

# Senate File 340

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SENATE FILE 340

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1 2  
1 3 AN ACT  
1 4 RELATING TO BUSINESS ENTITIES, BASED ON REVISIONS RELATED TO  
1 5 THE IOWA BUSINESS CORPORATION ACT, INCLUDING ADDITION OF A  
1 6 SAVINGS CLAUSE AND ADDITION OF PROVISIONS RELATED TO DIRECTOR  
1 7 AND OFFICER LIABILITY, DUTY, AND INDEMNIFICATION FOR CERTAIN  
1 8 INSURANCE COMPANIES AND INDEMNIFICATION FOR COOPERATIVE  
1 9 ASSOCIATIONS.

1 10  
1 11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 12  
1 13 Section 1. Section 490.1701, Code 2003, is amended by  
1 14 adding the following new unnumbered paragraph:

1 15 NEW UNNUMBERED PARAGRAPH. A corporation organized under  
1 16 chapter 496C may voluntarily elect to adopt the provisions of  
1 17 this chapter by complying with the provisions prescribed by  
1 18 subsection 3.

1 19 Sec. 2. Section 490.1701, subsection 3, paragraph b, Code  
1 20 2003, is amended to read as follows:

1 21 b. The instrument shall be delivered to the secretary of  
1 22 state for filing and recording in the secretary of state's  
1 23 office, ~~and. If the corporation was organized under chapter~~

1 24 176, 524, or 533, the instrument shall also be filed and

1 25 recorded in the office of the county recorder. The  
1 26 corporation shall at the time it files the instrument with the  
1 27 secretary of state deliver also to the secretary of state for  
1 28 filing in the secretary of state's office any biennial report  
1 29 which is then due.

1 30 If the county of the initial registered office as stated in  
1 31 the instrument for a corporation organized under chapter 176,  
1 32 524, or 533 is one which is other than the county where the

1 33 principal place of business of the corporation, as designated  
1 34 in its articles of incorporation, was located, the corporation  
1 35 shall forward to the county recorder of the county in which

2 1 the principal place of business of the corporation was located  
2 2 a copy of the instrument and the corporation shall forward to  
2 3 the recorder of the county in which the initial registered

2 4 office of the corporation is located, in addition to a copy of  
2 5 the original instrument, a copy of the articles of

2 6 incorporation of the corporation together with all amendments  
2 7 to them as then on file in the secretary of state's office.

2 8 The corporation shall, through an officer or director, certify  
2 9 to the secretary of state that a copy has been sent to each  
2 10 applicable county recorder, including the date each copy was  
2 11 sent.

2 12 Sec. 3. Section 490.1703, subsection 1, Code 2003, is  
2 13 amended to read as follows:

2 14 1. Except as provided in subsection 2, the repeal of a  
2 15 statute by 1989 Iowa Acts, chapter 288, and the amendment or  
2 16 repeal of a statute by 2002 Iowa Acts, chapter 1154, does not  
2 17 affect:

2 18 a. The operation of the statute or any action taken under  
2 19 it before its amendment or repeal.

2 20 b. Any ratification, right, remedy, privilege, obligation,  
2 21 or liability acquired, accrued, or incurred under the statute  
2 22 before its amendment or repeal.

2 23 c. Any violation of the statute, or any penalty,  
2 24 forfeiture, or punishment incurred because of the violation,  
2 25 before its amendment or repeal.

2 26 d. Any proceeding, reorganization, or dissolution  
2 27 commenced under the statute before its amendment or repeal,  
2 28 and the proceeding, reorganization, or dissolution may be  
2 29 completed in accordance with the statute as if it had not been  
2 30 amended or repealed.

2 31 Sec. 4. Section 490A.707, Code 2003, is amended to read as  
2 32 follows:

2 33 490A.707 LIMITATION OF LIABILITY OF MANAGERS.

2 34 The articles of organization may contain a provision  
2 35 eliminating or limiting the personal liability of a manager to  
3 1 the limited liability company or to its members or of the  
3 2 members with whom the management of the limited liability  
3 3 company is vested pursuant to section 490A.702, to the limited  
3 4 liability company or to its members for monetary money damages  
3 5 for breach of fiduciary duty for any action taken, or any

~~3 6 failure to take action, as a manager or a member with whom  
3 7 management of the limited liability company is vested, if the  
3 8 provision does not eliminate or limit the liability of a  
3 9 manager or a member with whom management of the limited  
3 10 liability company is vested for except for liability for any~~

3 11 of the following:

~~3 12 1. Breach of the manager's or member's duty of loyalty to  
3 13 the limited liability company or to its members. The amount of  
3 14 a financial benefit received by a manager or member to which  
3 15 the manager or member is not entitled.~~

~~3 16 2. Acts or omissions not in good faith or which involve  
3 17 intentional misconduct or a knowing violation of law. An  
3 18 intentional infliction of harm on the limited liability  
3 19 company or its members.~~

~~3 20 3. Transaction from which the manager or member derives an  
3 21 improper personal benefit or a wrongful distribution in  
3 22 violation of section A violation of section 490A.807.~~

3 23 4. An intentional violation of criminal law.

