

## CHAPTER 501A

## COOPERATIVE ASSOCIATIONS ACT

Referred to in §10B.1, 10B.4, 10B.7, 15E.202, 203.1, 489.102, 499.4, 501.104, 502.201, 547.1, 556.1, 669.14

	SUBCHAPTER I		501A.403	Resignation of registered agent — discontinuance of registered office — statement.
	GENERAL PROVISIONS		501A.404	Service on domestic cooperatives.
501A.101	Short title.		501A.405	Service on foreign cooperative.
501A.102	Definitions.			
501A.103	Requirements for signatures on documents.			
	SUBCHAPTER II			SUBCHAPTER V
	FILING			ORGANIZATION
	PART 1		501A.501	Organizational purpose.
	GENERAL REQUIREMENTS		501A.502	Organizers.
501A.201	General filing requirements.		501A.503	Articles of organization.
501A.202	Filing duty of secretary of state.		501A.504	Amendment of articles.
501A.203	Effective time and date of documents.		501A.505	Existence.
			501A.506	Bylaws.
501A.204	Correcting filed documents.		501A.507	Cooperative records.
501A.205	Fees.			
501A.206	Forms.			SUBCHAPTER VI
501A.207	Appeal from secretary of state's refusal to file document.	501A.601		POWERS AND AUTHORITIES
501A.208	Evidentiary effect of copy of filed document.	501A.602		
501A.209	Certificate of existence.	501A.603		Agricultural commodities and products — marketing contracts.
501A.210	Penalty for signing false document.			
501A.211	Secretary of state — powers.			SUBCHAPTER VII
				DIRECTORS — LIABILITY AND INDEMNIFICATION — OFFICERS
	PART 2			PART 1
	FOREIGN COOPERATIVES			DIRECTORS
501A.221	Certificate of authority.	501A.701		Board governs cooperative.
501A.222	Cancellation of certificate of authority.	501A.702		Number of directors.
		501A.703		Election of directors.
	PART 3	501A.704		Filling vacancies.
	REPORTS	501A.705		Removal of directors.
501A.231	Biennial report for secretary of state.	501A.706		Board of directors' meetings.
		501A.707		Quorum.
	SUBCHAPTER III	501A.708		Action of board of directors.
	NAMES	501A.709		Action without a meeting.
501A.301	Name.	501A.710		Audit committee.
501A.302	Reserved name.	501A.711		Committees.
		501A.712		Standard of conduct.
	SUBCHAPTER IV	501A.713		Director conflicts of interest.
	REGISTERED OFFICE AND AGENT			PART 2
				LIABILITY AND INDEMNIFICATION OF PARTIES
501A.401	Registered office and registered agent.	501A.714		Limitation of liability of directors, officers, employees, members, and volunteers.
501A.402	Change of registered office or registered agent.	501A.715		Indemnification.
				PART 3
				OFFICERS
		501A.716		Officers.



**501A.102 Definitions.**

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

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

2. “*Alternative voting method*” means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.

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

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

5. “*Board*” means the board of directors of a cooperative.

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

7. “*Cooperative*” means a business association organized under this chapter.

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

9. “*Domestic business entity*” means a business entity organized under the laws of this state, including but not limited to a limited liability company as defined in section 489.102; a corporation organized pursuant to chapter 490; a nonprofit corporation organized under chapter 504; a partnership, limited partnership, limited liability partnership, or limited liability limited partnership as provided in chapter 486A or 488; or a cooperative association or other cooperative organized under this chapter or chapter 497, 498, 499, or 501.

10. “*Domestic cooperative*” means a cooperative association or other cooperative organized under this chapter or chapter 497, 498, 499, or 501.

11. “*Foreign business entity*” means a business entity that is not a domestic business entity.

12. “*Foreign cooperative*” means a foreign business entity organized to conduct business consistent with this chapter or chapter 497, 498, or 499.

13. “*Iowa limited liability company*” means a limited liability company governed by chapter 489.

14. “*Livestock*” means the same as defined in section 717.1.

15. “*Member*” means a person or entity reflected on the books of a cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.

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

17. “*Membership interest*” means a member’s interest in a cooperative consisting of a member’s financial rights, a member’s right to assign financial rights, a member’s governance rights, and a member’s right to assign governance rights. “*Membership interest*” includes patron membership interests and nonpatron membership interests.

18. “*Members’ meeting*” means a regular or special members’ meeting.

19. “*Nonpatron member*” means a member who holds a nonpatron membership interest.

20. “*Nonpatron membership interest*” means a membership interest that does not require the holder to conduct patronage for or with the cooperative to receive financial rights or distributions.

21. “Patron” means a person or entity who conducts patronage with the cooperative, regardless of whether the person is a member.

22. “Patronage” means business, transactions, or services done for or with the cooperative as defined by the cooperative.

23. “Patron member” means a member holding a patron membership interest.

24. “Patron membership interest” means the membership interest requiring the holder to conduct patronage for or with the cooperative, as specified by the cooperative to receive financial rights or distributions.

25. “Secretary” means the secretary of state.

26. “Traditional cooperative” means a cooperative or cooperative association organized under chapter 497, 498, 499, or 501.

2005 Acts, ch 135, §2, 118, 119; 2008 Acts, ch 1162, §139, 154, 155; 2011 Acts, ch 23, §16

**501A.103 Requirements for signatures on documents.**

A document is signed when a person has affixed the person’s name on a document. A person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the directors or the members must sign the document. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

2005 Acts, ch 135, §3; 2006 Acts, ch 1030, §52

Referred to in §501A.231

SUBCHAPTER II

FILING

Referred to in §501A.503, 501A.504

PART 1

GENERAL REQUIREMENTS

**501A.201 General filing requirements.**

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

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

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

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

5. The document must be in the English language. A cooperative’s name need not be in English if written in English letters or Arabic or Roman numerals. The articles, duly authenticated by the official having custody of the applicable records in the state or country under whose law the cooperative is formed, which are required of cooperatives, need not be in English if accompanied by a reasonably authenticated English translation.

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

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

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

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

7. The person executing the document shall sign the document and state beneath or

opposite the person's signature, the person's name, and the capacity in which the person signs.

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

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

2005 Acts, ch 135, §4

Referred to in §501A.202, 501A.504

#### **501A.202 Filing duty of secretary of state.**

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

2. The secretary files a document by recording it as filed on the date and at the time of receipt. After filing a document, and except as provided in section 501A.204, the secretary shall deliver the document, and an acknowledgment of the date and time of filing, to the domestic cooperative or foreign cooperative or its representative.

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

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

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

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

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

2005 Acts, ch 135, §5

#### **501A.203 Effective time and date of documents.**

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

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

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

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

2005 Acts, ch 135, §6

Referred to in §501A.231

#### **501A.204 Correcting filed documents.**

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

a. Contains an incorrect statement.

b. Was defectively executed, attested, sealed, verified, or acknowledged.

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

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

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

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

(3) Correct the incorrect statement or defective execution.

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

3. Articles of correction are effective on the effective date of the document the articles

correct, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

2005 Acts, ch 135, §7  
 Referred to in §501A.202, 501A.203

**501A.205 Fees.**

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

- a. Articles of organization ..... \$ 50
- b. Application for use of indistinguishable name ..... \$ 10
- c. Application for reserved name ..... \$ 10
- d. Notice of transfer of reserved name ..... \$ 10
- e. Application for registered name per month or part thereof ..... \$ 2
- f. Application for renewal of registered name ..... \$ 20
- g. Statement of change of registered agent or registered office or both ..... No fee
- h. Agent’s statement of change of registered office for each affected cooperative ..... No fee
- i. Agent’s statement of resignation ..... No fee
- j. Amendment of articles of organization..... \$ 50
- k. Restatement of articles of organization with amendment of articles ..... \$ 50
- l. Articles of merger ..... \$ 50
- m. Articles of dissolution ..... \$ 5
- n. Articles of revocation of dissolution ..... \$ 5
- o. Certificate of administrative dissolution ..... No fee
- p. Application for reinstatement following administrative dissolution ..... \$ 5
- q. Certificate of reinstatement ..... No fee
- r. Certificate of judicial dissolution ..... No fee
- s. Application for certificate of authority ..... \$100
- t. Application for amended certificate of authority ..... \$100
- u. Application for certificate of cancellation ..... \$ 10
- v. Certificate of revocation of authority to transact business ..... No fee
- w. Articles of correction ..... \$ 5
- x. Application for certificate of existence or authorization ..... \$ 5
- y. Any other document required or permitted to be filed by this chapter ..... \$ 5

2. The secretary shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic cooperative or foreign cooperative:

- a. One dollar a page for copying.
- b. Five dollars for the certificate.

2005 Acts, ch 135, §8  
 Referred to in §501A.503

**501A.206 Forms.**

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

- (1) An application for a certificate of existence.
- (2) A foreign cooperative's application for a certificate of authority to transact business in this state.
- (3) A foreign cooperative's application for a certificate of withdrawal.

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

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

2005 Acts, ch 135, §9; 2012 Acts, ch 1023, §157

[T] Code editor directive applied

**501A.207 Appeal from secretary of state's refusal to file document.**

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

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

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

2005 Acts, ch 135, §10

**501A.208 Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the secretary, bearing the secretary's signature, which may be in facsimile, and the seal of the secretary, is conclusive evidence that the original document is on file with the secretary.

2005 Acts, ch 135, §11

**501A.209 Certificate of existence.**

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

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

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

*b.* That one of the following applies:

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

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

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

*d.* If it is a domestic cooperative, that articles of dissolution have not been filed.

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

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

2005 Acts, ch 135, §12

**501A.210 Penalty for signing false document.**

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

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

2005 Acts, ch 135, §13

**501A.211 Secretary of state — powers.**

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

2005 Acts, ch 135, §14

PART 2

FOREIGN COOPERATIVES

**501A.221 Certificate of authority.**

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

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

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

3. The street address of the registered office of the foreign cooperative in this state and the name of the registered agent at the office.

