification, the director or officer~~
32 ~~shall immediately and automatically cease to hold the~~
33 ~~directorship or office.~~ However, upon the occurrence of any
34 event that requires the corporation either to be dissolved or
35 to elect to adopt the provisions of the Iowa business

1 corporation Act, as provided in section 496C.19, provided the
2 corporation ceases to practice the profession that the
3 corporation is authorized to practice, as provided in section
4 496C.19, then individuals who are not licensed to practice in
5 this state a profession that the corporation is authorized to
6 practice may be appointed as officers and directors for the
7 sole purpose of carrying out the dissolution of the
8 corporation or, if applicable, the voluntary election of the
9 corporation to adopt the provisions of the Iowa business
10 corporation Act, as provided in section 496C.19.

11 Sec. 9. Section 496C.19, Code 2003, is amended to read as
12 follows:

13 496C.19 DISSOLUTION OR LIQUIDATION.

14 Violation of any provision of this chapter by a
15 professional corporation or any of its shareholders,
16 directors, or officers shall be cause for its involuntary
17 dissolution, or liquidation of its assets and business by the
18 district court, as provided in the Iowa business corporation
19 Act, chapter 490. Upon the death of the last remaining
20 shareholder of a professional corporation, or whenever the
21 last remaining shareholder is not licensed or ceases to be
22 licensed to practice in this state a profession which the
23 corporation is authorized to practice, or whenever any person
24 other than the shareholder of record becomes entitled to have
25 all shares of the last remaining shareholder of the
26 corporation transferred into that person's name or to exercise
27 voting rights, except as a proxy, with respect to such shares,
28 the corporation shall not practice any profession and it shall
29 either be promptly dissolved or shall promptly elect to adopt
30 the provisions of the Iowa business corporation Act, as
31 provided in section 490.1701, subsection 2. However, if prior
32 to such dissolution all outstanding shares of the corporation
33 are acquired by one or more persons licensed to practice in
34 this state a profession which the corporation is authorized to
35 practice, the corporation need not be dissolved and may

1 practice the profession as provided in this chapter.

2 Sec. 10. Section 497.33, Code 2003, is amended to read as
3 follows:

4 497.33 PERSONAL LIABILITY.

5 Except as otherwise provided in this chapter, a director,
6 officer, employee, or member of the corporation is not liable
7 on the corporation's debts or obligations and a director,
8 officer, member, or other volunteer is not personally liable
9 in that capacity, for a claim based upon ~~an act or omission of~~
10 ~~the person performed~~ any action taken, or any failure to take
11 action in the discharge of the person's duties, except for a
12 ~~breach of the duty of loyalty to the corporation, for acts or~~
13 ~~omissions not in good faith or which involve~~ the amount of a
14 financial benefit received by the person to which the person
15 is not entitled, an intentional infliction of harm on the
16 association or its members, or an intentional misconduct or
17 knowing violation of the criminal law, or for a transaction
18 from which the person derives an improper personal benefit.

19 Sec. 11. Section 498.35, Code 2003, is amended to read as
20 follows:

21 498.35 PERSONAL LIABILITY.

22 Except as otherwise provided in this chapter, a director,
23 officer, employee, or member of the association is not liable
24 on the association's debts or obligations and a director,
25 officer, member, or other volunteer is not personally liable
26 in that capacity, for a claim based upon ~~an act or omission of~~
27 ~~the person performed~~ any action taken, or any failure to take
28 action in the discharge of the person's duties, except for a
29 ~~breach of the duty of loyalty to the association, for acts or~~
30 ~~omissions not in good faith or which involve~~ the amount of a
31 financial benefit received by the person to which the person
32 is not entitled, an intentional infliction of harm on the
33 association or its members, or an intentional misconduct or
34 knowing violation of the criminal law, or for a transaction
35 from which the person derives an improper personal benefit.

1 Sec. 12. Section 499.59, Code 2003, is amended to read as
2 follows:

3 499.59 PERSONAL LIABILITY.

4 Except as otherwise provided in this chapter, a director,
5 officer, employee, or member of the association is not liable
6 on the association's debts or obligations, and a director,
7 officer, member, or other volunteer is not personally liable
8 in that capacity, for a claim based upon ~~an act or omission of~~
9 ~~the person performed~~ any action taken, or any failure to take
10 action in the discharge of the person's duties, except for a
11 ~~breach of the duty of loyalty to the association, for acts or~~
12 ~~omissions not in good faith or which involve~~ the amount of a
13 financial benefit received by the person to which the person
14 is not entitled, an intentional infliction of harm on the
15 association or its members, or an intentional misconduct or
16 knowing violation of the criminal law, or for a transaction
17 from which the person derives an improper personal benefit.

18 Sec. 13. Section 501.407, Code 2003, is amended to read as
19 follows:

20 501.407 PERSONAL LIABILITY -- INDEMNIFICATION.