3 24 A provision shall not eliminate or limit the liability of a  
3 25 manager or member with whom management of the limited  
3 26 liability company is vested for an act or omission occurring  
3 27 prior to the date when the provision in the articles of  
3 28 organization becomes effective.

3 29 Sec. 5. Section 491.5, subsection 8, Code 2003, is amended  
3 30 by striking the subsection and inserting in lieu thereof the  
3 31 following:

3 32 8. Any provision eliminating or limiting the personal  
3 33 liability of a director to the corporation or its shareholders  
3 34 or members for money damages as provided in section 490.202,  
3 35 subsection 2, paragraph "d", except that section 490.202,  
4 1 subsection 2, paragraph "d", subparagraph (3), shall have no  
4 2 application.

4 3 Sec. 6. Section 491.5, Code 2003, is amended by adding the  
4 4 following new subsection:

4 5 NEW SUBSECTION. 9. Any provision permitting or making  
4 6 obligatory indemnification of a director as provided in  
4 7 section 490.202, subsection 2, paragraph "e", except that  
4 8 section 490.202, subsection 2, paragraph "e", subparagraph  
4 9 (3), shall have no application.

4 10 Sec. 7. NEW SECTION. 491.16A DIRECTORS AND OFFICERS ==  
4 11 DUTIES AND LIABILITIES.

4 12 Sections 490.830 through 490.842 apply to corporations  
4 13 organized under or subject to this chapter.

4 14 Sec. 8. Section 496C.14, unnumbered paragraph 7, Code  
4 15 2003, is amended to read as follows:

4 16 Notwithstanding the foregoing provisions of this section,  
4 17 purchase by the corporation is not required upon the  
4 18 occurrence of any event other than death of a shareholder if  
4 19 the corporation is dissolved or voluntarily elects to adopt  
4 20 the provisions of the Iowa business corporation Act, as  
4 21 provided in section 490.1701, subsection 2, within sixty days  
4 22 after the occurrence of the event. The articles of  
4 23 incorporation or bylaws may provide that purchase is not  
4 24 required upon the death of a shareholder if the corporation is  
4 25 dissolved within sixty days after the death. Notwithstanding  
4 26 the foregoing provisions of this section, purchase by the  
4 27 corporation is not required upon the death of a shareholder,  
4 28 if the corporation voluntarily elects to adopt the provisions  
4 29 of the Iowa business corporation Act, as provided in section  
4 30 490.1701, subsection 2, within sixty days after death.

4 31 Sec. 9. Section 496C.16, Code 2003, is amended to read as  
4 32 follows:

4 33 496C.16 MANAGEMENT.

4 34 All directors of a professional corporation and all  
4 35 officers of a professional corporation except assistant  
5 1 officers, shall at all times be individuals who are licensed  
5 2 to practice in this state a profession which the corporation  
5 3 is authorized to practice. ~~No person who is not licensed~~  
~~5 4 shall have any authority or duties in the management or~~  
~~5 5 control of the corporation. If any director or any officer~~  
~~5 6 ceases to have this qualification, the director or officer~~  
~~5 7 shall immediately and automatically cease to hold the~~  
~~5 8 directorship or office. However, upon the occurrence of any~~  
~~5 9 event that requires the corporation either to be dissolved or~~  
~~5 10 to elect to adopt the provisions of the Iowa business~~  
5 11 corporation Act, as provided in section 496C.19, provided the  
5 12 corporation ceases to practice the profession that the  
5 13 corporation is authorized to practice, as provided in section  
5 14 496C.19, then individuals who are not licensed to practice in  
5 15 this state a profession that the corporation is authorized to  
5 16 practice may be appointed as officers and directors for the

5 17 sole purpose of carrying out the dissolution of the  
5 18 corporation or, if applicable, the voluntary election of the  
5 19 corporation to adopt the provisions of the Iowa business  
5 20 corporation Act, as provided in section 496C.19.

5 21 Sec. 10. Section 496C.19, Code 2003, is amended to read as  
5 22 follows:

5 23 496C.19 DISSOLUTION OR LIQUIDATION.

5 24 Violation of any provision of this chapter by a  
5 25 professional corporation or any of its shareholders,  
5 26 directors, or officers shall be cause for its involuntary  
5 27 dissolution, or liquidation of its assets and business by the  
5 28 district court, as provided in the Iowa business corporation  
5 29 Act, chapter 490. Upon the death of the last remaining  
5 30 shareholder of a professional corporation, or whenever the  
5 31 last remaining shareholder is not licensed or ceases to be  
5 32 licensed to practice in this state a profession which the  
5 33 corporation is authorized to practice, or whenever any person  
5 34 other than the shareholder of record becomes entitled to have  
5 35 all shares of the last remaining shareholder of the  
6 1 corporation transferred into that person's name or to exercise  
6 2 voting rights, except as a proxy, with respect to such shares,  
6 3 the corporation shall not practice any profession and it shall  
6 4 either be promptly dissolved or shall promptly elect to adopt  
6 5 the provisions of the Iowa business corporation Act, as

6 6 provided in section 490.1701, subsection 2. However, if prior  
6 7 to such dissolution all outstanding shares of the corporation  
6 8 are acquired by one or more persons licensed to practice in  
6 9 this state a profession which the corporation is authorized to  
6 10 practice, the corporation need not be dissolved and may  
6 11 practice the profession as provided in this chapter.