4. The address of the principal office, which is the office where the principal executive offices are located.

5. A certificate of existence or a document of similar import duly authenticated by the proper office of the state or other jurisdiction of its formation which is dated no earlier than ninety days prior to the date that the application is filed with the secretary.

2005 Acts, ch 135, §15

Referred to in §501.104

**501A.222 Cancellation of certificate of authority.**

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

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

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

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

d. A mailing address to which the secretary may mail a copy of any process served on the secretary under paragraph “c”.

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

2. The certificate of authority shall be canceled upon the filing of the certificate of cancellation by the secretary.

2005 Acts, ch 135, §16



PART 3  
REPORTS

**501A.231 Biennial report for secretary of state.**

1. A cooperative authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

- a. The name of the cooperative.
- b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.
- c. The address of its principal office.
- d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative and signed as provided in section 501A.103 or by any other person authorized by the board of directors of the cooperative.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative is organized. Subsequent biennial reports shall be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state.

4. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required by section 501A.402. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 501A.402 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 501A.203, before returning the biennial report to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

2005 Acts, ch 135, §17; 2005 Acts, ch 179, §133

SUBCHAPTER III

NAMES

**501A.301 Name.**

1. A cooperative name must contain the word “cooperative”, “coop”, or the abbreviation “CP”.

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

- a. The name of a domestic cooperative, limited liability company, limited partnership, or corporation organized under the laws of this state or registered as a foreign cooperative, foreign limited liability company, foreign limited partnership, or foreign corporation in this state.

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

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

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

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

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

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

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

a. Has merged with the other business entity.

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

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

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

2005 Acts, ch 135, §18

#### **501A.302 Reserved name.**

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

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

2005 Acts, ch 135, §19

### SUBCHAPTER IV

#### REGISTERED OFFICE AND AGENT

#### **501A.401 Registered office and registered agent.**

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

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

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

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

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

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

2005 Acts, ch 135, §20

Referred to in §501A.402

**501A.402 Change of registered office or registered agent.**

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

- a. The name of the domestic cooperative or foreign cooperative.
- b. If the current registered office is to be changed, the street address of the new registered office.
- c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to the statement, to the appointment.
- d. That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.

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

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

4. The change of address of a registered office or the change of registered agent becomes effective upon the filing of such statement by the secretary.

2005 Acts, ch 135, §21

Referred to in §501A.231

**501A.403 Resignation of registered agent — discontinuance of registered office — statement.**

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

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

2005 Acts, ch 135, §22

**501A.404 Service on domestic cooperatives.**

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

2. If a cooperative has no registered agent, or the agent cannot with reasonable diligence be served, the cooperative may be served by registered mail or certified mail, return receipt requested, and addressed to the cooperative at its principal office. Service is perfected under this subsection at the earliest of any of the following:

- a. The date the cooperative receives the mail.
- b. The date shown on the return receipt for the registered mail or certified mail, return receipt requested, if signed on behalf of the cooperative.
- c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a domestic cooperative or foreign cooperative.

2005 Acts, ch 135, §23

**501A.405 Service on foreign cooperative.**

1. The registered agent of a foreign cooperative authorized to transact business in this

state is the foreign cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the foreign cooperative.

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

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

b. Has withdrawn from transacting business in this state.

c. Has had its certificate of authority revoked.

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

a. The date the foreign cooperative receives the mail.

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

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

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

2005 Acts, ch 135, §24

## SUBCHAPTER V

### ORGANIZATION

Referred to in §501A.201

#### **501A.501 Organizational purpose.**

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

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

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

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

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

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

2005 Acts, ch 135, §25

Referred to in §501A.601

#### **501A.502 Organizers.**

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

2. *Role of organizers.* If the first board of directors is not named in the articles of organization, the organizers may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until a contribution is accepted, whichever occurs first.

3. *Meeting or written action.*

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

(1) Amending the articles.

(2) Electing directors.

- (3) Adopting bylaws.
  - (4) Authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, or materials.
  - (5) Adopting a fiscal year.
  - (6) Contracting to receive and accept contributions.
  - (7) Making appropriate tax elections.
- b. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or director named, stating the date, time, and place of the meeting. Organizers and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board.

2005 Acts, ch 135, §26; 2012 Acts, ch 1023, §157

[T] Code editor directive applied

### **501A.503 Articles of organization.**

1. *Requirements.*
  - a. The articles of organization for the cooperative shall include all of the following:
    - (1) The name of the cooperative.
    - (2) The purpose of the cooperative.
    - (3) The name and address of each organizer.
    - (4) The period of duration for the cooperative, if the duration is not to be perpetual.
    - (5) The street address of the cooperative's initial registered office and the name of its registered agent at that office.
  - b. The articles may contain any other lawful provision.
2. *Effect of filing.* When the articles of organization or an application for a certificate of authority has been filed pursuant to subchapter II and the required fee has been paid to the secretary under section 501A.205, all of the following shall be presumed:
  - a. All conditions precedent that are required to be performed by the organizers have been complied with.
  - b. The organization of the cooperative has been organized under the laws of this state as a separate legal entity.
  - c. The secretary will issue an acknowledgment to the cooperative.

2005 Acts, ch 135, §27; 2006 Acts, ch 1030, §53

Referred to in §501A.505

### **501A.504 Amendment of articles.**

1. *Procedure.*
  - a. The articles of organization of a cooperative shall be amended only as follows:
    - (1) The board, by majority vote, must pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached ballot, if the board has provided for a mail ballot in the resolution, shall be mailed or otherwise distributed with a regular or special meeting notice to each member. If the board authorizes an alternative voting method, the text of the proposed amendment and explanation of how to cast a vote using the alternative voting method shall be distributed with the regular or special meeting notice to each member. The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on.
    - (2) If a quorum of the members is registered as being present or represented at the meeting, the proposed amendment is adopted if any of the following occurs:
      - (a) If approved by a majority of the votes cast.
      - (b) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.
  - b. After an amendment has been adopted by the members, the amendment must be signed by the chairperson, vice chairperson, records officer, or assistant records officer and a copy of the amendment filed in the office of the secretary.
2. *Certified statement.*

- a. The board shall prepare a certified statement affirming that all of the following are true:
- (1) The vote and meeting of the board adopting a resolution of the proposed amendment.
  - (2) The notice given to members of the meeting at which the amendment was adopted.
  - (3) The quorum registered at the meeting.
  - (4) The vote cast adopting the amendment.
- b. The certified statement shall be signed by the chairperson, vice chairperson, records officer, or financial officer and filed with the records of the cooperative.
3. *Amendment by directors.* A majority of directors may amend the articles if the cooperative does not have any members with voting rights.
4. *Filing.* An amendment of the articles shall be filed with the secretary as required in section 501A.201. The amendment is effective as provided in subchapter II. After an amendment to the articles of organization has been adopted and approved in the manner required by this chapter and by the articles of organization, the cooperative shall deliver to the secretary of state for filing articles of amendment which shall set forth all of the following:
- a. The name of the cooperative.
  - b. The text of each amendment adopted.
  - c. The date of each amendment's adoption.
  - d. (1) If the amendment was adopted by the directors, a statement that the amendment was duly adopted in the manner required by this chapter and by the articles of organization and that members' adoption was not required.
  - (2) If an amendment required adoption by the members, a statement that the amendment was duly adopted by the members in the manner required by this chapter and by the articles of organization.
- 2005 Acts, ch 135, §28; 2006 Acts, ch 1010, §128; 2011 Acts, ch 23, §17, 18; 2012 Acts, ch 1021, §96

[T] Subsection 4 amended

#### **501A.505 Existence.**

1. *Commencement.* The existence of a cooperative shall commence on or after the filing of articles of organization as provided in section 501A.503.
  2. *Duration.* A cooperative shall have a perpetual duration unless the cooperative provides for a limited period of duration in the articles or the cooperative is dissolved as provided in subchapter XII.
- 2005 Acts, ch 135, §29

#### **501A.506 Bylaws.**

1. *Required.* A cooperative shall have bylaws governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations, and distributions of membership interests, which are not otherwise provided in the articles or by this chapter.
2. *Contents.*
  - a. If not stated in the articles, a cooperative's bylaws must state all of the following:
    - (1) The purpose of the cooperative.
    - (2) The capital structure of the cooperative to the extent not stated in the articles, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue membership interests, which may be designated to be determined by the board.
    - (3) A provision designating the voting and governance rights, to the extent not stated in the articles, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this chapter.
    - (4) A statement that patron membership interests with voting power shall be restricted to one vote for each member regardless of the amount of patron membership interests held

in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in this chapter.

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

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

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

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

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

b. The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with law or the articles, and shall include all of the following:

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

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

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

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

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

### 3. *Adoption.*

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

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

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

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

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

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

### 4. *Amendment of bylaws by board or members.*

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

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

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

b. Any amendment of the bylaws adopted by the board must be distributed to the members no later than ten days after adoption and the notice of the annual meeting of the members

must contain a notice and summary or the actual amendments to the bylaws adopted by the board.

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

5. *Bylaw changing quorum or voting requirement for members.*

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

(2) An amendment to the bylaws to add, change, or delete a greater quorum or voting requirement for members shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

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

6. *Bylaw changing quorum or voting requirement for directors.*

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

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

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

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

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

7. *Emergency bylaws.*

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

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

(2) Quorum requirements for the meeting.

(3) Designation of additional or substitute directors.

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

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

(1) The action binds the cooperative.

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

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

2005 Acts, ch 135, §30

[P] Member control agreements, see §501A.1007

[P] Emergency powers, see §501A.602

### **501A.507 Cooperative records.**

1. *Permanent records required to be kept.* A cooperative shall keep as permanent records minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board.

2. *Accounting records.* A cooperative shall maintain appropriate accounting records.



3. *Format.* A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

4. *Copies.* A cooperative shall keep a copy of each of the following records at its principal office:

a. Its articles and other governing instruments.

b. Its bylaws or other similar instruments.

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

d. The minutes of members' meetings, and records of all actions taken by members without a meeting by unanimous written consent in lieu of a meeting, for the past three years.