21 1. The articles may contain a provision eliminating or
22 limiting the personal liability of a director, officer, or
23 interest holder of the cooperative for monetary money damages
24 for ~~breach of a fiduciary duty~~ any action taken, or any
25 failure to take action as a director, officer, or interest
26 holder, ~~provided that the provision does not eliminate or~~
27 ~~limit~~ except liability for any of the following:

28 1. a. ~~A breach of the duty of loyalty to the cooperative~~
29 ~~or its interest holders~~ An intentional infliction of harm on
30 the cooperative or its members.

31 2. b. ~~An act or omission not in good faith or which~~
32 ~~involves intentional misconduct or a knowing~~ A violation of
33 criminal law.

34 3. c. ~~A transaction from which the director, officer, or~~
35 ~~interest holder derives an improper personal benefit~~ The

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1 amount of a financial benefit received by the person to which
2 the person is not entitled.

3 4- d. An act or omission occurring prior to the date when
4 the provision in the articles becomes effective.

5 2. The articles may contain a provision permitting or
6 making obligatory indemnification of a director for liability,
7 as defined in section 501.411, to any person for any action
8 taken, or any failure to take any action, as a director,
9 except liability for any of the following:

10 a. Receipt of a financial benefit to which the person is
11 not entitled.

12 b. An intentional infliction of harm on the corporation or
13 its shareholders.

14 c. An intentional violation of criminal law.

15 Sec. 14. Section 501.411, Code 2003, is amended to read as
16 follows:

17 501.411 DEFINITIONS.

18 As used in this part, unless the context otherwise
19 requires:

20 1. "Cooperative" includes any domestic or foreign
21 predecessor entity of a cooperative ~~in-a-merger-or-other~~
22 ~~transaction-in-which-the-predecessor's-existence-ceased-upon~~
23 ~~consummation-of-the-transaction.~~

24 2. "Director" or "officer" means an individual who is or
25 was a director or officer, respectively, of a cooperative or
26 ~~an-individual~~ who, while a director or officer of a the
27 cooperative, is or was serving at the cooperative's request as
28 a director, officer, partner, trustee, employee, or agent of
29 another ~~foreign-or~~ domestic or foreign cooperative,
30 corporation, partnership, joint venture, trust, employee
31 benefit plan, or other enterprise entity. A director or
32 officer is considered to be serving an employee benefit plan
33 at the cooperative's request if the director's or officer's
34 duties to the cooperative also impose duties on, or otherwise
35 involve services by, that director or officer to the plan or

1 to participants in or beneficiaries of the plan. "Director"
2 or "officer" includes, unless the context requires otherwise,
3 the estate or personal representative of a director or
4 officer.

5 3. "Disinterested director" means a director who at the
6 time of a vote referred to in section 501.414, subsection 3,
7 or a vote or selection referred to in section 501.416,
8 subsection 2 or 3, is not either of the following:

9 a. A party to the proceeding.

10 b. An individual having a familial, financial,
11 professional, or employment relationship with the director
12 whose indemnification or advance for expenses is the subject
13 of the decision being made, which relationship would in the
14 circumstances, reasonably be expected to exert an influence on
15 the director's judgment when voting on the decision being
16 made.

17 ~~3-~~ 4. "Expenses" includes counsel fees.

18 ~~4-~~ 5. "Liability" means the obligation to pay a judgment,
19 settlement, penalty, fine, including an excise tax assessed
20 with respect to an employee benefit plan, or reasonable
21 expenses incurred with respect to a proceeding.

22 ~~5-~~ 6. "Official capacity" means:

23 a. When used with respect to a director, the office of
24 director in a cooperative.

25 b. When used with respect to an ~~individual other than a~~
26 director officer, as contemplated in section 501.417, the
27 office in a cooperative held by the officer ~~or the employment~~
28 ~~or agency relationship undertaken by the employee or agent on~~
29 ~~behalf of the cooperative.~~

30 "Official capacity" does not include service for any other
31 ~~foreign or domestic~~ or foreign cooperative or any corporation,
32 partnership, joint venture, trust, employee benefit plan, or
33 other enterprise entity.

34 ~~6-~~ 7. "Party" ~~includes~~ means an individual who was, is, or
35 is threatened to be made a ~~named~~ defendant or respondent in a

1 proceeding.

2 7- 8. "Proceeding" means any threatened, pending, or
3 completed action, suit, or proceeding, whether civil,
4 criminal, administrative, or investigative and whether formal
5 or informal.

6 Sec. 15. Section 501.412, Code 2003, is amended to read as
7 follows:

8 501.412 ~~AUTHORITY-TO-INDEMNIFY~~ PERMISSIBLE
9 INDEMNIFICATION.

10 1. a. Except as otherwise provided in ~~subsection-4~~ this
11 section, a cooperative may indemnify an individual made who is
12 a party to a proceeding because the individual is ~~or-was~~ a
13 director against liability incurred in the proceeding if ~~at~~
14 either of the following ~~apply~~ applies in full:

15 a- (1) The individual acted in good faith.

16 b- (2) The individual reasonably believed ~~either~~ all of
17 the following:

18 (1) (a) In the case of conduct in the individual's
19 official capacity ~~with-the-cooperative~~, that the individual's
20 conduct was in the ~~cooperative's~~ best interests of the
21 cooperative.