6 12 Sec. 11. Section 497.33, Code 2003, is amended to read as  
6 13 follows:

6 14 497.33 PERSONAL LIABILITY.

6 15 Except as otherwise provided in this chapter, a director,  
6 16 officer, employee, or member of the corporation is not liable  
6 17 on the corporation's debts or obligations and a director,  
6 18 officer, member, or other volunteer is not personally liable  
6 19 in that capacity, for a claim based upon ~~an act or omission of~~  
6 20 ~~the person performed any action taken, or any failure to take~~  
6 21 ~~action in the discharge of the person's duties, except for a~~  
6 22 ~~breach of the duty of loyalty to the corporation, for acts or~~  
6 23 ~~omissions not in good faith or which involve the amount of a~~  
6 24 ~~financial benefit received by the person to which the person~~  
6 25 ~~is not entitled, an intentional infliction of harm on the~~  
6 26 ~~association or its members, or an intentional misconduct or~~  
6 27 ~~knowing violation of the criminal law, or for a transaction~~  
6 28 ~~from which the person derives an improper personal benefit.~~

6 29 Sec. 12. Section 498.35, Code 2003, is amended to read as  
6 30 follows:

6 31 498.35 PERSONAL LIABILITY.

6 32 Except as otherwise provided in this chapter, a director,  
6 33 officer, employee, or member of the association is not liable  
6 34 on the association's debts or obligations and a director,  
6 35 officer, member, or other volunteer is not personally liable  
7 1 in that capacity, for a claim based upon ~~an act or omission of~~  
7 2 ~~the person performed any action taken, or any failure to take~~  
7 3 ~~action in the discharge of the person's duties, except for a~~  
7 4 ~~breach of the duty of loyalty to the association, for acts or~~  
7 5 ~~omissions not in good faith or which involve the amount of a~~  
7 6 ~~financial benefit received by the person to which the person~~  
7 7 ~~is not entitled, an intentional infliction of harm on the~~  
7 8 ~~association or its members, or an intentional misconduct or~~  
7 9 ~~knowing violation of the criminal law, or for a transaction~~  
7 10 ~~from which the person derives an improper personal benefit.~~

7 11 Sec. 13. Section 499.37, Code 2003, is amended to read as  
7 12 follows:

7 13 499.37 OFFICERS AND EMPLOYEES.

7 14 1. The board of directors of the association shall select  
7 15 from their own number a president, one or more vice  
7 16 presidents, a secretary-treasurer or a secretary and a  
7 17 treasurer the association's officers as provided in its  
7 18 articles of incorporation or bylaws, and shall fill vacancies  
7 19 in such offices. The articles of incorporation or bylaws  
7 20 shall delegate to an officer the responsibility for all of the  
7 21 following:

7 22 a. Preparing minutes of meetings of the directors and the  
7 23 shareholders.

7 24 b. Authenticating the association's records.

7 25 2. Unless the association's articles of incorporation or  
7 26 bylaws otherwise provide, said the association's officers  
7 27 shall be chosen serve for annual terms beginning at the close

7 28 of the first regular meeting of members in each year.

7 29 ~~The directors shall also choose and may remove such other~~  
7 30 ~~officers and employees as they deem proper, or as the articles~~  
7 31 ~~or bylaws may prescribe.~~

7 32 Sec. 14. Section 499.59, Code 2003, is amended to read as  
7 33 follows:

7 34 499.59 PERSONAL LIABILITY.

7 35 Except as otherwise provided in this chapter, a director,  
8 1 officer, employee, or member of the association is not liable  
8 2 on the association's debts or obligations, and a director,  
8 3 officer, member, or other volunteer is not personally liable  
8 4 in that capacity, for a claim based upon ~~an act or omission of~~  
8 5 ~~the person performed any action taken, or any failure to take~~  
8 6 ~~action in the discharge of the person's duties, except for a~~  
8 7 ~~breach of the duty of loyalty to the association, for acts or~~  
8 8 ~~omissions not in good faith or which involve the amount of a~~  
8 9 ~~financial benefit received by the person to which the person~~  
8 10 ~~is not entitled, an intentional infliction of harm on the~~  
8 11 ~~association or its members, or an intentional misconduct or~~  
8 12 ~~knowing violation of the criminal law, or for a transaction~~  
8 13 ~~from which the person derives an improper personal benefit.~~

8 14 Sec. 15. Section 501.407, Code 2003, is amended to read as  
8 15 follows:

8 16 501.407 PERSONAL LIABILITY == INDEMNIFICATION.

8 17 1. The articles may contain a provision eliminating or  
8 18 limiting the personal liability of a director, officer, or  
8 19 interest holder of the cooperative for ~~monetary money~~ damages  
8 20 for ~~breach of a fiduciary duty any action taken, or any~~  
8 21 ~~failure to take action as a director, officer, or interest~~  
8 22 ~~holder, provided that the provision does not eliminate or~~  
8 23 ~~limit except liability for any of the following:~~

8 24 1- a. A breach of the duty of loyalty to the cooperative  
8 25 or its interest holders ~~An intentional infliction of harm on~~  
8 26 ~~the cooperative or its members.~~

8 27 2- b. An act or omission not in good faith or which  
8 28 involves intentional misconduct or a knowing ~~An intentional~~  
8 29 violation of criminal law.