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

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

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

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

2005 Acts, ch 135, §31

Referred to in §501A.801

## SUBCHAPTER VI

### POWERS AND AUTHORITIES

#### **501A.601 Powers.**

1. *Generally.*

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

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

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

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

b. This section does not give a cooperative the power or authority to exercise the powers of a credit union under chapter 533 or a bank under chapter 524.

2. *Dealing in products.* A cooperative may buy, sell, or deal in its own commodities or products or those of another person, including but not limited to those of its members, patrons, or nonmembers; or commodities or products of another cooperative organized under this chapter or another cooperative association organized under other law including a traditional cooperative, or members or patrons of such cooperatives or cooperative associations. A cooperative may negotiate the price at which its commodities or products may be sold.

3. *Contracts.* A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's members or patrons or between the cooperative and its members or patrons.

4. *Holding and transactions of real and personal property.*

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

b. A cooperative may take, receive, and hold real or personal property, including the principal and interest of money or other negotiable instruments and rights in a contract, in

trust for any purpose not inconsistent with the purposes of the cooperative in its articles or bylaws. The cooperative may exercise fiduciary powers in relation to taking, receiving, and holding the real or personal property. However, a cooperative's fiduciary powers do not include trust powers or trust services exercised for its members as provided in section 633.63 or chapter 524.

5. *Buildings.* A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

6. *Debt instruments.*

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

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

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

7. *Advances to patrons.* A cooperative may make advances to its members or patrons on products delivered by the members or patrons to the cooperative.

8. *Deposits.* A cooperative may accept donations or deposits of money or real or personal property from other cooperatives or associations from which the cooperative is constituted.

9. *Borrowing, investment, and payment terms.* A cooperative may borrow money from its members, or cooperatives or associations from which the cooperative is constituted, with security that the cooperative considers sufficient. A cooperative may invest or reinvest its moneys. A cooperative may extend payment terms to its customers not exceeding six months from the date of the sale of the cooperative's goods or services. An extension of payment terms by the cooperative shall not be secured by real property. A cooperative may exercise rights as a lien creditor or judgment creditor to collect any past due or delinquent account which is owed to the cooperative.

10. *Pensions and benefits.* A cooperative may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the cooperative, employee or incentive benefit plans, trusts, and provisions to or for the benefit of any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents, and in the case of a related organization that is a cooperative, members who provide services to the cooperative, and any of their families, dependents, and beneficiaries. A cooperative may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

11. *Insurance.*

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

b. A cooperative or a foreign cooperative shall not sell, solicit, or negotiate in this state any line of insurance to members or nonmembers.

12. *Ownership interests in other entities.*

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

(1) As a federation of associations.

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

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

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

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

2005 Acts, ch 135, §32; 2006 Acts, ch 1010, §129; 2012 Acts, ch 1017, §98

[T] Subsection 1, paragraph b amended

#### **501A.602 Emergency powers.**

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

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

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

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

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

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

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

a. The action binds the cooperative.

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

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

2005 Acts, ch 135, §33

[P] Emergency bylaws, see §501A.506

#### **501A.603 Agricultural commodities and products — marketing contracts.**

1. *Authority.* A cooperative and its patron member or patron may make and execute a marketing contract, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural commodity or product or specified commodity or product produced from a certain area exclusively to or through the cooperative or facility established by the cooperative.

2. *Title to commodities or products.* If a sale is contracted to the cooperative, the sale shall transfer title to the commodity or product absolutely, except for a recorded lien or security interest against the agricultural commodity or product of the patron member or patron as provided in article 9 of chapter 554, and provisions in Title XIV, subtitle 3, governing agricultural liens, and liens granted against farm products under federal law, to the cooperative on delivery of the commodity or product or at another specified time if expressly provided in the contract. The contract may allow the cooperative to sell or resell the commodity or product of its patron member or patron with or without taking title to the commodity or product, and pay the resale price to the patron member or patron, after

deducting all necessary selling, overhead, and other costs and expenses, including other proper reserves and interest.

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

4. *Damages for breach of contract.* The cooperative's bylaws or marketing contract in which the cooperative is a party may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the marketing contract regarding the sale or delivery or withholding of a commodity or product and may provide that the patron member or patron shall pay the costs, premiums for bonds, expenses, and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in the courts of this state. The provisions shall be enforced as liquidated damages and are not considered a penalty.

5. *Injunction against breach of contract.* If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

6. *Penalties for contract interference.* A person who knowingly induces or attempts to induce any patron member or patron of a cooperative organized under this chapter to breach a marketing contract with the cooperative is guilty of a simple misdemeanor.

7. *Civil damages for contract interference.* In addition to the penalty provided in subsection 6, the person may be liable to the cooperative for civil damages for any violation of that subsection.

2005 Acts, ch 135, §34; 2006 Acts, ch 1030, §54

## SUBCHAPTER VII

### DIRECTORS — LIABILITY AND INDEMNIFICATION — OFFICERS

#### PART 1

#### DIRECTORS

##### **501A.701 Board governs cooperative.**

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

2005 Acts, ch 135, §35

##### **501A.702 Number of directors.**

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

2005 Acts, ch 135, §36

**501A.703 Election of directors.**

1. *First board.* The organizers shall elect and obtain the acknowledgment of the first board to serve until directors are elected by members. Until election by members, the first board shall appoint directors to fill any vacancies.

2. *Generally.*

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

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

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

(1) At least one-half of the voting power on matters of the cooperative that are not specific to equity classifications or allocation units shall be allocated to the directors elected by members holding patron membership interests.

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

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

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

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

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

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

3. *Election at regular meeting.* Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings or special meetings to fill a vacancy, all directors shall be elected at the regular members' meeting. There shall be no cumulative voting for directors except as provided in this chapter and the articles or bylaws.

4. *District or local unit election of directors.* For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting or the annual regular members' meeting.

5. *Vote by ballot or alternative voting method.* The following shall apply to voting by ballot or alternative voting method:

a. A member shall not vote for a director other than by being present at a meeting, by mail ballot, or by alternative voting method, as authorized by the board.

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

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

d. If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting or as otherwise prescribed for an alternative voting method, the ballot or alternative voting method shall be accepted and counted as the vote of the absent member.

6. *Business entity members may nominate persons for director.* If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one or more natural persons to be eligible for election as a director.

7. *Term.* A director holds office for the term the director was elected and until a successor is elected and has qualified, or the earlier death, resignation, removal, or disqualification of the director.

8. *Acts not void or voidable.* The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the director void or voidable.

9. *Compensation.* Subject to any limitation in the articles or bylaws, the board may fix the compensation of the directors.

10. *Classification.* Directors may be divided into classes as provided in the articles or bylaws.

2005 Acts, ch 135, §37; 2006 Acts, ch 1030, §55; 2011 Acts, ch 23, §19; 2011 Acts, ch 131, §69, 158

#### **501A.704 Filling vacancies.**

1. *Patron directors.* If a patron member director's position becomes vacant or a new director position is created for a director that was or is to be elected by patron members, the board, in consultation with the directors elected by patron members, shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting. If there are no directors elected by patron members on the board at the time of the vacancy, a special patron members' meeting shall be called to fill the patron member director vacancy.

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

2005 Acts, ch 135, §38

#### **501A.705 Removal of directors.**

1. *Modification.* The provisions of this section apply unless modified by the articles or the bylaws.

2. *Removal of directors.* A director may be removed at any time, with or without cause, if all of the following apply:

a. The director was named by the board to fill a vacancy.

b. The members have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal.

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

3. *Removal by members.* Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of membership interests entitled to vote at an election of directors, provided that if a director has been elected solely by the patron members or the holders of a class or series of membership interests as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members for a director elected by the patron members or of all membership interests of that class or series entitled to vote at an election of that director.

4. *Election of replacements.* New directors may be elected at a meeting at which directors are removed.

2005 Acts, ch 135, §39

#### **501A.706 Board of directors' meetings.**

1. *Time and place.* Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by

any means described in subsection 2. If the board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. *Electronic communications.*

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

b. A director may participate in a board meeting not described in paragraph “a” by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

3. *Calling meetings and notice.* Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days’ notice or, in the case of organizational meetings, at least three days’ notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless this chapter, the articles, or the bylaws require it.

4. *Previously scheduled meetings.* If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

5. *Waiver of notice.* A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

6. *Absent directors.* If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

2005 Acts, ch 135, §40

**501A.707 Quorum.**

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

2005 Acts, ch 135, §41

**501A.708 Action of board of directors.**

1. Except as provided in subsection 2, the board shall only take action at a duly held meeting by the affirmative vote of any of the following:

- a. A majority of directors present at the meeting.
  - b. A majority of the directors’ voting power present at the meeting.
2. The articles or bylaws may require the affirmative vote of a larger vote than provided

in subsection 1. If the articles or bylaws require a larger vote than is required by this chapter for a particular action, the articles or bylaws control.

2005 Acts, ch 135, §42

**501A.709 Action without a meeting.**

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

2. *Effective time.* The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

3. *Notice and liability.* When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

2005 Acts, ch 135, §43

**501A.710 Audit committee.**

The board shall establish an audit committee to review the financial information and accounting report of the cooperative. The cooperative shall have the financial information audited for presentation to the members unless the cooperative's bylaws allow financial statements that are not audited and the financial statements clearly state that they are not audited and the difference between the financial statements and audited financial statements that are prepared according to generally accepted accounting procedures. The directors shall elect members to the audit committee. The audit committee shall ensure an independent review of the cooperative's finances and audit.

2005 Acts, ch 135, §44

**501A.711 Committees.**

1. *Generally.* A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the cooperative only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the cooperative and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

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

3. *Procedure.* The procedures for meetings of the board apply to committees and members of committees to the same extent as those sections apply to the board and individual directors.

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

5. *Standard of conduct.* The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 501A.712.

6. *Committee members considered directors.* Committee members are considered to be directors for purposes of sections 501A.712, 501A.713, and 501A.715.

2005 Acts, ch 135, §45

**501A.712 Standard of conduct.**

1. *Standard and liability.* A director shall discharge the duties of the position of director



in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the cooperative.