22 (2) (b) In all other cases, that the individual's conduct
23 was at least not opposed to the ~~cooperative's~~ best interests
24 of the cooperative.

25 c- (c) In the case of any criminal proceeding, the
26 individual had no reasonable cause to believe the individual's
27 conduct was unlawful.

28 b. The individual engaged in conduct for which broader
29 indemnification has been made permissible or obligatory under
30 a provision of the articles of organization as authorized by
31 section 501.407, subsection 2.

32 2. A director's conduct with respect to an employee
33 benefit plan for a purpose the director reasonably believed to
34 be in the interests of the participants in and beneficiaries
35 of the plan is conduct that satisfies the requirement of

1 subsection 1, paragraph "b" "a", subparagraph (2),
2 subparagraph subdivision (b).

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

8 4. A Unless ordered by a court pursuant to section
9 501.415, subsection 1, paragraph "c", a cooperative shall not
10 indemnify a director under-this-section in either of the
11 following circumstances:

12 a. In connection with a proceeding by or in the right of
13 the cooperative, in-which-the-director-was-adjudged-liable-to
14 the-cooperative except for reasonable expenses incurred in
15 connection with the proceeding if it is determined that the
16 director has met the relevant standard of conduct under
17 subsection 1, paragraph "a".

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 with
21 respect to conduct for which the director was adjudged liable
22 on the basis that personal the director received a financial
23 benefit was-improperly-received-by-the-director to which the
24 director was not entitled, whether or not involving action in
25 the director's official capacity.

26 ~~5.--Indemnification-permitted-under-this-section-in~~
27 ~~connection-with-a-proceeding-by-or-in-the-right-of-the~~
28 ~~cooperative-is-limited-to-reasonable-expenses-incurred-in~~
29 ~~connection-with-the-proceeding-~~

30 Sec. 16. Section 501.413, Code 2003, is amended to read as
31 follows:

32 501.413 MANDATORY INDEMNIFICATION.

33 ~~Unless-limited-by-its-articles-of-association,-a A~~
34 cooperative shall indemnify a director who against reasonable
35 expenses incurred by the director in connection with the

1 proceeding in which the director was wholly successful, on the
2 merits or otherwise, in the defense of any proceeding to which
3 the director was a party because the director is or was a
4 director of the cooperative against-reasonable-expenses
5 incurred-by-the-director-in-connection-with-the-proceeding.

6 Sec. 17. Section 501.414, Code 2003, is amended to read as
7 follows:

8 501.414 ADVANCE FOR EXPENSES.

9 1. A cooperative may, before final disposition of a
10 proceeding, advance funds to pay for or reimburse the
11 reasonable expenses incurred by a director who is a party to a
12 proceeding in-advance-of-final-disposition-of-the-proceeding
13 because the person is a director if any-of the person delivers
14 all of the following applies to the cooperative:

15 a. ~~The-director-furnishes-the-cooperative-a~~ A written
16 affirmation of the director's good faith belief that either
17 the director has met the relevant standard of conduct
18 described in section 501.412 or that the proceeding involves
19 conduct for which liability has been eliminated under a
20 provision of the articles of organization as authorized by
21 section 501.407, subsection 1.

22 b. ~~The director-furnishes-the-cooperative-a~~ director's
23 written undertaking, executed personally or on the director's
24 behalf, to repay the advance if any funds advanced if the
25 director is not entitled to mandatory indemnification under
26 section 501.413 and it is ultimately determined that the
27 director did-not-meet-the has not met the relevant standard of
28 conduct described in section 501.412.

29 ~~c.--A-determination-is-made-pursuant-to-section-501-416~~
30 ~~that-the-facts-then-known-to-those-making-the-determination~~
31 ~~would-not-preclude-indemnification-under-this-part.~~

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

1 3. ~~Determinations-and-authorizations-of-payments~~

2 Authorizations under this section shall be made ~~in-the-manner~~
3 ~~specified-in-section-501-416-~~ according to either of the
4 following:

5 a. By the board of directors, according to one of the
6 following:

7 (1) TWO OR MORE DISINTERESTED DIRECTORS. By a majority
8 vote of all the disinterested directors, a majority of whom
9 shall for such purpose constitute a quorum, or by a majority
10 of the members of a committee of two or more disinterested
11 directors appointed by such a vote.

12 (2) FEWER THAN TWO DISINTERESTED DIRECTORS. If a quorum
13 is present when the vote is taken, by the affirmative vote of
14 a majority of the directors present, unless the articles or
15 bylaws require the vote of a greater number of directors, in
16 which authorization directors who do not qualify as
17 disinterested directors may participate.

18 b. By the members, but voting interests owned by or voted
19 under the control of a director who at the time does not
20 qualify as a disinterested director shall not be voted on the
21 authorization.

22 Sec. 18. Section 501.415, Code 2003, is amended to read as
23 follows:

24 501.415 COURT-ORDERED INDEMNIFICATION.