8 30 3- c. A transaction from which the director, officer, or  
8 31 interest holder derives an improper personal benefit ~~The~~  
8 32 ~~amount of a financial benefit received by the person to which~~  
8 33 ~~the person is not entitled.~~

8 34 4- d. An act or omission occurring prior to the date when  
8 35 the provision in the articles becomes effective.

9 1 2. The articles may contain a provision ~~permitting or~~  
9 2 ~~making obligatory indemnification of a director or officer for~~  
9 3 ~~liability, as defined in section 501.411, to any person for~~  
9 4 ~~any action taken, or any failure to take any action, as a~~  
9 5 ~~director or officer, except liability for any of the~~  
9 6 following:

9 7 a. Receipt of a financial benefit to which the person is  
9 8 not entitled.

9 9 b. An intentional infliction of harm on the corporation or  
9 10 its shareholders.

9 11 c. An intentional violation of criminal law.

9 12 Sec. 16. Section 501.411, Code 2003, is amended to read as  
9 13 follows:

9 14 501.411 DEFINITIONS.

9 15 As used in this part, unless the context otherwise  
9 16 requires:

9 17 1. "Cooperative" includes any domestic or foreign  
9 18 predecessor entity of a cooperative in a merger ~~or other~~  
9 19 ~~transaction in which the predecessor's existence ceased upon~~  
9 20 ~~consummation of the transaction.~~

9 21 2. "Director" ~~or "officer"~~ means an individual who is or  
9 22 was a director ~~or officer, respectively,~~ of a cooperative ~~or~~  
9 23 ~~an individual~~ who, while a director ~~or officer of a the~~  
9 24 cooperative, is or was serving at the cooperative's request as  
9 25 a director, officer, partner, trustee, employee, or agent of  
9 26 another ~~foreign or domestic or foreign~~ cooperative,  
9 27 corporation, partnership, joint venture, trust, employee  
9 28 benefit plan, or other ~~enterprise entity~~. A director ~~or~~  
9 29 ~~officer~~ is considered to be serving an employee benefit plan  
9 30 at the cooperative's request if the director's ~~or officer's~~  
9 31 duties to the cooperative also impose duties on, or otherwise  
9 32 involve services by, that director ~~or officer~~ to the plan or  
9 33 to participants in or beneficiaries of the plan. "Director"  
9 34 ~~or "officer"~~ includes, unless the context requires otherwise,  
9 35 the estate or personal representative of a director ~~or~~  
10 1 officer.

10 2 3. "Disinterested director" means a director who at the  
10 3 time of a vote referred to in section 501.414, subsection 3,

10 4 or a vote or selection referred to in section 501.416,  
10 5 subsection 2 or 3, is not either of the following:

10 6 a. A party to the proceeding.  
10 7 b. An individual having a familial, financial,  
10 8 professional, or employment relationship with the director  
10 9 whose indemnification or advance for expenses is the subject  
10 10 of the decision being made, which relationship would in the  
10 11 circumstances, reasonably be expected to exert an influence on  
10 12 the director's judgment when voting on the decision being  
10 13 made.

10 14 ~~3- 4.~~ "Expenses" includes counsel fees.  
10 15 ~~4- 5.~~ "Liability" means the obligation to pay a judgment,  
10 16 settlement, penalty, fine, including an excise tax assessed  
10 17 with respect to an employee benefit plan, or reasonable  
10 18 expenses incurred with respect to a proceeding.

10 19 ~~5- 6.~~ "Official capacity" means:  
10 20 a. When used with respect to a director, the office of  
10 21 director in a cooperative.  
10 22 b. When used with respect to an individual other than a  
10 23 director officer, as contemplated in section 501.417, the  
10 24 office in a cooperative held by the officer or the employment  
10 25 or agency relationship undertaken by the employee or agent on  
10 26 behalf of the cooperative.

10 27 "Official capacity" does not include service for any other  
10 28 foreign or domestic or foreign cooperative or any corporation,  
10 29 partnership, joint venture, trust, employee benefit plan, or  
10 30 other enterprise entity.

10 31 ~~6- 7.~~ "Party" includes means an individual who was, is, or  
10 32 is threatened to be made a named defendant or respondent in a  
10 33 proceeding.

10 34 ~~7- 8.~~ "Proceeding" means any threatened, pending, or  
10 35 completed action, suit, or proceeding, whether civil,  
11 1 criminal, administrative, or investigative and whether formal  
11 2 or informal.

11 3 Sec. 17. Section 501.412, Code 2003, is amended to read as  
11 4 follows:

11 5 501.412 ~~AUTHORITY TO INDEMNIFY PERMISSIBLE~~  
11 6 ~~INDEMNIFICATION.~~

11 7 1. Except as otherwise provided in ~~subsection 4 this~~  
11 8 ~~section~~, a cooperative may indemnify an individual ~~made who is~~  
11 9 a party to a proceeding because the individual is ~~or was~~ a  
11 10 director against liability incurred in the proceeding if ~~all~~  
11 11 either of the following apply:

11 12 a. All of the following apply:

11 13 a- (1) The individual acted in good faith.