2. *Reliance.*

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

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

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

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

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

3. *Presumption of assent and dissent.* A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless any of the following applies:

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

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

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

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

2005 Acts, ch 135, §46

Referred to in §501A.711

**501A.713 Director conflicts of interest.**

1. *Conflict and procedure when conflict arises.*

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

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

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

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors are not counted in determining the presence of a quorum and must not vote.

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

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

2. *Material financial interest.* For purposes of this section, all of the following apply:

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

b. A director has a material financial interest in each organization in which the director or a family member of the director has a material financial interest. A contract or other transaction between a cooperative and a family member of a director is considered to be a transaction between the cooperative and the director. A family member of a director includes the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and the brothers and sisters of the spouse of the director or any combination of them.

2005 Acts, ch 135, §47

Referred to in §501A.711

## PART 2

### LIABILITY AND INDEMNIFICATION OF PARTIES

#### **501A.714 Limitation of liability of directors, officers, employees, members, and volunteers.**

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

2005 Acts, ch 135, §48

Referred to in §501A.715

#### **501A.715 Indemnification.**

1. *Definitions.* As used in this section, all of the following apply:

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

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

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

(3) With respect to a director, chief executive officer, member, or employee of the cooperative who, while a director, chief executive officer, or member or employee of the cooperative, is or was serving at the request of the cooperative or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

b. "*Predecessor entity*" includes a domestic cooperative or foreign cooperative that was

the predecessor of the cooperative referred to in this section in a merger or other transaction in which the predecessor entity's existence ceased upon consummation of the transaction.

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

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

### 2. Indemnification.

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

(1) All of the following apply:

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

(b) The person acted in good faith.

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

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

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

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

(b) In the case of an act or omission occurring in the official capacity described in subsection 1, paragraph "a", subparagraph (3), the person reasonably believed that the conduct was not opposed to the best interests of the cooperative. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the cooperative if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

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

### 3. Advances.

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

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

(2) After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

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

4. *Prohibition or limit on indemnification or advances.* The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsection 2 or 3, including, without limitation, monetary limits on indemnification or advances of expenses if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances of expenses shall not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances of expenses.

5. *Reimbursement to witnesses.* This section does not require, or limit the ability of, a cooperative to reimburse expenses, including attorney fees and disbursements incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

6. *Determination of eligibility.*

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

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

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

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

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

(5) If an adverse determination is made under subparagraphs (1) through (4) or paragraph "b" or if a determination is not made under subparagraphs (1) through (4) or paragraph "b" within sixty days either after the later to occur of the termination of a proceeding or a written request for indemnification to the cooperative, or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses under this subparagraph has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

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

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

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

9. *Indemnification of other persons.* Nothing in this section must be construed to limit the power of the cooperative to indemnify persons other than a director, chief executive officer, member, employee, or member of a committee of the board of the cooperative by contract or otherwise.

2005 Acts, ch 135, §49; 2006 Acts, ch 1010, §130; 2006 Acts, ch 1030, §56, 85, 89; 2012 Acts, ch 1023, §99, 157

Referred to in §501A.711

[T] Code editor directive applied

[T] Subsection 2, paragraph a, subparagraph (2), subparagraph division (b) amended

### PART 3

#### OFFICERS

##### **501A.716 Officers.**

###### 1. *Required officers.*

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

- (1) A chairperson.
- (2) One or more vice chairpersons.

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

- (1) A records officer.
- (2) A financial officer.

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

2. *Additional officers.* The board may elect additional officers as the articles or bylaws authorize or require.

3. *Records officer and financial officer may be combined.* The offices of records officer and financial officer may be combined.

4. *Officers that must be members.* The chairperson and first vice chairperson shall be directors and members. The financial officer, records officer, and additional officers need not be directors or members.

5. *Chief executive officer.* The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative, and if a chief executive officer is employed, the chief executive officer shall have the authority to implement the functions, duties, and obligations of the cooperative except as restricted by the board. The chief executive officer shall not exercise authority reserved to the board or the members under this chapter, the articles, or the bylaws.

2005 Acts, ch 135, §50

### SUBCHAPTER VIII

#### MEMBERS — PROPERTY — OWNERSHIP INTERESTS

### PART 1

#### MEMBERS

##### **501A.801 Members.**

1. *Requirement.* A cooperative shall have one or more patron members.

2. *Grouping of members.*

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

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

3. *Member violations.*

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

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

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

4. *Inspection of cooperative records by member.*

a. A member is entitled to inspect and copy, at the member's expense, during regular business hours at a reasonable location specified by the cooperative, any of the records described in section 501A.507 if the member meets the requirements of paragraph "b" and gives the cooperative written demand at least five business days before the date on which the member wishes to inspect and copy the records. Notwithstanding the provisions of this subsection or any provisions of section 501A.507, a member shall not have the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person, or any personnel records or employment records of any employee.

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

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

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

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

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

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

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

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

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

e. Notwithstanding any other provision in this subsection, if the records to be inspected or copied are in active use or storage and, therefore, not available at the time otherwise provided for inspection or copying, the cooperative shall notify the member and shall set a date and hour within three business days of the date otherwise set in this subsection for the inspection or copying.

f. A member's agent or attorney has the same inspection and copying rights as the member. The right to copy records under this subsection includes, if reasonable, the right to

receive copies made by photographic copying, xerographic copying, or other means. The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production and reproduction of the records.

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

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

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

(2) The court may order the losing party to pay the prevailing party for any damages the prevailing party shall have incurred by reason of the subject matter of the litigation.

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

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

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

2005 Acts, ch 135, §51

#### **501A.802 Member liability.**

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

2005 Acts, ch 135, §52

[P] See also §501A.714

#### **501A.803 Regular members' meetings.**

1. *Annual meeting.* Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

2. *Location.* The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board.

3. *Business and fiscal reports.* The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

4. *Election of directors.* All directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

5. *Notice.*

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

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

6. *Waiver and objections.* A member may waive notice of a meeting of members. A

waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item cannot lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

2005 Acts, ch 135, §53

#### **501A.804 Special members' meetings.**

1. *Calling meeting.* Special members' meetings of the members may be called by any of the following:

a. A majority vote of the board.

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

2. *Notice.* The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address, or by another process determined by the board if the member is to vote by an alternative voting method as approved by the board and agreed to by the member individually or the members generally. For a member that is an entity, the notice mailed, or delivered by another process for vote by an alternative voting method, shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten days from and after the date of the presentation of a members' petition, and the special members' meeting shall be held within thirty days after the date of the presentation of the members' petition.

3. *Waiver and objections.* A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item cannot lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

2005 Acts, ch 135, §54; 2011 Acts, ch 23, §20

#### **501A.805 Certification of meeting notice.**

1. *Certificate of mailing.* After mailing special or regular members' meeting notices or otherwise delivering the notices, the cooperative shall execute a certificate containing the date of mailing or delivery of the notice and a statement that the special or regular members' meeting notices were mailed or delivered as prescribed by law.

2. *Matter of record.* The certificate shall be made a part of the record of the meeting.

3. *Failure to receive meeting notice.* Failure of a member to receive a special or regular members' meeting notice does not invalidate an action taken by the members at a members' meeting.

2005 Acts, ch 135, §55

#### **501A.806 Quorum.**

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

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

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

2. *Quorum for voting by mail.* In determining a quorum at a meeting, on a question



submitted to a vote by mail or by an alternative voting method, members present in person or represented by mail vote or the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chairperson or the records officer of the cooperative and shall be reported in the minutes of the meeting.

3. *Meeting action invalid without quorum.* An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

2005 Acts, ch 135, §56; 2011 Acts, ch 23, §21

Referred to in §501A.808

### **501A.807 Remote communications for members' meetings.**

1. *Construction and application.* This section shall be construed and applied to all of the following:

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

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

2. *Members' meetings held solely by means of remote communication.* To the extent authorized in the articles, a member control agreement, or the bylaws and determined by the board, a regular or special meeting of members may be held solely by any combination of means of remote communication through which the members may participate in the meeting, if notice of the meeting is given to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of this chapter for the meeting are met.

3. *Participation in members' meetings by means of remote communication.* To the extent authorized in the articles or the bylaws and determined by the board, a member not physically present in person or by proxy at a regular or special meeting of members may, by means of remote communication, participate in a meeting of members held at a designated place. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of this chapter for the meeting are met.

4. *Requirements for meetings held solely by means of remote communication and for participation by means of remote communication.* In any meeting of members held solely by means of remote communication under subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subsection 3, all of the following shall apply:

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

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

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

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

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

5. *Notice to members.*

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

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

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

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

(a) The posting.

(b) The giving of the separate notice.

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

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

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

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

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

2005 Acts, ch 135, §57

Referred to in §501A.814

### **501A.808 Action of members.**

1. *Action by affirmative vote of members.*

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

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

(2) A majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles or bylaws, or a member control agreement requires a larger proportion.

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

2. *Class or series of membership interests.* In any case where a class or series of membership interests is entitled by this chapter, the articles, bylaws, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series; or of the total outstanding membership interests of that class or series, as the proportion required under subsection 1, unless the articles, bylaws, or the member control agreement requires a larger proportion. Unless otherwise stated in the articles, bylaws, or a member control agreement, in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 501A.806.

3. *Greater quorum or voting requirements.*

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

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

2005 Acts, ch 135, §58; 2006 Acts, ch 1030, §57

#### **501A.809 Action without a meeting.**

1. *Method.* An action required or permitted to be taken at a meeting of the members may be taken by written action signed, or consented to by authenticated electronic communication, by all of the members. If the articles, bylaws, or a member control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

2. *Effective time.* The written action is effective when signed or consented to by authenticated electronic communication by the required members, unless a different effective time is provided in the written action.