25 1. ~~Unless-a-cooperative's-articles-of-association-provide~~
26 ~~otherwise-~~ A director of-the-cooperative who is a party to a
27 proceeding because the person is a director may apply ~~for~~
28 ~~indemnification~~ to the court conducting the proceeding or to
29 another court of competent jurisdiction for indemnification or
30 an advance for expenses. ~~On~~ After receipt of an application,
31 ~~the-court~~ and after giving any notice the court considers
32 necessary ~~may-order,~~ the court shall proceed according to the
33 following:

34 a. Order indemnification if it the court determines either
35 of-the-following: that the

1 ~~1.--The director is entitled to mandatory indemnification~~
2 ~~under section 501.413, in which case the court shall also~~
3 ~~order the cooperative to pay the director's reasonable~~
4 ~~expenses incurred to obtain court-ordered indemnification.~~

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

12 b. Order indemnification or advance for expenses if the
13 court determines that the director is entitled to
14 indemnification or advance for expenses pursuant to a
15 provision authorized by section 501.419, subsection 1.

16 c. Order indemnification or advance for expenses if the
17 court determines, in view of all the relevant circumstances,
18 that it is fair and reasonable to do one of the following:

19 (1) To indemnify the director.

20 (2) To advance expenses to the director, even if the
21 director has not met the relevant standard of conduct set
22 forth in section 501.412, subsection 1, failed to comply with
23 section 501.414, or was adjudged liable in a proceeding
24 referred to in subsection 501.412, subsection 4, paragraph "a"
25 or "b", but if the director was adjudged so liable the
26 director's indemnification shall be limited to reasonable
27 expenses incurred in connection with the proceeding.

28 2. If the court determines that the director is entitled
29 to indemnification under subsection 1, paragraph "a", or to
30 indemnification or advance for expenses under subsection 1,
31 paragraph "b", the court shall also order the cooperative to
32 pay the director's reasonable expenses incurred in connection
33 with obtaining court-ordered indemnification or advance for
34 expenses. If the court determines that the director is
35 entitled to indemnification or advance for expenses under

1 subsection 1, paragraph "c", the court may also order the
2 cooperative to pay the director's reasonable expenses to
3 obtain court-ordered indemnification or advance for expenses.

4 Sec. 19. Section 501.416, Code 2003, is amended to read as
5 follows:

6 501.416 DETERMINATION AND AUTHORIZATION OF
7 INDEMNIFICATION.

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

14 2. The determination shall be made by any one of the
15 following:

16 a. ~~By-the-board-of-directors-by-majority-vote-of-a-quorum~~
17 ~~consisting-of-directors-not-at-the-time-parties-to-the~~
18 proceeding If there are two or more disinterested directors,
19 by the board of directors by a majority vote of all the
20 disinterested directors, a majority of whom shall for such
21 purpose constitute a quorum, or by a majority of the members
22 of a committee of two or more disinterested directors
23 appointed by such a vote.

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

29 c. b. By special legal counsel.

30 (1) The special legal counsel shall be selected ~~by-the~~
31 ~~board-of-directors-or-its-committee~~ in the manner prescribed
32 described in paragraph "a" ~~or-"b"~~.

33 (2) If a-quorum-of-the-board-of there are fewer than two
34 disinterested directors ~~cannot-be-obtained-under-paragraph-"a"~~
35 ~~and-a-committee-cannot-be-designated-under-paragraph-"b",-the~~

1 special legal counsel shall be selected by majority-vote-of
2 the full board of directors, in which selection directors who
3 are-parties do not qualify as disinterested directors may
4 participate.

5 ~~d. c.~~ By the members, but voting interests owned by or
6 voted under the control of directors a director who are at the
7 time parties-to-the-proceeding does not qualify as a
8 disinterested director shall not be voted on the
9 determination.

10 3. Authorization of indemnification ~~and-evaluation-as-to~~
11 ~~reasonableness-of-expenses~~ shall be made in the same manner as
12 the determination that indemnification is permissible, except
13 that if there are fewer than two disinterested directors or if
14 the determination is made by special legal counsel,
15 authorization of indemnification ~~and-evaluation-as-to~~
16 ~~reasonableness-of-expenses~~ shall be made by those entitled
17 under subsection 2, paragraph "c" "b", to select special legal
18 counsel.

19 Sec. 20. Section 501.417, Code 2003, is amended to read as
20 follows:

21 501.417 INDEMNIFICATION OF OFFICERS~~7~~-EMPLOYEES~~7~~-AND
22 AGENTS.

23 ~~Unless-a-cooperative's-articles-of-association-provide~~
24 ~~otherwise7-all-of-the-following-apply7~~

25 ~~17--An-officer-of-the-cooperative-who-is-not-a-director-is~~
26 ~~entitled-to-mandatory-indemnification-under-section-501-4137~~
27 ~~and-is-entitled-to-apply-for-court-ordered-indemnification~~
28 ~~under-section-501-4157-in-each-case-to-the-same-extent-as-a~~
29 ~~director7~~

30 27 1. The A cooperative may indemnify and advance expenses
31 under this part to an officer~~7~~-employee~~7~~-or-agent of the
32 cooperative who is not-a-director-to a party to the proceeding
33 because the person is an officer, according to both of the
34 following:

35 a. To the same extent as to a director.

