



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 25, 2003

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 340, an Act relating to business entities, based on revisions related to the Iowa Business Corporation Act, including addition of a savings clause and addition of provisions related to director and officer liability, duty, and indemnification for certain insurance companies and indemnification for cooperative associations.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack".

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 340

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

490A.707 LIMITATION OF LIABILITY OF MANAGERS.

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for ~~monetary~~ money damages

~~for breach of fiduciary duty~~ for any action taken, or any failure to take action, as a manager or a member with whom management of the limited liability company is vested, ~~if the provision does not eliminate or limit the liability of a manager or a member with whom management of the limited liability company is vested for~~ except for liability for any of the following:

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

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

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

4. An intentional violation of criminal law.

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

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

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

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

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

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

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

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

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

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

496C.16 MANAGEMENT.

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

practice may be appointed as officers and directors for the sole purpose of carrying out the dissolution of the corporation or, if applicable, the voluntary election of the corporation to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19.

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

496C.19 DISSOLUTION OR LIQUIDATION.

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

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

497.33 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an-act-or-omission-of-the-person-performed any action taken, or any failure to take action in the discharge of the person's duties, except for a

~~breach-of-the-duty-of-loyalty-to-the-corporation, for acts or~~
~~emissions-not-in-good-faith-or-which-involve~~ the amount of a
financial benefit received by the person to which the person
is not entitled, an intentional infliction of harm on the
association or its members, or an intentional misconduct or
knowing violation of the criminal law, or for a transaction
~~from-which-the-person-derives-an-improper-personal-benefit.~~

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

498.35 PERSONAL LIABILITY.

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

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

499.37 OFFICERS AND EMPLOYEES.

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

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

b. Authenticating the association's records.

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

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

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

499.59 PERSONAL LIABILITY.

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

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

501.407 PERSONAL LIABILITY -- INDEMNIFICATION.

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

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

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

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

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

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

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

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

c. An intentional violation of criminal law as defined in Sec. 16. Section 501.411, Code 2001, is amended to read as follows:

501.411 DEFINITIONS.

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

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

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

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

a. A party to the proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

a. All of the following apply:

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

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

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

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

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

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

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

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

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

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

b. In connection with any ~~other~~ proceeding charging ~~improper-personal-benefit-to-the-director, whether-or-not involving-action-in-the-director's-official-capacity, in~~ with

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

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

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

501.413 MANDATORY INDEMNIFICATION.

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

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

501.414 ADVANCE FOR EXPENSES.

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

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

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

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

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

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

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

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

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

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

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

501.415 COURT-ORDERED INDEMNIFICATION.

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

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

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

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

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

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

(1) To indemnify the director.

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

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

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

501.416 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

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

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

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

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

~~c.~~ b. By special legal counsel.

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

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

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

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

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

501.417 INDEMNIFICATION OF OFFICERS, ~~EMPLOYEES,~~ ~~AND~~ AGENTS.

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

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

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

a. To the same extent as to a director.

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

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

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

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

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

(c) An intentional violation of criminal law.

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

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

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

501.418 INSURANCE.

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

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

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

~~Except-as-limited-in-section-501-412-subsection-4~~ paragraph-"a", ~~and-subsection-5-with-respect-to-proceedings-by~~ or-in-the-right-of-the-cooperative, ~~the-indemnification-and~~ advancement-of-expenses-provided-by, ~~or-granted-pursuant-to~~ sections-501-411-through-501-418-are-not-exclusive-of-any

~~other rights to which persons seeking indemnification or advancement of expenses are entitled under a provision in the articles of association or bylaws, agreements, vote of the members or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. -- However, such provisions, agreements, votes, or other actions shall not provide indemnification for a breach of a director's duty of loyalty to the cooperative or its interest holders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person seeking indemnification derives an improper personal benefit.~~

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

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

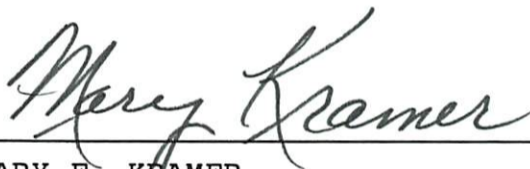
3. A cooperative may, by a provision in its articles of organization, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

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

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

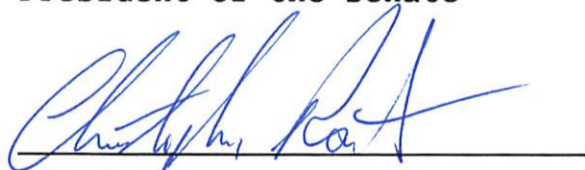
Sec. 25. NEW SECTION. 501.420 EXCLUSIVITY.

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



MARY E. KRAMER

President of the Senate



CHRISTOPHER C. RANTS

Speaker of the House

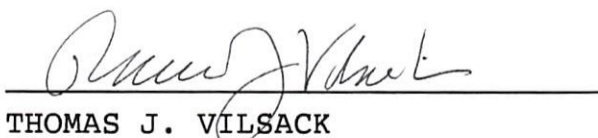
I hereby certify that this bill originated in the Senate and is known as Senate File 340, Eightieth General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved April 25, 2003



THOMAS J. VILSACK

Governor