3. *Notice and liability.* When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

2005 Acts, ch 135, §59

#### **501A.810 Member voting rights.**

1. *Patron and nonpatron member voting.* A patron member of a cooperative is only entitled to one vote on an issue to be voted upon by members holding patron membership interests. However, if authorized in the cooperative's articles or bylaws, a patron member may be entitled to additional votes based on patronage criteria in section 501A.811. If nonpatron members are authorized by the patron members and granted voting rights on any matter voted on by the members of the cooperative, the entire patron members' voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue and the collective vote of the patron members shall be a majority of the vote cast unless otherwise provided in the bylaws. The bylaws shall not reduce the collective patron member vote to less than fifteen percent of the total vote on matters of the cooperative. A nonpatron member has the voting rights in accordance to the nonpatron member's nonpatron membership interests as granted in the bylaws, subject to the provisions of this chapter.

2. *Right to vote at meeting.* A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

3. *Voting method.* A member's vote at a members' meeting shall be cast in person, by mail if a mail ballot is authorized by the board, or by an alternative voting method if that is authorized by the board. A vote shall not be cast by proxy, except as provided in subsection 4.

4. The cooperative shall take reasonable measures to authenticate that a vote is cast by a member eligible to cast that vote.

4. *Members represented by delegates.*

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

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

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

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

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

5. *Mail ballots.* The provisions of this subsection apply to mail ballots.

a. A member who is or will be absent from a members' meeting may vote by mail on any motion, resolution, or amendment that the board submits for vote by mail.

b. A ballot shall be in the form prescribed by the board and be accompanied by the text of the proposed motion, resolution, or amendment to be acted upon at the meeting.

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

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

6. *Alternative voting method.* The board may also allow the members to vote by alternative voting method, provided the members receive a copy of the proposed motion, resolution, or amendment to be acted upon.

2005 Acts, ch 135, §60; 2011 Acts, ch 23, §22 – 24

Referred to in §501A.813, 501A.903, 501A.1007

#### **501A.811 Patron member voting based on patronage.**

1. *Patron members to have an additional vote.* A cooperative may authorize by the articles or the bylaws for patron members to have an additional vote for all of the following:

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

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

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

d. A combination of methods provided in this subsection.

2. *Delegates elected by patrons to have an additional vote.* A cooperative that is organized into units or districts of patron members may, by the articles or the bylaws, authorize the delegates elected by its patron members to have an additional vote for any of the following:

a. A stipulated amount of business transacted between the patron members in the units or districts and the cooperative.

b. A certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative.

c. A combination of methods in this subsection.

2005 Acts, ch 135, §61

Referred to in §501A.810

#### **501A.812 Voting rights.**

1. *Determination.* The board may fix a date not more than sixty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

2. *Nonmembers.* The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote on patron membership interests under this section.

3. *Jointly owned membership interests.* Membership interests owned by two or more members may be voted by any one of them unless the cooperative receives written notice from any one of them denying the authority of that person to vote those membership interests.

4. *Manner of voting and presumption.* Except as provided in subsection 3, an owner of a

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

2005 Acts, ch 135, §62

#### **501A.813 Voting by organizations and legal representatives.**

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

2. *Membership interests held by subsidiary.* Except as provided in subsection 3, membership interests of a cooperative reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

3. *Membership interests controlled in a fiduciary capacity.* Membership interests of a cooperative in the name of, or under the control of, the cooperative or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settler or beneficiary possesses and exercises a right to vote or gives the cooperative or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the membership interests.

4. *Voting by certain representatives.* Subject to section 501A.810, membership interests under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

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

6. *Membership interests held by other organizations.* Membership interests reflected in the required records in the name of a business entity not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that business entity.

7. *Grant of security interest.* The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote.

2005 Acts, ch 135, §63

#### **501A.814 Proxies.**

##### *1. Authorization.*

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

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

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

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

c. The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment was authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination. A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication under

section 501A.807, to the extent the member appointing the proxy would have been entitled to participate by remote communication if the member did not appoint the proxy.

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

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

2. *Duration.* The appointment of a proxy is valid for eleven months unless a longer period is expressly provided in the appointment. An appointment is not irrevocable unless the appointment is coupled with an interest in the membership interests or the cooperative.

3. *Termination.* An appointment may be terminated at will unless the appointment is coupled with an interest, in which case the appointment shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with a manager of the cooperative or by filing a new written appointment of a proxy with a manager of the cooperative. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the cooperative.

4. *Revocation by death or incapacity.* The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the cooperative before the proxy exercises the authority under that appointment.

5. *Multiple proxies.* Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member, all of the following apply:

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

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

6. *Vote of proxy accepted and liability.* Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the cooperative may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

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

2005 Acts, ch 135, §64

## PART 2

### PROPERTY AND ASSETS

#### **501A.815 Sale of property and assets.**

1. *Member approval not required.* A cooperative may, by affirmative vote of a majority of the board present, upon those terms and conditions and for those considerations, which

may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient and without member approval, do any of the following:

- a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business.
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business.
  - c. Transfer any or all of its property to a business entity all the ownership interests of which are owned by the cooperative.
  - d. For purposes of debt financing, transfer any or all of its property to a special purpose entity owned or controlled by the cooperative for an asset securitization.
2. *Member approval required.* Except as provided in subsection 1, a cooperative, by affirmative vote of a majority of the board present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of two-thirds of the voting power voting at the meeting. Ten days' written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.
3. *Confirmatory documents.* Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current chairperson of the board or authorized agents.
4. *Liability of transferee.* The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by law.

2005 Acts, ch 135, §65

### PART 3

#### OWNERSHIP INTERESTS

##### **501A.816 Vote of ownership interests held by cooperative.**

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

2005 Acts, ch 135, §66

### SUBCHAPTER IX

#### MEMBERSHIP INTERESTS

##### **501A.901 Membership interests.**

1. *Patron membership interests.* Patron membership interests shall be the only membership interests of a cooperative unless nonpatron memberships are authorized under subsection 2. If nonpatron interests are authorized, the patron membership interests collectively shall have not less than fifty percent of the cooperative's financial rights to profit allocations and distributions. However, the cooperative's articles or bylaws may be amended by the affirmative vote of patron members to allow the cooperative's financial rights to profit allocations and distributions to patron members collectively to be a lesser amount but in no case less than fifteen percent.

2. *Nonpatron membership interests.*

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

b. If nonpatron membership interests are authorized, the cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed in the articles, bylaws, or by separate disclosure to the members. Each member acquiring nonpatron membership interests shall sign a member control agreement or otherwise agree to the conditions of the bylaws. The control agreement or the bylaws shall describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocation of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the articles or bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles or bylaws, subject to the provisions of this chapter. If not otherwise provided in the articles or bylaws, distributions shall be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests to the extent the contributions have been accepted by the cooperative.

3. *Amounts and divisions of membership interests.* The authorized amount and divisions of patron membership interests and, if authorized by the patron members, nonpatron membership interests, may be increased, decreased, established, or altered in accordance with the restrictions in this chapter by amending the articles or bylaws at a regular members' meeting or at a special members' meeting called for the purpose of the amendment.

4. *Issuance of membership interests.* Authorized membership interests may be issued on terms and conditions prescribed in the articles, bylaws, or if authorized in the articles or bylaws as determined by the board. The cooperative shall disclose to any person acquiring membership interests to be issued by the cooperative, the organization, capital structure, and known business prospects and risks of the cooperative, the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative shall notify all members of the membership interests being issued by the cooperative. A membership interest shall not be issued until subscription price of the membership interest has been paid for in money or property with the value of the property to be contributed approved by the board.

5. *Transferring or selling membership interests.* After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred with the approval of the board. The board may adopt resolutions prescribing procedures to prospectively approve transfers.

6. *Cooperative first right to purchase membership interests.* The articles or bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of membership interests offered for sale. The first privilege to purchase membership interests may be satisfied by notice to other members that the membership interests are for sale and a procedure by which members may proceed to attempt to purchase and acquire the membership interests.

7. *Payment for dissenting membership interests.*

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

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



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

b. The dissenting member shall file a notice of intent to demand fair value of the membership interest with the records officer of the cooperative within thirty days after the amendment of the bylaws and notice of the amendment to members; otherwise, the right of the dissenting member to demand payment of fair value for the membership interest is waived. If a proposed amendment of the articles or bylaws must be approved by the members, a member who is entitled to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of the membership interest with the records officer of the cooperative; otherwise, the right to demand fair value for the membership interest by the dissenting member is waived. After receipt of the dissenting member's demand notice and approval of the amendment, the cooperative has sixty days to rescind the amendment, or otherwise the cooperative shall remit the fair value for the member's interest to the dissenting member by one hundred eighty days after receipt of the notice. Upon receipt of the fair value for the membership interest, the member has no further member rights in the cooperative.

2005 Acts, ch 135, §67  
Referred to in §501A.1007

#### **501A.902 Assignment of financial rights.**

1. *Assignment of financial rights permitted.* Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.

2. *Effect of assignment of financial rights.* An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the cooperative and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the cooperative, or to cause dissolution. The assignment shall not allow the assignee to control the member's exercise of governance or voting rights.

3. *Restrictions of assignment of financial rights.*

a. A restriction on the assignment of financial rights may be imposed in the articles, in the bylaws, in a member control agreement, by a resolution adopted by the members, by an agreement among or other written action by the members, or by an agreement among or other written action by the members and the cooperative. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

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

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

d. Notwithstanding any provision of law, articles, bylaws, member control agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with the uniform commercial code, chapter 554,

without the consent or approval of the member whose financial rights are subject to the security interest.

2005 Acts, ch 135, §68  
Referred to in §501A.903

**501A.903 Nature of a membership interest and statement of interest owned.**

1. *Generally.* A membership interest is personal property. A member has no interest in specific cooperative property. All property of the cooperative is property of the cooperative.

2. *Statement of membership interest.* At the request of any member, the cooperative shall state in writing the particular membership interest owned by that member as of the date the cooperative makes the statement. The statement must describe the member's rights to vote, if any, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under section 501A.902, subsection 3, or voting rights under section 501A.810 then in effect, as well as any assignment of the member's rights then in effect other than a security interest.