11 14 b- (2) The individual reasonably believed ~~either of the~~  
11 15 following:

11 16 (1) (a) In the case of conduct in the individual's  
11 17 official capacity ~~with the cooperative~~, that the individual's  
11 18 conduct was in the ~~cooperative's~~ best interests ~~of the~~  
11 19 cooperative.

11 20 (2) (b) In all other cases, that the individual's conduct  
11 21 was at least not opposed to the ~~cooperative's~~ best interests  
11 22 ~~of the cooperative.~~

11 23 c- (3) In the case of any criminal proceeding, the  
11 24 individual had no reasonable cause to believe the individual's  
11 25 conduct was unlawful.

11 26 b. ~~The individual engaged in conduct for which broader~~  
11 27 ~~indemnification has been made permissible or obligatory under~~  
11 28 ~~a provision of the articles of organization as authorized by~~  
11 29 ~~section 501.407, subsection 2.~~

11 30 2. A director's conduct with respect to an employee  
11 31 benefit plan for a purpose the director reasonably believed to  
11 32 be in the interests of the participants in and beneficiaries  
11 33 of the plan is conduct that satisfies the requirement of  
11 34 subsection 1, paragraph "b" "a", subparagraph (2).  
11 35 subparagraph subdivision (b).

12 1 3. The termination of a proceeding by judgment, order,  
12 2 settlement, conviction, or upon a plea of nolo contendere or  
12 3 its equivalent is not, of itself, determinative that the  
12 4 director did not meet the relevant standard of conduct  
12 5 described in this section.

12 6 4. ~~A~~ Unless ordered by a court pursuant to section  
12 7 501.415, subsection 1, paragraph "c", a cooperative shall not  
12 8 indemnify a director under this section in either of the  
12 9 following circumstances:

12 10 a. In connection with a proceeding by or in the right of  
12 11 the cooperative, ~~in which the director was adjudged liable to~~  
12 12 ~~the cooperative except for reasonable expenses incurred in~~  
12 13 ~~connection with the proceeding if it is determined that the~~  
12 14 ~~director has met the relevant standard of conduct under~~

12 15 subsection 1, paragraph "a".

12 16 b. In connection with any ~~other proceeding charging~~  
12 17 ~~improper personal benefit to the director, whether or not~~  
12 18 ~~involving action in the director's official capacity, in with~~  
12 19 ~~respect to conduct for which the director was adjudged liable~~  
12 20 ~~on the basis that ~~personal~~ the director received a financial~~  
12 21 ~~benefit was improperly received by the director to which the~~  
12 22 ~~director was not entitled, whether or not involving action in~~  
12 23 ~~the director's official capacity.~~

12 24 5. ~~Indemnification permitted under this section in~~  
12 25 ~~connection with a proceeding by or in the right of the~~  
12 26 ~~cooperative is limited to reasonable expenses incurred in~~  
12 27 ~~connection with the proceeding.~~

12 28 Sec. 18. Section 501.413, Code 2003, is amended to read as  
12 29 follows:

12 30 501.413 MANDATORY INDEMNIFICATION.

12 31 ~~Unless limited by its articles of association, a A~~  
12 32 ~~cooperative shall indemnify a director who was wholly~~  
12 33 ~~successful, on the merits or otherwise, in the defense of any~~  
12 34 ~~proceeding to which the director was a party because the~~  
12 35 ~~director is or was a director of the cooperative ~~against~~~~  
13 1 ~~reasonable expenses incurred by the director in connection~~  
13 2 ~~with the proceeding.~~

13 3 Sec. 19. Section 501.414, Code 2003, is amended to read as  
13 4 follows:

13 5 501.414 ADVANCE FOR EXPENSES.

13 6 1. A cooperative may, ~~before final disposition of a~~  
13 7 ~~proceeding, advance funds to pay for or reimburse the~~  
13 8 ~~reasonable expenses incurred by a director who is a party to a~~  
13 9 ~~proceeding in advance of final disposition of the proceeding~~  
13 10 ~~because the person is a director if any of the person delivers~~  
13 11 ~~all of the following ~~applies~~ to the cooperative:~~

13 12 a. ~~The director furnishes the cooperative a A written~~  
13 13 ~~affirmation of the director's good faith belief that ~~either~~~~  
13 14 ~~the director has met the ~~relevant~~ standard of conduct~~  
13 15 ~~described in section 501.412 or that the proceeding involves~~  
13 16 ~~conduct for which liability has been eliminated under a~~  
13 17 ~~provision of the articles of organization as authorized by~~  
13 18 ~~section 501.407, subsection 1.~~

13 19 b. ~~The director furnishes the cooperative a director's~~  
13 20 ~~written undertaking, ~~executed personally or on the director's~~~~  
13 21 ~~behalf, to repay the advance if any funds advanced if the~~  
13 22 ~~director is not entitled to mandatory indemnification under~~  
13 23 ~~section 501.413 and it is ultimately determined that the~~  
13 24 ~~director did not meet the ~~has not met~~ the relevant standard of~~  
13 25 ~~conduct described in section 501.412.~~

13 26 c. ~~A determination is made pursuant to section 501.416~~  
13 27 ~~that the facts then known to those making the determination~~  
13 28 ~~would not preclude indemnification under this part.~~

13 29 2. The undertaking required by subsection 1, paragraph  
13 30 "b", must be an unlimited general obligation of the director  
13 31 but need not be secured and may be accepted without reference  
13 32 to ~~the financial ability of the director~~ to make repayment.