1 ~~3. b. A cooperative may also indemnify and advance~~
2 ~~expenses to an officer, employee, or agent who is not a~~
3 ~~director to the extent consistent with law that~~ If the person
4 is an officer but not a director, to such further extent as
5 may be provided by its the articles of association, the
6 bylaws, general or specific action a resolution of its the
7 board of directors, or contract, except for either of the
8 following:

9 (1) Liability in connection with a proceeding by or in the
10 right of the cooperative other than for reasonable expenses
11 incurred in connection with the proceeding.

12 (2) Liability arising out of conduct that constitutes any
13 of the following:

14 (a) Receipt by the officer of a financial benefit to which
15 the officer is not entitled.

16 (b) An intentional infliction of harm on the cooperative
17 or the interest holders.

18 (c) An intentional violation of criminal law.

19 2. The provisions of subsection 1, paragraph "b", shall
20 apply to an officer who is also a director if the basis on
21 which the officer is made a party to a proceeding is an act or
22 omission solely as an officer.

23 3. An officer of a cooperative who is not a director is
24 entitled to mandatory indemnification under section 501.413,
25 and may apply to a court under section 501.415 for
26 indemnification or an advance for expenses, in each case to
27 the same extent to which a director may be entitled to
28 indemnification or an advance for expenses under those
29 provisions.

30 Sec. 21. Section 501.418, Code 2003, is amended to read as
31 follows:

32 501.418 INSURANCE.

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

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

13 Sec. 22. Section 501.419, Code 2003, is amended to read as
14 follows:

15 501.419 VARIATION BY CORPORATE ACTION -- APPLICATION OF
16 THIS PART.

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

35 1. A cooperative may, by a provision in its articles of

1 organization or bylaws or in a resolution adopted or a
2 contract approved by its board of directors or members,
3 obligate itself in advance of the act or omission giving rise
4 to a proceeding to provide indemnification in accordance with
5 section 501.412 or advance funds to pay for or reimburse
6 expenses in accordance with section 501.414. Any such
7 obligatory provision shall be deemed to satisfy the
8 requirements for authorization referred to in section 501.414,
9 subsection 3, and in section 501.416, subsection 3. Any such
10 provision that obligates the cooperative to provide
11 indemnification to the fullest extent permitted by law shall
12 be deemed to obligate the cooperative to advance funds to pay
13 for or reimburse expenses in accordance with section 501.414
14 to the fullest extent permitted by law, unless the provision
15 specifically provides otherwise.

16 2. Any provision pursuant to subsection 1 shall not
17 obligate the cooperative to indemnify or advance expenses to a
18 director of a predecessor of the cooperative, pertaining to
19 conduct with respect to the predecessor, unless otherwise
20 specifically provided. Any provision for indemnification or
21 advance for expenses in the articles of organization, bylaws,
22 or a resolution of the board of directors or members of a
23 predecessor of the cooperative in a merger or in a contract to
24 which the predecessor is a party, existing at the time the
25 merger takes effect, shall be governed by section 501.618,
26 subsection 3.

27 3. A cooperative may, by a provision in its articles of
28 organization, limit any of the rights to indemnification or
29 advance for expenses created by or pursuant to this part.

30 4. This part does not limit a cooperative's power to pay
31 or reimburse expenses incurred by a director or an officer in
32 connection with the director's or officer's appearance as a
33 witness in a proceeding at a time when the director or officer
34 is not a party.

35 5. This part does not limit a cooperative's power to

1 indemnify, advance expenses to, or provide or maintain
2 insurance on behalf of an employee or agent.

3 Sec. 23. NEW SECTION. 501.420 EXCLUSIVITY.

4 A cooperative may provide indemnification or advance
5 expenses to a director or an officer only as permitted by this
6 chapter.

7 EXPLANATION

8 This bill applies changes made during the 2002 Legislative
9 Session to provisions regarding director and officer duties,
10 liability, and indemnification in Code chapter 490 to similar
11 provisions in Code chapter 491, which is the older corporation
12 law in Iowa under which Iowa mutual insurance companies and
13 mutual insurance holding companies are organized; Code chapter
14 496C, regarding professional corporations; Code chapters 497,
15 498, 499, and 501, regarding various types of cooperative
16 associations. The bill also makes related additional changes
17 to Code chapter 490, as well as amending the savings provision
18 in Code section 490.1703 with regard to the passage of the
19 2002 amendments to the Iowa business corporation Act.

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SENATE FILE 340

AN ACT

RELATING TO BUSINESS ENTITIES, BASED ON REVISIONS RELATED TO THE IOWA BUSINESS CORPORATION ACT, INCLUDING ADDITION OF A SAVINGS CLAUSE AND ADDITION OF PROVISIONS RELATED TO DIRECTOR AND OFFICER LIABILITY, DUTY, AND INDEMNIFICATION FOR CERTAIN INSURANCE COMPANIES AND INDEMNIFICATION FOR COOPERATIVE ASSOCIATIONS.