3. *Terms of membership interests.* All the membership interests of a cooperative are subject to all of the following:

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

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

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

4. *Rights of judgment creditor.* On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 501A.902. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

5. *Establishment of class or series.*

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

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

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

b. A statement setting forth the name of the cooperative and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be given to the members before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles or bylaws. Where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles or bylaws before the acceptance of the contributions with respect to the membership interests, the statement may be filed anytime within one year after the acceptance of the contributions. The resolution is effective three days after delivery to the members is deemed effective by the

board, or, if the statement is not required to be given to the members before the acceptance of contributions, on the date of its adoption by the directors.

6. *Specific terms.* Without limiting the authority granted in this section, in regulating the membership interests of a class or series, a cooperative may do any of the following:

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

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

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

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

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

7. *Grant of a security interest.* For the purpose of any law relating to security interests, membership interests, governance or voting rights, and financial rights are each to be characterized as provided in section 554.8103, subsection 3.

8. *Powers of estate of a deceased or incompetent member.*

a. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a business entity, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

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

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

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

9. *Liability of subscribers and members with respect to membership interests.* A person who subscribes to or owns a membership interest in a cooperative is under no obligation to the cooperative or its creditors with respect to the membership interests subscribed for or owned, except to pay to the cooperative the full consideration for which the membership interests are issued or to be issued.

2005 Acts, ch 135, §69; 2006 Acts, ch 1030, §58

Referred to in §501A.902

#### **501A.904 Certificated and uncertificated membership interests.**

1. *Certificated — uncertificated.* The membership interests of a cooperative shall be either certificated or uncertificated. Each holder of certificated membership interests issued is entitled to a certificate of membership interest.

2. *Signature required.* Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by the chairperson or records officer of the cooperative.

3. *Signature valid.* If a person signs or has a facsimile signature placed upon a certificate while the chairperson, an officer, transfer agent, or records officer of a cooperative, the certificate may be issued by the cooperative, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

4. *Form of certificate.* A certificate representing membership interests of a cooperative shall contain on its face all of the following:

a. The name of the cooperative.

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

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

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

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

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

5. *Limitations set forth.* A certificate representing membership interests issued by a cooperative authorized to issue membership interests of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the cooperative will furnish to any member upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the membership interests of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

6. *Prima facie evidence.* A certificate signed as provided in subsection 2 is prima facie evidence of the ownership of the membership interests referred to in the certificate.

7. *Uncertificated membership interests.*

a. Unless uncertificated membership interests are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its membership interests will be uncertificated membership interests.

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

2005 Acts, ch 135, §70; 2012 Acts, ch 1023, §157

[T] Code editor directive applied

#### **501A.905 Lost certificates — replacement.**

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

2. *Not overissue.* The issuance of a new certificate under this section does not constitute an overissue of the membership interests the new certificate represents.

2005 Acts, ch 135, §71

#### **501A.906 Restriction on transfer or registration of membership interests.**

1. *How imposed.* A restriction on the transfer or registration of transfer of membership interests of a cooperative may be imposed in the articles, in the bylaws, by a resolution adopted by the members, or by an agreement among or other written action by a number of members or holders of other membership interests or among them and the cooperative. A restriction is not binding with respect to membership interests issued prior to the adoption of the restriction, unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction.

2. *Restrictions permitted.*

a. A written restriction on the transfer or registration of transfer of membership interests of a cooperative that is not manifestly unreasonable under the circumstances may be enforced

against the holder of the restricted membership interests or a successor or transferee of the holder, including a pledgee or a legal representative, if the restriction is any of the following:

- (1) Noted conspicuously on the face or back of the certificate.
- (2) Included in this chapter or the articles or bylaws.
- (3) Included in information sent to the holders of uncertificated membership interests.

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

2005 Acts, ch 135, §72; 2012 Acts, ch 1023, §157

[T] Code editor directive applied

## SUBCHAPTER X

### CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS — MEMBER CONTROL AGREEMENTS

#### **501A.1001 Authorization, form, and acceptance of contributions.**

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

2. *Permissible forms.* A person may make a contribution to a cooperative by any of the following:

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

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

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

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

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

4. *Valuation by directors.* The determinations of the board as to the amount or fair value or the fairness to the cooperative of the contribution accepted or to be accepted by the cooperative or the terms of payment or performance, including under a contribution agreement in section 501A.1003, and a contribution rights agreement in section 501A.1004, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the cooperative, or overvalue property or services received or to be received by the cooperative as a contribution, are jointly and severally liable to the cooperative for the benefit of the then members who did not consent to and are damaged by the action to the extent of the damages of those members. A director against whom a claim is asserted under this subsection, except in case of knowing

participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors who are liable under this subsection.

2005 Acts, ch 135, §73; 2005 Acts, ch 179, §134

Referred to in §501A.1002

#### **501A.1002 Restatement of value of previous contributions.**

1. *Definition.* As used in this section, an “old contribution” is a contribution reflected in the required records of a cooperative before the time the cooperative accepts a new contribution.

2. *Restatement required.* Whenever a cooperative accepts a new contribution, the board shall restate, as required by this section, the value of all old contributions.

3. *Restatement as to particular series or class to which new contribution pertains.*

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

(1) State the value the cooperative has accorded to the new contribution under section 501A.1001, subsection 3, paragraph “a”.

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

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

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

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

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

b. The values determined under paragraph “a”, subparagraph (5), and allocated and added under paragraph “a”, subparagraph (6), may be positive, negative, or zero.

4. *Restatement method for other series or class.* Unless otherwise provided in a cooperative’s articles or bylaws, this subsection sets forth the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains. In restating the value, the cooperative shall do all of the following:

a. Determine the percentage by which the restatement under subsection 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains.

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

5. *New contributions may be aggregated.* If a cooperative accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section, the cooperative may consider all the new contributions a single contribution.

2005 Acts, ch 135, §74

#### **501A.1003 Contribution agreements.**

1. *Signed writing.* A contribution agreement, whether made before or after the formation

of the cooperative, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

2. *Irrevocable period.* Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the cooperative, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months.

3. *Current and deferred payment.* A contribution agreement, whether made before or after the formation of a cooperative, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board. However, a call made by the board for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

4. *Failure to pay — remedies.*

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

b. (1) If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the cooperative for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale.

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

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

(b) The amount actually paid by the delinquent would-be contributor.

(3) If the membership interests that were subject to the contribution agreement are not sold according to this paragraph "b", the cooperative may collect the amount due in the same manner as a debt due the cooperative or cancel the contribution agreement according to paragraph "c".

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

5. *Restrictions on assignment.* Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution agreement shall not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

2005 Acts, ch 135, §75; 2012 Acts, ch 1023, §157

Referred to in §501A.1001

[T] Code editor directive applied

**501A.1004 Contribution rights agreements.**

1. *Agreements permitted.* Subject to any restrictions in a cooperative's articles or bylaws, the cooperative may enter into contribution rights agreements under the terms, provisions, and conditions established by board resolution.

2. *Writing required and terms to be stated.* Any contribution rights agreement must be in writing and the writing must state in full, summarize, or include by reference all the agreement's terms, provisions, and conditions of the rights to make contributions.

3. *Restrictions on assignment.* Unless otherwise provided in a cooperative's articles or bylaws, a would-be contributor's rights under a contribution rights agreement shall not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

2005 Acts, ch 135, §76

Referred to in §501A.1001

**501A.1005 Allocations and distributions — profits, losses, cash, or other assets.**

1. *Allocation of profits and losses.* If nonpatron membership interests are authorized by the patrons, the bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and any other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than fifty percent of the total profits in any fiscal year, except if authorized in the cooperative's articles or bylaws that are adopted by an affirmative vote of the patron members, or in the articles or bylaws as amended by the affirmative vote of the patron members. However, the allocation of profits to the patron membership interests collectively shall not be less than fifteen percent of the total profits in any fiscal year.

2. *Distribution of cash or other assets.* A cooperative's bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If nonpatron membership interests are authorized by the patrons and the bylaws do not provide otherwise, distributions shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative, by the patron membership interests collectively, and other membership interests. The distributions to patron membership interests collectively shall not be less than fifty percent of the total distributions in any fiscal year, except if authorized in the articles or bylaws adopted by the affirmative vote of the patron members, or the articles or bylaws as amended by the affirmative vote of the patron members. However, the distributions to patron membership interests collectively shall not be less than fifteen percent of the total distributions in any fiscal year.

2005 Acts, ch 135, §77; 2006 Acts, ch 1030, §59

Referred to in §501A.903, 501A.1007

**501A.1006 Allocations and distributions — net income.**

1. *Distribution of net income.* A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

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

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

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

3. *Patronage distributions.* Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may establish allocation units, whether the units are functional, divisional, departmental, geographic, or otherwise. The cooperative may provide



for pooling arrangements. The cooperative may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements.

4. *Frequency of distribution.* A distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

5. *Form of distribution.* A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

6. *Eligible nonmember patrons.* A cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

7. *Patronage credits for ineligible members.* If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the nonmember patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the nonmember patron is issued a certificate of interest, the nonmember patron may participate in the distribution of net income on the same basis as a patron member.

2005 Acts, ch 135, §78; 2006 Acts, ch 1030, §60

Referred to in §501A.903, 501A.1007

#### **501A.1007 Member control agreements.**

1. *Authorization.* A written agreement among persons who are then members, including a sole member, or who have signed subscription or contribution agreements, relating to the control of any phase of the business and affairs of the cooperative, its liquidation, dissolution and termination, or the relations among members or persons who have signed subscription or contribution agreements is valid as provided in subsection 2. Other than the authorization of nonpatron membership interests as provided in section 501A.901 and nonpatron voting rights as provided in section 501A.810, whenever this chapter provides that a particular result may or must be obtained through a provision in a cooperative's articles or bylaws, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section. However, the member control agreement must be authorized by the cooperative's articles or bylaws and cannot conflict with the cooperative's articles or bylaws. Any result accomplished through a membership control agreement under this section must be properly disclosed as provided in section 501A.901.

