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SENATE FILE 2135
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 2076)

Passed Senate, Date ^(p. 348) 2/15/96 Passed House, Date ^(p. 643) 3/12/96
Vote: Ayes 46 Nays 3 Vote: Ayes 92 Nays 1
Approved March 21, 1996

A BILL FOR

1 An Act providing for the organization of cooperative
2 corporations, providing for fees, and providing for penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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~~SENATE FILE 2135~~

S-5057

1 Amend Senate File 2135 as follows:
2 1. Page 13, line 2, by inserting after the word
3 "interest." the following: "A director shall be
4 deemed to have a conflict of interest in a matter
5 concerning a transaction between the cooperative and
6 another entity, if the director owns a twenty-five
7 percent or greater ownership interest in the other
8 entity."

By STEWART IVERSON, Jr.
EMIL J. HUSAK

(p. 348) adopted 2/15/96

S-5057 FILED FEBRUARY 13, 1996

SF. 2135

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1 Section 1. PURPOSE. The purpose of chapter 501 is to
2 provide an opportunity for producers of agricultural
3 commodities to contribute a portion of their production for a
4 single enterprise for purposes of enhancing the value of that
5 production and to restrict control of these enterprises to
6 agricultural producers.

7 Sec. 2. Section 203.1, subsection 8, Code Supplement 1995,
8 is amended to read as follows:

9 8. "Grain dealer" means a person who buys during any
10 calendar month five hundred bushels of grain or more from the
11 producers of the grain for purposes of resale, milling, or
12 processing. However, "grain dealer" does not include a any of
13 the following:

14 a. A producer of grain who is buying grain for the
15 producer's own use as seed or feed~~;-a.~~

16 b. A person solely engaged in buying grain future
17 contracts on the board of trade~~;-a.~~

18 c. A person who purchases grain only for sale in a
19 registered feed~~;-a.~~

20 d. A person who purchases grain for sale in a
21 nonregistered customer-formula feed regulated by chapter 198,
22 who purchases less than a total of fifty thousand bushels of
23 grain annually from producers, and who is also exempt as an
24 incidental warehouse operator under chapter 203C~~;-a.~~

25 e. A person engaged in the business of selling
26 agricultural seeds regulated by chapter 199~~;-a.~~

27 f. A person buying grain only as a farm manager~~;-an.~~

28 g. An executor, administrator, trustee, guardian, or
29 conservator of an estate~~;-a.~~

30 h. A bargaining agent as defined in section 203A.1; or a
31 custom livestock feeder.

32 i. A cooperative corporation organized under chapter 501
33 that does not buy any grain from producers who are not members
34 and does not sell any grain.

35 SUBCHAPTER I

1 GENERAL PROVISIONS

2 Sec. 3. NEW SECTION. 501.101 DEFINITIONS.

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

5 1. "Articles" means the cooperative's articles of
6 incorporation.

7 2. "Authorized person" means a person who is one of the
8 following:

9 a. A farming entity.

10 b. An individual or general partnership that owns land and
11 receives as rent a share of the crops or the animals raised on
12 the land if those crops or animals are a significant component
13 of the cooperative's business operations.

14 c. An employee of the cooperative who performs at least
15 one thousand hours of service for the cooperative in each
16 calendar year.

17 3. "Board" means the cooperative's board of directors.

18 4. "Cooperative" means a cooperative corporation organized
19 under this chapter or converted to this chapter pursuant to
20 section 501.601.

21 5. "Farming" means the same as section 9H.1.

22 6. "Farming entity" means any one of the following:

23 a. A natural person or a fiduciary for a natural person
24 who regularly participates in physical labor or operations
25 management in a farming operation and files schedule F as part
26 of the person's annual form 1040 or form 1041 filing with the
27 United States internal revenue service.

28 b. A family farm corporation, family farm limited
29 liability company, family farm limited partnership, or family
30 trust, as defined in section 9H.1.

31 c. A general partnership, limited partnership, or limited
32 liability partnership composed exclusively of natural persons
33 or persons acting in a fiduciary capacity for the benefit of
34 natural persons, which has received at least sixty percent of
35 gross income from farming over its entire duration or the last

1 consecutive three-year period, whichever is less.

2 7. "Member" means a person who owns voting stock in a
3 cooperative.

4 8. "Shareholder" means a person who owns stock in a
5 cooperative, whether or not that stock has voting rights.

6 9. "Voting stock" means stock in a cooperative that has
7 voting rights.

8 Sec. 4. NEW SECTION. 501.102 PURPOSES AND POWERS.

9 1. A cooperative organized under this chapter has the
10 purpose of engaging in any lawful business unless a more
11 limited purpose is set forth in the articles.

12 2. Unless its articles provide otherwise, a cooperative
13 has perpetual duration and succession in its corporate name
14 and has the same powers as an individual to do all things
15 necessary or convenient to carry out its business and affairs,
16 including, without limitation, all of the powers enumerated in
17 sections 490.302 and 490.303.

18 Sec. 5. NEW SECTION. 501.103 LIMITED FARMING ACTIVITIES.

19 1. Notwithstanding section 9H.4, a cooperative may,
20 directly or indirectly, acquire or otherwise obtain or lease
21 agricultural land in this state, for as long as the
22 cooperative continues to meet the following requirements:

23 a. Farming entities own sixty percent of the stock and are
24 eligible to cast sixty percent of the votes at member
25 meetings.