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

Section 1. Section 490.1701, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A corporation organized under chapter 496C may voluntarily elect to adopt the provisions of this chapter by complying with the provisions prescribed by subsection 3.

Sec. 2. Section 490.1701, subsection 3, paragraph b, Code 2003, is amended to read as follows:

b. The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office, ~~and.~~ If the corporation was organized under chapter 176, 524, or 533, the instrument shall also be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

If the county of the initial registered office as stated in the instrument for a corporation organized under chapter 176, 524, or 533 is one which is other than the county where the principal place of business of the corporation, as designated

in its articles of incorporation, was located, the corporation shall forward to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the corporation shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to a copy of the original instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office. The corporation shall, through an officer or director, certify to the secretary of state that a copy has been sent to each applicable county recorder, including the date each copy was sent.

Sec. 3. Section 490.1703, subsection 1, Code 2003, is amended to read as follows:

1. Except as provided in subsection 2, the repeal of a statute by 1989 Iowa Acts, chapter 288, and the amendment or repeal of a statute by 2002 Iowa Acts, chapter 1154, does not affect:

- a. The operation of the statute or any action taken under it before its amendment or repeal.
- b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its amendment or repeal.
- c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its amendment or repeal.
- d. Any proceeding, reorganization, or dissolution commenced under the statute before its amendment or repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been amended or repealed.

Sec. 4. Section 490A.707, Code 2003, is amended to read as follows:

490A.707 LIMITATION OF LIABILITY OF MANAGERS.

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for monetary money damages for breach of fiduciary duty for any action taken, or any failure to take action, as a manager or a member with whom management of the limited liability company is vested, if the provision does not eliminate or limit the liability of a manager or a member with whom management of the limited liability company is vested for except for liability for any of the following:

1. ~~Breach of the manager's or member's duty of loyalty to the limited liability company or to its members~~ The amount of a financial benefit received by a manager or member to which the manager or member is not entitled.

2. ~~Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law~~ An intentional infliction of harm on the limited liability company or its members.

3. ~~Transaction from which the manager or member derives an improper personal benefit or a wrongful distribution in violation of section~~ A violation of section 490A.807.

4. An intentional violation of criminal law.

A provision shall not eliminate or limit the liability of a manager or member with whom management of the limited liability company is vested for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

Sec. 5. Section 491.5, subsection 8, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

8. Any provision eliminating or limiting the personal liability of a director to the corporation or its shareholders

or members for money damages as provided in section 490.202, subsection 2, paragraph "d", except that section 490.202, subsection 2, paragraph "d", subparagraph (3), shall have no application.

Sec. 6. Section 491.5, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. Any provision permitting or making obligatory indemnification of a director as provided in section 490.202, subsection 2, paragraph "e", except that section 490.202, subsection 2, paragraph "e", subparagraph (3), shall have no application.

Sec. 7. NEW SECTION. 491.16A DIRECTORS AND OFFICERS -- DUTIES AND LIABILITIES.

Sections 490.830 through 490.842 apply to corporations organized under or subject to this chapter.

Sec. 8. Section 496C.14, unnumbered paragraph 7, Code 2003, is amended to read as follows:

Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the occurrence of any event other than death of a shareholder if the corporation is dissolved or voluntarily elects to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2, within sixty days after the occurrence of the event. The articles of incorporation or bylaws may provide that purchase is not required upon the death of a shareholder if the corporation is dissolved within sixty days after the death. Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the death of a shareholder, if the corporation voluntarily elects to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2, within sixty days after death.

Sec. 9. Section 496C.16, Code 2003, is amended to read as follows:

496C.16 MANAGEMENT.

All directors of a professional corporation and all officers of a professional corporation except assistant officers, shall at all times be individuals who are licensed to practice in this state a profession which the corporation is authorized to practice. ~~No person who is not licensed shall have any authority or duties in the management or control of the corporation. If any director or any officer ceases to have this qualification, the director or officer shall immediately and automatically cease to hold the directorship or officer.~~ However, upon the occurrence of any event that requires the corporation either to be dissolved or to elect to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19, provided the corporation ceases to practice the profession that the corporation is authorized to practice, as provided in section 496C.19, then individuals who are not licensed to practice in this state a profession that the corporation is authorized to practice may be appointed as officers and directors for the sole purpose of carrying out the dissolution of the corporation or, if applicable, the voluntary election of the corporation to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19.

Sec. 10. Section 496C.19, Code 2003, is amended to read as follows:

496C.19 DISSOLUTION OR LIQUIDATION.

Violation of any provision of this chapter by a professional corporation or any of its shareholders, directors, or officers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in the Iowa business corporation Act, chapter 490. Upon the death of the last remaining shareholder of a professional corporation, or whenever the last remaining shareholder is not licensed or ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, or whenever any person

other than the shareholder of record becomes entitled to have all shares of the last remaining shareholder of the corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such shares, the corporation shall not practice any profession and it shall either be promptly dissolved or shall promptly elect to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2. However, if prior to such dissolution all outstanding shares of the corporation are acquired by one or more persons licensed to practice in this state a profession which the corporation is authorized to practice, the corporation need not be dissolved and may practice the profession as provided in this chapter.