2. *Valid execution.* Other than patron member voting control under section 501A.810 and patron member allocation and distribution provisions under sections 501A.1005 and 501A.1006, a written agreement among persons described in subsection 1 that relates to the control of or the liquidation, dissolution, and termination of the cooperative, the relations among them, or any phase of the business and affairs of the cooperative is valid if it meets the requirements of this subsection. This includes but is not limited to the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of directors, the employment of members by the cooperative, or the arbitration of disputes. The written agreement must be signed by all persons who are then the members of the cooperative, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power.

3. *Other agreements not affected.* This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described.

2005 Acts, ch 135, §79

**501A.1008 Reversion of disbursements.**

1. Once a person's membership interest or other member's equity in a cooperative is deemed abandoned under section 556.5, the cooperative may retain any disbursement held by the cooperative for or owing to the person. The cooperative may also deliver the disbursement to the treasurer of state for disposition as abandoned property pursuant to sections 556.5 and 556.11.

2. If the cooperative elects to retain the disbursement under this section, the disbursement shall be deposited into a reversion fund established by the cooperative.

3. A disbursement having an aggregate value of fifty dollars or more that is retained by the cooperative shall be forfeited to the cooperative only if the cooperative publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative is located. The notice shall include all of the following:

a. The name and address of the cooperative.

b. The name of the person who has an interest in the disbursement according to the records of the cooperative.

c. A brief description of the type of disbursement retained by the cooperative.

d. A statement that the disbursement will be forfeited to the cooperative unless the person files a claim for the disbursement within the period provided for in this section.

4. a. Subject to this subsection, a person asserting an interest in the disbursement may file a claim for it with the cooperative in a manner and according to procedures required by the cooperative. If a person is entitled to an abandoned membership interest, or other interest as provided in section 556.20 or 556.21, the cooperative shall also pay the person the disbursement deposited in the reversion fund that is realized or accrued from the membership interest or other interest.

b. If a person has not filed a claim for the disbursement within six months after the first date that the notice of abandoned property is first published as provided in this section, the disbursement shall be forfeited to the cooperative.

5. The disbursements deposited into the reversion fund that are forfeited to the cooperative shall be used as provided in this subsection. The cooperative may authorize the payment of forfeited disbursements to persons claiming interests in forfeited disbursements as provided in the cooperative's articles of organization or bylaws. Otherwise, forfeited disbursements shall be used as the directors deem suitable for any of the following purposes:

a. Teaching and promoting cooperation. The directors may deposit the amounts of disbursements into the education fund as established by the cooperative.

b. Economic development including private or joint public and private investments involving the creation of economic opportunities for the cooperative's members or the retention of existing sources of income that would otherwise be lost.

2005 Acts, ch 135, §80; 2006 Acts, ch 1010, §131

Referred to in §556.5

**SUBCHAPTER XI****MERGER AND CONVERSION****501A.1101 Merger and consolidation.**

1. *Authorization.* Unless otherwise prohibited, cooperatives organized under the laws of this state, including cooperatives organized under this chapter or traditional cooperatives, may merge or consolidate with each other, an Iowa limited liability company under the provisions of section 489.1015, or other business entities organized under the laws of another state by complying with the provisions of this section and the law of the state where the surviving or new business entity will exist. A cooperative shall not merge or consolidate with a business entity organized under the laws of this state, other than a traditional cooperative, unless the law governing the business entity expressly authorizes merger or consolidation

with a cooperative. This subsection does not authorize a foreign business entity to do any act not authorized by the law governing the foreign business entity.

2. *Plan.* To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state all of the following:

a. The names of the constituent domestic cooperative, the name of any Iowa limited liability company that is a party to the merger, to the extent authorized under section 489.1015, and any foreign business entities.

b. The name of the surviving or new domestic cooperative, Iowa limited liability company as required by section 489.1015, or other foreign business entity.

c. The manner and basis of converting membership or ownership interests of the constituent domestic cooperative, the Iowa limited liability company that is a party as provided in section 489.1015, or foreign business entity into membership or ownership interests in the surviving or new domestic cooperative, the surviving Iowa limited liability company as authorized in section 489.1015, or foreign business entity.

d. The terms of the merger or consolidation.

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

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

3. *Notice.* The following shall apply to notice:

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

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

4. *Adoption of plan.*

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

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

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

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

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

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

e. For a merger, the articles of the surviving domestic cooperative subject to this chapter are deemed amended to the extent provided in the articles of merger.

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

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

5. *Effect of merger or consolidation.* For a merger that does not involve an Iowa limited liability company, the following shall apply to the effect of a merger:

a. After the effective date, the domestic cooperative, Iowa limited liability company, if party to the plan, and any foreign business entity that is a party to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new domestic cooperative, the Iowa limited liability company, if any,

and any foreign business entity is the business entity provided for in the plan. Except for the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity, the separate existence of each merged or consolidated domestic or foreign business entity that is a party to the plan ceases on the effective date of the merger or consolidation.

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

c. If a merger involves an Iowa limited liability company, this subsection is subject to the provisions of section 489.1015.

2005 Acts, ch 135, §81; 2006 Acts, ch 1010, §132; 2007 Acts, ch 126, §86; 2008 Acts, ch 1162, §140 – 142, 154, 155; 2011 Acts, ch 23, §25

Referred to in §489.1015, 501A.1102

#### **501A.1102 Merger of subsidiary.**

1. *Definition.* For purposes of this section, “*subsidiary*” means a domestic cooperative, an Iowa limited liability company, or a foreign cooperative.

2. *When authorized — contents of plan.* An Iowa limited liability company may only participate in a merger under this section to the extent authorized under section 489.1015. A parent domestic cooperative or a subsidiary that is a domestic cooperative may complete the merger of a subsidiary as provided in this section. However, if either the parent cooperative or the subsidiary is a business entity organized under the laws of this state, the merger of the subsidiary is not authorized under this section unless the law governing the business entity expressly authorizes merger with a cooperative.

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

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

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

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

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

b. If the parent is a constituent cooperative and the surviving cooperative in the merger, the parent cooperative may change its cooperative name, without a vote of its members, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent cooperative present. Upon the effective date of the merger, the name of the parent cooperative shall be changed.

c. If the parent cooperative is a constituent cooperative but is not the surviving cooperative in the merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting if the parent is a cooperative, or in accordance with the laws under which the parent is organized if the parent is a foreign business entity or foreign cooperative.

3. *Notice to members of subsidiary.* Notice of the action, including a copy of the plan of merger, shall be delivered to each member, other than the parent cooperative and any subsidiary of each subsidiary that is a constituent cooperative in the merger before, or within ten days after, the effective date of the merger.

4. *Articles of merger — contents of articles.* Articles of merger shall be prepared that contain all of the following:

a. The plan of merger.

b. The number of outstanding membership interests of each series and class of each subsidiary that is a constituent cooperative in the merger, other than the series or classes that, absent this section, would otherwise not be entitled to vote on the merger, and the number of membership interests of each series and class of the subsidiary or subsidiaries, other than series or classes that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly, or indirectly through related organizations.

c. A statement that the plan of merger has been approved by the parent under this section.

5. *Articles signed, filed.* The articles of merger shall be signed on behalf of the parent and filed with the secretary.

6. *Certificate.* The secretary shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent cooperative but is not the surviving cooperative in the merger, to the surviving cooperative or its legal representative.

7. *Nonexclusivity.* A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under section 501A.1101 instead of this section, in which case this section does not apply.

2005 Acts, ch 135, §82; 2008 Acts, ch 1162, §143, 154, 155

#### **501A.1103 Abandonment.**

1. *Abandonment by members of plan.* After a plan of merger has been approved by the members entitled to vote on the approval of the plan and before the effective date of the plan, the plan may be abandoned by the same vote that approved the plan.

2. *Abandonment of merger.*

a. A merger may be abandoned upon any of the following:

(1) The members of each of the constituent domestic cooperatives entitled to vote on the approval of the plan have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the membership interests entitled to vote.

(2) The merger is with a domestic cooperative and an Iowa limited liability company or foreign business entity.

(3) The abandonment is approved in such manner as may be required by section 489.1015 for the involvement of an Iowa limited liability company, or for a foreign business entity by the laws of the state under which the foreign business entity is organized.

(4) The members of a constituent domestic cooperative are not entitled to vote on the approval of the plan, and the board of the constituent domestic cooperative has approved the abandonment by the affirmative vote of a majority of the directors present.

(5) The plan provides for abandonment and all conditions for abandonment set forth in the plan are met.

(6) The plan is abandoned before the effective date of the plan by a resolution of the board of any constituent domestic cooperative abandoning the plan of merger approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If a plan of merger is with a domestic business entity or foreign business entity, the plan of merger may be abandoned before the effective date of the plan by a resolution of the foreign business entity adopted according to the laws of the state under which the foreign business entity is organized, subject to the contract rights of any

other person under the plan. If the plan of merger is with an Iowa limited liability company, the plan of merger may be abandoned by the Iowa limited liability company as provided in section 489.1015, subject to the contractual rights of any other person under the plan.

b. If articles of merger have been filed with the secretary, but have not yet become effective, the constituent organizations, in the case of abandonment under paragraph “a”, subparagraphs (1) through (4), the constituent organizations or any one of them, in the case of abandonment under paragraph “a”, subparagraph (5), or the abandoning organization in the case of abandonment under paragraph “a”, subparagraph (6), shall file with the secretary articles of abandonment that include all of the following:

(1) The names of the constituent organizations.

(2) The provisions of this section under which the plan is abandoned.

(3) If the plan is abandoned under paragraph “a”, subparagraph (6), the text of the resolution abandoning the plan.

2005 Acts, ch 135, §83; 2008 Acts, ch 1162, §144, 154, 155

Referred to in §489.1015

**501A.1104 Conversion — amendment of organizational documents to be governed by this chapter.**

1. *Authority.*

a. A traditional cooperative may convert to a cooperative and become subject to this chapter by amending its organizational documents to conform to the requirements of this chapter.

b. A traditional cooperative becoming a converted cooperative must provide its members with a disclosure statement of the rights and obligations of the members and the capital structure of the cooperative before becoming subject to this chapter. A traditional cooperative, upon distribution of the disclosure required in this subsection and approval of its members as necessary for amending its articles under the respective chapter of its organization, may amend its articles to comply with this chapter.

c. A traditional cooperative becoming a converted cooperative must prepare a certificate stating all of the following:

(1) The date on which the traditional cooperative was first organized.