13 33 3. ~~Determinations and authorizations of payments~~  
13 34 ~~Authorizations~~ under this section shall be made ~~in the manner~~  
13 35 ~~specified in section 501.416. ~~according to either of the~~~~  
14 1 ~~following:~~

14 2 a. By the board of directors, according to one of the  
14 3 following:

14 4 (1) ~~If there are two or more disinterested directors, by a~~  
14 5 ~~majority vote of all the disinterested directors, a majority~~  
14 6 ~~of whom shall for such purpose constitute a quorum, or by a~~  
14 7 ~~majority of the members of a committee of two or more~~  
14 8 ~~disinterested directors appointed by such a vote.~~

14 9 (2) ~~If there are fewer than two disinterested directors,~~  
14 10 ~~if a quorum is present when the vote is taken, by the~~  
14 11 ~~affirmative vote of a majority of the directors present,~~  
14 12 ~~unless the articles or bylaws require the vote of a greater~~  
14 13 ~~number of directors, in which authorization directors who do~~  
14 14 ~~not qualify as disinterested directors may participate.~~

14 15 b. By the members, but voting interests owned by or voted  
14 16 under the control of a director who at the time does not  
14 17 qualify as a disinterested director shall not be voted on the  
14 18 authorization.

14 19 Sec. 20. Section 501.415, Code 2003, is amended to read as  
14 20 follows:

14 21 501.415 COURT-ORDERED INDEMNIFICATION.

14 22 1. ~~Unless a cooperative's articles of association provide~~  
14 23 ~~otherwise, a A director of the cooperative who is a party to a~~  
14 24 ~~proceeding because the person is a director may apply for~~  
14 25 ~~indemnification to the court conducting the proceeding or to~~

14 26 another court of competent jurisdiction for indemnification or  
14 27 an advance for expenses. ~~On~~ After receipt of an application,  
14 28 ~~the court and~~ after giving any notice the court considers  
14 29 necessary ~~may order~~, the court shall proceed according to the  
14 30 following:

14 31 a. Order indemnification if it the court determines either  
14 32 of the following: that the

14 33 1. ~~The director is entitled to mandatory indemnification~~  
14 34 ~~under section 501.413, in which case the court shall also~~  
14 35 ~~order the cooperative to pay the director's reasonable~~  
15 1 ~~expenses incurred to obtain court-ordered indemnification.~~

15 2 2. ~~The director is fairly and reasonably entitled to~~  
15 3 ~~indemnification in view of all the relevant circumstances,~~  
15 4 ~~whether or not the director met the standard of conduct set~~  
15 5 ~~forth in section 501.412 or was adjudged liable as described~~  
15 6 ~~in section 501.412, subsection 4, but if the director was~~  
15 7 ~~adjudged so liable the director's indemnification is limited~~  
15 8 ~~to reasonable expenses incurred.~~

15 9 b. Order indemnification or advance for expenses if the  
15 10 court determines that the director is entitled to  
15 11 indemnification or advance for expenses pursuant to a  
15 12 provision authorized by section 501.419, subsection 1.

15 13 c. Order indemnification or advance for expenses if the  
15 14 court determines, in view of all the relevant circumstances,  
15 15 that it is fair and reasonable to do one of the following:

15 16 (1) To indemnify the director.

15 17 (2) To advance expenses to the director, even if the  
15 18 director has not met the relevant standard of conduct set  
15 19 forth in section 501.412, subsection 1, failed to comply with  
15 20 section 501.414, or was adjudged liable in a proceeding  
15 21 referred to in subsection 501.412, subsection 4, paragraph "a"  
15 22 or "b", but if the director was adjudged so liable the  
15 23 director's indemnification shall be limited to reasonable  
15 24 expenses incurred in connection with the proceeding.

15 25 2. If the court determines that the director is entitled  
15 26 to indemnification under subsection 1, paragraph "a", or to  
15 27 indemnification or advance for expenses under subsection 1,  
15 28 paragraph "b", the court shall also order the cooperative to  
15 29 pay the director's reasonable expenses incurred in connection  
15 30 with obtaining court-ordered indemnification or advance for  
15 31 expenses. If the court determines that the director is  
15 32 entitled to indemnification or advance for expenses under  
15 33 subsection 1, paragraph "c", the court may also order the  
15 34 cooperative to pay the director's reasonable expenses to  
15 35 obtain court-ordered indemnification or advance for expenses.

16 1 Sec. 21. Section 501.416, Code 2003, is amended to read as  
16 2 follows:

16 3 501.416 DETERMINATION AND AUTHORIZATION OF  
16 4 INDEMNIFICATION.