Sec. 11. Section 497.33, Code 2003, is amended to read as follows:

497.33 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed any action taken, or any failure to take action in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional misconduct or knowing violation of the criminal law, or for a transaction from which the person derives an improper personal benefit.

Sec. 12. Section 498.35, Code 2003, is amended to read as follows:

498.35 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable

on the association's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed any action taken, or any failure to take action in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional misconduct or knowing violation of the criminal law or for a transaction from which the person derives an improper personal benefit.

Sec. 13. Section 499.37, Code 2003, is amended to read as follows:

499.37 OFFICERS AND EMPLOYEES.

1. The board of directors of the association shall select from their own number a president, one or more vice presidents, a secretary-treasurer or a secretary and a treasurer the association's officers as provided in its articles of incorporation or bylaws, and shall fill vacancies in such offices. The articles of incorporation or bylaws shall delegate to an officer the responsibility for all of the following:

a. Preparing minutes of meetings of the directors and the shareholders.

b. Authenticating the association's records.

2. Unless the association's articles of incorporation or bylaws otherwise provide, said the association's officers shall be chosen serve for annual terms beginning at the close of the first regular meeting of members in each year.

The directors shall also choose and may remove such other officers and employees as they deem proper, or as the articles or bylaws may prescribe.

Sec. 14. Section 499.59, Code 2003, is amended to read as follows:

499.59 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed any action taken, or any failure to take action in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional misconduct or knowing violation of the criminal law or for a transaction from which the person derives an improper personal benefit.

Sec. 15. Section 501.407, Code 2003, is amended to read as follows:

501.407 PERSONAL LIABILITY -- INDEMNIFICATION.

1. The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or interest holder of the cooperative for monetary money damages for breach of a fiduciary duty any action taken, or any failure to take action as a director, officer, or interest holder, provided that the provision does not eliminate or limit except liability for any of the following:

1. a. A breach of the duty of loyalty to the cooperative or its interest holders An intentional infliction of harm on the cooperative or its members.

2. b. An act or omission not in good faith or which involves intentional misconduct or a knowing An intentional violation of criminal law.

3. c. A transaction from which the director, officer, or interest holder derives an improper personal benefit The amount of a financial benefit received by the person to which the person is not entitled.

4- d. An act or omission occurring prior to the date when the provision in the articles becomes effective.

2. The articles may contain a provision permitting or making obligatory indemnification of a director or officer for liability, as defined in section 501.411, to any person for any action taken, or any failure to take any action, as a director or officer, except liability for any of the following:

a. Receipt of a financial benefit to which the person is not entitled.

b. An intentional infliction of harm on the corporation or its shareholders.

c. An intentional violation of criminal law.

Sec. 16. Section 501.411, Code 2003, is amended to read as follows:

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" or "officer" means an individual who is or was a director or officer, respectively, of a cooperative ~~or an individual~~ who, while a director or officer of a the cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another ~~foreign or~~ domestic or foreign cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise entity. A director or officer is considered to be serving an employee benefit plan at the cooperative's request if the director's or officer's duties to the cooperative also impose duties on, or otherwise involve services by, that director or officer to the plan or to participants in or beneficiaries of the plan. "Director"

or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. "Disinterested director" means a director who at the time of a vote referred to in section 501.414, subsection 3, or a vote or selection referred to in section 501.416, subsection 2 or 3, is not either of the following:

a. A party to the proceeding.

b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

3- 4. "Expenses" includes counsel fees.

4- 5. "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- 6. "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 officer, 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 or foreign cooperative or any corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise entity.

6- 7. "Party" ~~includes~~ means an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

7- 8. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Sec. 17. Section 501.412, Code 2003, is amended to read as follows:

501.412 ~~AUTHORITY-TO-INDEMNIFY~~ PERMISSIBLE INDEMNIFICATION.

1. Except as otherwise provided in subsection-4 this section, a cooperative may indemnify an individual made who is a party to a proceeding because the individual is or-was a director against liability incurred in the proceeding if all either of the following apply:

a. All of the following apply:

a- (1) The individual acted in good faith.

b- (2) The individual reasonably believed ~~either-of-the following:~~

(1) (a) 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 of the cooperative.

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

c- (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

b. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of organization as authorized by section 501.407, subsection 2.

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" "a", subparagraph (2), subparagraph subdivision (b).

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 relevant standard of conduct described in this section.

4. A Unless ordered by a court pursuant to section 501.415, subsection 1, paragraph "c", 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 except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1, paragraph "a".

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 with respect to conduct for which the director was adjudged liable on the basis that personal the director received a financial benefit was-improperly-received-by-the-director to which the director was not entitled, whether or not involving action in the director's official capacity.