(2) The name of the traditional cooperative and, if the name is changed, the name of the cooperative becoming converted.

(3) The future effective date and time, which must be a date and time certain, that the traditional cooperative will be governed by this chapter, if the effective date and time is not to be the date and time of filing.

d. Upon filing with the secretary of the articles for compliance with this chapter and the certificate required under paragraph “c”, a traditional cooperative is converted and governed by this chapter unless a later date and time is specified in the certificate under paragraph “c”.

e. In connection with a conversion under which a traditional cooperative becomes governed by this chapter, the rights, securities, or interests of the traditional cooperative as provided in chapter 497, 498, 499, or 501 may be exchanged or converted into rights, property, securities, or interests in the converted cooperative.

2. *Effect of being governed by this chapter.* The conversion of a traditional cooperative to a cooperative governed by this chapter does not affect any obligations or liabilities of the cooperative before the conversion or the personal liability of any person incurred before the conversion.

a. When the conversion is effective, the rights, privileges, and powers of the cooperative, real and personal property of the cooperative, debts due to the cooperative, and causes of action belonging to the traditional cooperative remain vested in the converted cooperative and are the property of the converted cooperative and governed by this chapter. Title to real property vested by deed or otherwise in the traditional cooperative does not revert and is not impaired by reason of the cooperative being converted and governed by this chapter.

b. Rights of creditors and liens upon property of the traditional cooperative are preserved unimpaired, and debts, liabilities, and duties of the traditional cooperative remain attached to the converted cooperative and may be enforced against the converted cooperative to the

same extent as if the debts, liabilities, and duties had originally been incurred or contracted by the cooperative as organized under this chapter.

c. The rights, privileges, powers, and interests in property of the traditional cooperative as well as the debts, liabilities, and duties of the traditional cooperative are not deemed, as a consequence of the conversion, to have been transferred for any purpose by the laws of this state.

2005 Acts, ch 135, §84; 2006 Acts, ch 1010, §133

## SUBCHAPTER XII

### DISSOLUTION

Referred to in §501A.505

#### **501A.1201 Methods of dissolution.**

A cooperative may be dissolved by the members or by administrative or court order as provided in this chapter.

2005 Acts, ch 135, §85

#### **501A.1202 Winding up.**

1. *Collection and payment of debts.* After the notice of intent to dissolve has been filed with the secretary, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to do all of the following:

a. Collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for membership interests.

b. Pay or make provision for the payment of all debts, obligations, and liabilities of the cooperative according to their priorities.

2. *Transfer of assets.* After the notice of intent to dissolve has been filed with the secretary, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

3. *Distribution to members.* Tangible and intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the cooperative shall be distributed to the members and former members as provided in the cooperative's articles or bylaws, unless otherwise provided by law. If previously authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

2005 Acts, ch 135, §86

#### **501A.1203 Revocation of dissolution proceedings.**

1. *Authority to revoke.* Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary.

2. *Revocation by members.* The chairperson may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or, for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

3. *Filing with the secretary.* Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary. After the notice is filed, the cooperative may resume business.

2005 Acts, ch 135, §87

**501A.1204 Statute of limitations.**

The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative, or arbitration proceedings concerning the claim by two years after the date the notice of intent to dissolve is filed with the secretary.

2005 Acts, ch 135, §88

[P] Barring of claims, §501A.1215

**501A.1205 Articles of dissolution.**

1. *Conditions to file.* Articles of dissolution of a cooperative shall be filed with the secretary after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state all of the following:

a. The name of the cooperative.

b. All debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding.

c. The remaining property, assets, and claims of the cooperative have been distributed among the members or under a liquidation authorized by the members.

d. Legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against the cooperative in a pending proceeding.

2. *Dissolution effective on filing.* The cooperative is dissolved when the articles of dissolution have been filed with the secretary.

3. *Certificate.* The secretary shall issue to the dissolved cooperative or its legal representative a certificate of dissolution that contains all of the following:

a. The name of the dissolved cooperative.

b. The date the articles of dissolution were filed with the secretary.

c. A statement that the cooperative is dissolved.

2005 Acts, ch 135, §89

**501A.1206 Application for court-supervised voluntary dissolution.**

After a notice of intent to dissolve has been filed with the secretary and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court.

2005 Acts, ch 135, §90

**501A.1207 Court-ordered remedies for dissolution.**

1. *Conditions for relief.* A court may grant equitable relief that the court deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business as follows:

a. In a supervised voluntary dissolution that is applied for by the cooperative.

b. In an action by a member when it is established that any of the following apply:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock.

(2) The directors or those in control of the cooperative have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.

(3) The members of the cooperative are so divided in voting power that, for a period that includes the time when two consecutive regular members' meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

(4) The cooperative assets are being misapplied or wasted.

(5) The period of duration as provided in the articles has expired and has not been extended as provided in this chapter.



c. In an action by a creditor when any of the following applies:

(1) The claim of the creditor against the cooperative has been reduced to judgment and an execution on the judgment has been returned unsatisfied.

(2) The cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business.

(3) In an action by the attorney general to dissolve the cooperative in accordance with this chapter when it is established that a decree of dissolution is appropriate.

2. *Condition of cooperative or association.* In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative, but shall not refuse to order equitable relief or dissolution solely on the grounds that the cooperative has accumulated operating net income or current operating net income.

3. *Dissolution as remedy.* In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subsection 1, paragraph “b”, subparagraph (1) or (2). Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

4. *Expenses.* If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award reasonable expenses, including attorney fees and disbursements, to any of the other parties.

5. *Venue.* Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

6. *Parties.* It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

2005 Acts, ch 135, §91

#### **501A.1208 Procedure in involuntary or court-supervised voluntary dissolution.**

1. *Action before hearing.* Before a hearing is completed in dissolution proceedings, a court may do any of the following:

- a. Issue injunctions.
- b. Appoint receivers with all powers and duties that the court directs.
- c. Take actions required to preserve the cooperative’s assets, wherever located.
- d. Carry on the business of the cooperative.

2. *Action after hearing.* After a hearing is completed, upon notice to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative’s assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of membership interests. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative, either at public or private sale.

3. *Discharge of obligations.* The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

- a. The costs and expense of the proceedings, including attorney fees and disbursements.
- b. Debts, taxes, and assessments due the United States, this state, and other states in that order.

c. Claims duly proved and allowed to employees under the provisions of the workers’ compensation law, except that claims under this paragraph shall not be allowed if the cooperative carried workers’ compensation insurance, as provided by law, at the time the injury was sustained.

d. Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three months preceding the appointment of the receiver.

- e. Other claims that are proved and allowed by the court.

4. *Remainder to members.* After payment of the expenses of receivership and claims

of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed under an approved liquidation plan.

2005 Acts, ch 135, §92

**501A.1209 Receiver qualifications and powers.**

1. *Qualifications.* A receiver shall be a natural person or a domestic business entity or a foreign business entity authorized to transact business in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

2. *Powers.* A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.

2005 Acts, ch 135, §93

**501A.1210 Dissolution action by attorney general — administrative dissolution.**

1. *Conditions to begin action.* A cooperative may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general if it is established that any of the following applies:

a. The articles and certificate of organization were procured through fraud.

b. The cooperative was organized for a purpose not permitted by this chapter or prohibited by state law.

c. The cooperative has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter.

d. The cooperative has acted, or failed to act, in a manner that constitutes surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

2. *Notice to cooperative.* An action shall not be commenced under subsection 1 until thirty days after notice to the cooperative by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the cooperative has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the cooperative thirty additional days to make the correction before filing the action.

2005 Acts, ch 135, §94

**501A.1211 Filing claims in court-supervised dissolution proceedings.**

1. *Filing under oath.* In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.

2. *Date to file a claim.* If the court requires the filing of claims, the court shall do all of the following:

a. Set a date, by order, at least one hundred twenty days after the date the order is filed as the last day for the filing of claims.

b. Prescribe the notice of the fixed date that shall be given to creditors and claimants.

3. *Fixed date or extension for filing.* Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the cooperative.

2005 Acts, ch 135, §95

**501A.1212 Discontinuance of court-supervised dissolution proceedings.**

The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets.

2005 Acts, ch 135, §96

**501A.1213 Court-supervised dissolution order.**

1. *Conditions for dissolution order.* In an involuntary or supervised voluntary dissolution the court shall enter an order dissolving the cooperative upon the following conditions:

a. After the costs and expenses of the proceedings and all debts, obligations, and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members.

b. If the property or other assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities.

2. *Dissolution effective on filing order.* When the order dissolving the cooperative has been entered, the cooperative is dissolved.

2005 Acts, ch 135, §97

**501A.1214 Filing court's dissolution order.**

After the court enters an order dissolving a cooperative, the clerk of court shall cause a certified copy of the dissolution order to be filed with the secretary. The secretary shall not charge a fee for filing the dissolution order.

2005 Acts, ch 135, §98

**501A.1215 Barring of claims.**

1. *Claims barred.* A person who is or becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings and all those claiming through or under the creditor or claimant are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. *Certain unfiled claims allowed.* Within one year after articles of dissolution have been filed with the secretary under this chapter or a dissolution order has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim for any of the following:

a. Against the cooperative to the extent of undistributed assets.

b. If the undistributed assets are not sufficient to satisfy the claim, the claim may be allowed against a member to the extent of the distributions to members in dissolution received by the member.

3. *Omitted claims allowed.* Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the offenders, directors, or members of the cooperative before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

2005 Acts, ch 135, §99

[P] Statute of limitations, see §501A.1204

**501A.1216 Right to sue or defend after dissolution.**

After a cooperative has been dissolved, any of its former officers, directors, or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

2005 Acts, ch 135, §100