16 5 1. A cooperative shall not indemnify a director under  
16 6 section 501.412 unless authorized ~~in the for a specific case~~  
16 7 ~~proceeding~~ after a determination has been made that  
16 8 indemnification of the director is permissible ~~in the~~  
16 9 ~~circumstances~~ because the director has met the relevant  
16 10 standard of conduct set forth in section 501.412.

16 11 2. The determination shall be made by ~~any one~~ of the  
16 12 following:

16 13 a. ~~By the board of directors by majority vote of a quorum~~  
16 14 ~~consisting of directors not at the time parties to the~~  
16 15 ~~proceeding. If there are two or more disinterested directors,~~  
16 16 ~~by the board of directors by a majority vote of all the~~  
16 17 ~~disinterested directors, a majority of whom shall for such~~  
16 18 ~~purpose constitute a quorum, or by a majority of the members~~  
16 19 ~~of a committee of two or more disinterested directors~~  
16 20 ~~appointed by such a vote.~~

16 21 b. ~~If a quorum cannot be obtained under paragraph "a", by~~  
16 22 ~~majority vote of a committee duly designated by the board of~~  
16 23 ~~directors, in which designation directors who are parties may~~  
16 24 ~~participate, consisting solely of two or more directors not at~~  
16 25 ~~the time parties to the proceeding.~~

16 26 c. b. By special legal counsel.

16 27 (1) ~~The special legal counsel shall be selected by the~~  
16 28 ~~board of directors or its committee in the manner prescribed~~  
16 29 ~~described in paragraph "a" or "b".~~

16 30 (2) ~~If a quorum of the board of there are fewer than two~~  
16 31 ~~disinterested directors cannot be obtained under paragraph "a"~~  
16 32 ~~and a committee cannot be designated under paragraph "b", the~~  
16 33 ~~special legal counsel shall be selected by majority vote of~~  
16 34 ~~the full board of directors, in which selection directors who~~  
16 35 ~~are parties do not qualify as disinterested directors may~~  
17 1 ~~participate.~~

17 2 ~~d. c.~~ By the members, but voting interests owned by or  
17 3 voted under the control of ~~directors~~ a director who ~~are~~ at the  
17 4 time ~~parties to the proceeding~~ does not qualify as a  
17 5 disinterested director shall not be voted on the

17 6 determination.  
17 7 3. Authorization of indemnification ~~and evaluation as to~~  
17 8 ~~reasonableness of expenses~~ shall be made in the same manner as  
17 9 the determination that indemnification is permissible, except  
17 10 that if there are fewer than two disinterested directors or if  
17 11 the determination is made by special legal counsel,  
17 12 authorization of indemnification ~~and evaluation as to~~  
17 13 ~~reasonableness of expenses~~ shall be made by those entitled  
17 14 under subsection 2, paragraph "c" "b", to select special legal  
17 15 counsel.

17 16 Sec. 22. Section 501.417, Code 2003, is amended to read as  
17 17 follows:

17 18 501.417 INDEMNIFICATION OF OFFICERS, ~~EMPLOYEES, AND~~  
17 19 ~~AGENTS~~.

17 20 ~~Unless a cooperative's articles of association provide~~  
17 21 ~~otherwise, all of the following apply:~~

17 22 1. ~~An officer of the cooperative who is not a director is~~  
17 23 ~~entitled to mandatory indemnification under section 501.413,~~  
17 24 ~~and is entitled to apply for court-ordered indemnification~~  
17 25 ~~under section 501.415, in each case to the same extent as a~~  
17 26 ~~director.~~

17 27 2. ~~1. The~~ A cooperative may indemnify and advance expenses  
17 28 under this part to an officer, ~~employee, or agent~~ of the  
17 29 cooperative who is ~~not a director to a party to a proceeding~~  
17 30 because the person is an officer, according to both of the  
17 31 following:

17 32 a. To the same extent as to a director.

17 33 3. ~~b. A cooperative may also indemnify and advance~~  
17 34 ~~expenses to an officer, employee, or agent who is not a~~  
17 35 ~~director to the extent consistent with law that~~ If the person  
18 1 is an officer but not a director, to such further extent as  
18 2 may be provided by its the articles of association, the  
18 3 bylaws, general or specific action a resolution of its the  
18 4 board of directors, or contract, except for either of the  
18 5 following:

18 6 (1) Liability in connection with a proceeding by or in the  
18 7 right of the cooperative other than for reasonable expenses  
18 8 incurred in connection with the proceeding.

18 9 (2) Liability arising out of conduct that constitutes any  
18 10 of the following:

18 11 (a) Receipt by the officer of a financial benefit to which  
18 12 the officer is not entitled.

18 13 (b) An intentional infliction of harm on the cooperative  
18 14 or the interest holders.

18 15 (c) An intentional violation of criminal law.

18 16 2. The provisions of subsection 1, paragraph "b", shall  
18 17 apply to an officer who is also a director if the basis on  
18 18 which the officer is made a party to a proceeding is an act or  
18 19 omission solely as an officer.

18 20 3. An officer of a cooperative who is not a director is  
18 21 entitled to mandatory indemnification under section 501.413,  
18 22 and may apply to a court under section 501.415 for  
18 23 indemnification or an advance for expenses, in each case to  
18 24 the same extent to which a director may be entitled to  
18 25 indemnification or an advance for expenses under those  
18 26 provisions.