~~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. 18. Section 501.413, Code 2003, is amended to read as follows:

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. 19. Section 501.414, Code 2003, is amended to read as follows:

501.414 ADVANCE FOR EXPENSES.

1. A cooperative may, ~~before final disposition of a proceeding, advance funds to 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 because the person is a director if any of the person delivers all of the following appites to the cooperative:~~

a. ~~The director furnishes the cooperative a~~ written affirmation of the director's good faith belief that either the director has met the relevant standard of conduct described in section 501.412 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of organization as authorized by section 501.407, subsection 1.

b. ~~The director furnishes the cooperative a~~ director's written undertaking, ~~executed personally or on the director's behalf to repay the advance if any funds advanced if the director is not entitled to mandatory indemnification under section 501.413 and it is ultimately determined that the director did not meet the~~ has not met the relevant 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 the financial ability of the director to make repayment.

3. ~~Determinations and authorizations of payments~~ Authorizations under this section shall be made ~~in the manner specified in section 501.416,~~ according to either of the following:

a. By the board of directors, according to one of the following:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

(2) If there are fewer than two disinterested directors, if a quorum is present when the vote is taken, by the affirmative vote of a majority of the directors present, unless the articles or bylaws require the vote of a greater number of directors, in which authorization directors who do not qualify as disinterested directors may participate.

b. By the members, but voting interests owned by or voted under the control of a director who at the time does not qualify as a disinterested director shall not be voted on the authorization.

Sec. 20. Section 501.415, Code 2003, is amended to read as follows:

501.415 COURT-ORDERED INDEMNIFICATION.

1. ~~Unless a cooperative's articles of association provide otherwise, a~~ director of the cooperative who is a party to a proceeding because the person is a director may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction for indemnification or an advance for expenses. ~~On~~ After receipt of an application, the court and after giving any notice the court considers necessary may order, the court shall proceed according to the following:

a. Order indemnification if ~~it~~ the court determines either of the following: that the

~~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.~~

b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 501.419, subsection 1.

c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 501.412, subsection 1, failed to comply with section 501.414, or was adjudged liable in a proceeding referred to in subsection 501.412, subsection 4, paragraph "a" or "b", but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph "a", or to indemnification or advance for expenses under subsection 1, paragraph "b", the court shall also order the cooperative to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under

subsection 1, paragraph "c", the court may also order the cooperative to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

Sec. 21. Section 501.416, Code 2003, is amended to read as follows:

501.416 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

1. A cooperative shall not indemnify a director under section 501.412 unless authorized in the for a specific case proceeding after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the relevant standard of conduct set forth in section 501.412.

2. The determination shall be made by any one 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 if there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

~~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.~~

~~or~~ b. By special legal counsel.

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

(2) If a quorum of the board of there are fewer than two disinterested 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 do not qualify as disinterested directors may participate.

d- c. By the members, but voting interests owned by or voted under the control of directors a director who are at the time parties-to-the-proceeding does not qualify as a disinterested director 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 there are fewer than two disinterested directors or 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" "b", to select special legal counsel.

Sec. 22. Section 501.417, Code 2003, is amended to read as follows:

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- 1. The A cooperative may indemnify and advance expenses under this part to an officer, employee-or-agent of the cooperative who is not-a-director-to a party to the proceeding because the person is an officer, according to both of the following:

a. To the same extent as to a director.

3- b. 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 If the person is an officer but not a director, to such further extent as may be provided by its the articles of association, the bylaws, general-or-specific-action a resolution of its the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the cooperative other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the cooperative or the interest holders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph "b", shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a cooperative who is not a director is entitled to mandatory indemnification under section 501.413, and may apply to a court under section 501.415 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

Sec. 23. Section 501.418, Code 2003, is amended to read as follows:

501.418 INSURANCE.

A cooperative may purchase and maintain insurance on behalf of an individual who is or-was a director, or officer, employee-or-agent of the cooperative, or who, while a

director, ~~or officer, employee, or agent~~ of the cooperative ~~is or was serving~~ serves at the request of the cooperative ~~cooperative's request~~ as a director, officer, partner, trustee, employee, or agent of another foreign or domestic or foreign cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise entity, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, ~~or officer, employee, or agent,~~ whether or not the cooperative would have power to indemnify ~~or advance expenses to~~ that individual against the same liability under ~~section 501.412 or 501.413~~ this part.

Sec. 24. Section 501.419, Code 2003, is amended to read as follows:

501.419 VARIATION BY CORPORATE ACTION -- 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.~~

1. A cooperative may, by a provision in its articles of organization or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 501.412 or advance funds to pay for or reimburse expenses in accordance with section 501.414. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 501.414, subsection 3, and in section 501.416, subsection 3. Any such provision that obligates the cooperative to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the cooperative to advance funds to pay for or reimburse expenses in accordance with section 501.414 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the cooperative to indemnify or advance expenses to a director of a predecessor of the cooperative, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of organization, bylaws, or a resolution of the board of directors or members of a predecessor of the cooperative in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 501.618, subsection 3.

3. A cooperative may, by a provision in its articles of organization, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a cooperative's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a cooperative's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Sec. 25. NEW SECTION. 501.420 EXCLUSIVITY.

A cooperative may provide indemnification or advance expenses to a director or an officer only as permitted by this chapter.

MARY E. KRAMER
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 340, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2003

THOMAS J. VILSACK
Governor