18 27 Sec. 23. Section 501.418, Code 2003, is amended to read as  
18 28 follows:

18 29 501.418 INSURANCE.

18 30 A cooperative may purchase and maintain insurance on behalf  
18 31 of an individual who is ~~or was~~ a director, ~~or~~ officer,  
18 32 ~~employee, or agent~~ of the cooperative, or who, while a  
18 33 director, ~~or~~ officer, ~~employee, or agent~~ of the cooperative,  
18 34 ~~is or was serving serves~~ as a director, officer, partner,  
18 35 cooperative's request as a director, officer, partner,  
19 1 trustee, employee, or agent of another foreign or domestic or  
19 2 foreign cooperative, corporation, partnership, joint venture,  
19 3 trust, employee benefit plan, or other enterprise entity,  
19 4 against liability asserted against or incurred by that  
19 5 individual in that capacity or arising from the individual's  
19 6 status as a director, or officer, employee, or agent, whether  
19 7 or not the cooperative would have power to indemnify or  
19 8 advance expenses to that individual against the same liability  
19 9 under section 501.412 or 501.413 this part.

19 10 Sec. 24. Section 501.419, Code 2003, is amended to read as  
19 11 follows:

19 12 501.419 VARIATION BY CORPORATE ACTION -- APPLICATION OF



19 13 THIS PART.

19 14 Except as limited in section 501.412, subsection 4,  
19 15 paragraph "a", and subsection 5 with respect to proceedings by  
19 16 or in the right of the cooperative, the indemnification and  
19 17 advancement of expenses provided by, or granted pursuant to,  
19 18 sections 501.411 through 501.418 are not exclusive of any  
19 19 other rights to which persons seeking indemnification or  
19 20 advancement of expenses are entitled under a provision in the  
19 21 articles of association or bylaws, agreements, vote of the  
19 22 members or disinterested directors, or otherwise, both as to  
19 23 action in a person's official capacity and as to action in  
19 24 another capacity while holding the office. However, such  
19 25 provisions, agreements, votes, or other actions shall not  
19 26 provide indemnification for a breach of a director's duty of  
19 27 loyalty to the cooperative or its interest holders, for acts  
19 28 or omissions not in good faith or which involve intentional  
19 29 misconduct or knowing violation of the law, or for a  
19 30 transaction from which the person seeking indemnification  
19 31 derives an improper personal benefit.

19 32 1. A cooperative may, by a provision in its articles of  
19 33 organization or bylaws or in a resolution adopted or a  
19 34 contract approved by its board of directors or members,  
19 35 obligate itself in advance of the act or omission giving rise  
20 1 to a proceeding to provide indemnification in accordance with  
20 2 section 501.412 or advance funds to pay for or reimburse  
20 3 expenses in accordance with section 501.414. Any such  
20 4 obligatory provision shall be deemed to satisfy the  
20 5 requirements for authorization referred to in section 501.414,  
20 6 subsection 3, and in section 501.416, subsection 3. Any such  
20 7 provision that obligates the cooperative to provide  
20 8 indemnification to the fullest extent permitted by law shall  
20 9 be deemed to obligate the cooperative to advance funds to pay  
20 10 for or reimburse expenses in accordance with section 501.414  
20 11 to the fullest extent permitted by law, unless the provision  
20 12 specifically provides otherwise.

20 13 2. Any provision pursuant to subsection 1 shall not  
20 14 obligate the cooperative to indemnify or advance expenses to a  
20 15 director of a predecessor of the cooperative, pertaining to  
20 16 conduct with respect to the predecessor, unless otherwise  
20 17 specifically provided. Any provision for indemnification or  
20 18 advance for expenses in the articles of organization, bylaws,  
20 19 or a resolution of the board of directors or members of a  
20 20 predecessor of the cooperative in a merger or in a contract to  
20 21 which the predecessor is a party, existing at the time the  
20 22 merger takes effect, shall be governed by section 501.618,  
20 23 subsection 3.

20 24 3. A cooperative may, by a provision in its articles of  
20 25 organization, limit any of the rights to indemnification or  
20 26 advance for expenses created by or pursuant to this part.

20 27 4. This part does not limit a cooperative's power to pay  
20 28 or reimburse expenses incurred by a director or an officer in  
20 29 connection with the director's or officer's appearance as a  
20 30 witness in a proceeding at a time when the director or officer  
20 31 is not a party.

20 32 5. This part does not limit a cooperative's power to  
20 33 indemnify, advance expenses to, or provide or maintain  
20 34 insurance on behalf of an employee or agent.

20 35 Sec. 25. NEW SECTION. 501.420 EXCLUSIVITY.

21 1 A cooperative may provide indemnification or advance  
21 2 expenses to a director or an officer only as permitted by this  
21 3 chapter.

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MARY E. KRAMER  
President of the Senate

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CHRISTOPHER C. RANTS  
Speaker of the House

21 15 I hereby certify that this bill originated in the Senate and  
21 16 is known as Senate File 340, Eightieth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

21 22 Approved \_\_\_\_\_, 2003

21 24

21 25

21 26 THOMAS J. VILSACK

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21 27 Governor