26 b. Authorized persons own at least seventy-five percent of
27 the stock and are eligible to cast at least seventy-five
28 percent of the votes at member meetings.

29 c. The cooperative does not, either directly or
30 indirectly, acquire or otherwise obtain or lease agricultural
31 land, if the total agricultural land either directly or
32 indirectly owned or leased by the cooperative would then
33 exceed one thousand five hundred acres.

34 2. A cooperative that claims that it is exempt from the
35 restrictions of section 9H.4 pursuant to subsection 1 shall

1 file an annual report with the secretary of state on or before
2 March 31 of each year on forms supplied by the secretary of
3 state. The report shall be signed by the president or the
4 vice president of the cooperative and shall contain the
5 following:

- 6 a. The cooperative's name and address.
- 7 b. A certification that the cooperative meets both of the
8 requirements of subsection 1.
- 9 c. The number of acres of agricultural land owned, leased
10 or held by the cooperative, including the following:
 - 11 (1) The total number of acres in the state.
 - 12 (2) The number of acres in each county identified by
13 county name.
 - 14 (3) The number of acres owned.
 - 15 (4) The number of acres leased.
 - 16 (5) The number of acres held other than by ownership or
17 lease.
 - 18 (6) The number of acres used for the production of row
19 crops.

20 3. The president or the vice president of the cooperative
21 who falsifies a report shall be guilty of perjury as provided
22 in section 720.2.

23 4. In the event of a transfer of stock by operation of law
24 as a result of death, divorce, bankruptcy, or pursuant to a
25 security interest, the cooperative may disregard the transfer
26 for purposes of determining compliance with subsection 1 for a
27 period of two years after the transfer.

28 Sec. 6. NEW SECTION. 501.104 NAME.

29 The name of a cooperative organized under this chapter must
30 contain the word "cooperative", "coop", or "co-op", and the
31 name must be distinguishable from the names of cooperatives
32 organized under this chapter or another chapter, or foreign
33 cooperatives authorized to do business in this state.

34 Sec. 7. NEW SECTION. 501.105 EXECUTION AND FILING OF
35 DOCUMENTS.

- 1 1. The secretary of state may prescribe and furnish on
2 request forms for the proper administration of this chapter.
3 If the secretary of state has prescribed a mandatory form for
4 a document, then that form must be on the prescribed form.
- 5 2. Articles must be signed by all of the incorporates; and
6 all other documents filed with the secretary of state must be
7 signed by one of the cooperative's officers. The printed name
8 and capacity of each signatory must appear in proximity to the
9 signatory's signature. The secretary of state may accept a
10 document containing a copy of the signature. A document is
11 not required to contain a corporate seal, an acknowledgment,
12 or a verification.
- 13 3. The secretary of state shall collect the following
14 fees:
 - 15 a. Twenty dollars upon the filing of original or amended
16 articles or articles of merger.
 - 17 b. Five dollars upon the filing of all other required
18 documents.
 - 19 c. Five dollars per document and fifty cents per page for
20 copying and certifying a document.
- 21 4. A document is effective at the later of the following
22 times:
 - 23 a. The time of filing on the date it is filed, as
24 evidenced by the secretary of state's date and time
25 endorsement on the original document.
 - 26 b. The delayed effective time and date specified in the
27 document. If a delayed effective date but no time is
28 specified in the document, the document is effective at the
29 close of business on that date. A delayed effective date for
30 a document shall not be later than the ninetieth day after the
31 date it is filed.
- 32 5. A document filed under this section may be corrected if
33 the document contains an incorrect statement or the execution
34 of the document was defective. A document is corrected by
35 filing with the secretary of state articles of correction

1 which describe the document to be corrected, including its
2 filing date or a copy of the document. The articles must
3 specify and correct the incorrect statement or defective
4 execution. Articles of correction are effective on the
5 effective date of the document it corrects except as to
6 persons relying on the original document and adversely
7 affected by the correction. As to those persons, articles of
8 correction are effective when filed.

9 6. The secretary of state shall forward for recording a
10 copy of each original, amended, and restated articles,
11 articles of merger, articles of consolidation, and articles of
12 dissolution to the recorder of the county in which the
13 cooperative has its principal place of business, or in the
14 case of a merger or consolidation, to the recorders of each of
15 the counties in which the merging or consolidating
16 cooperatives have their principal offices.

17 Sec. 8. NEW SECTION. 501.106 REGISTERED OFFICE.

18 1. A cooperative must continuously maintain in this state
19 a registered office that may be the same as any of its places
20 of business, and a registered agent, who may be any of the
21 following:

22 a. An individual who resides in this state and whose
23 business office is identical with the registered office.

24 b. A domestic corporation or not-for-profit domestic
25 corporation whose business office is identical with the
26 registered office.

27 c. A foreign corporation or not-for-profit foreign
28 corporation authorized to transact business in this state
29 whose business office is identical with the registered office.

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

34 a. The name of the cooperative.

35 b. The street address of its current registered office.

1 c. If the street address of the current registered office
2 is to be changed, the street address of the new registered
3 office.

4 d. The name of its current registered agent.

5 e. If the current registered agent is to be changed, the
6 name of the new registered agent and the new agent's written
7 consent, either on the statement or attached to it, to the
8 appointment.

9 f. That after the change or changes are made, the street
10 addresses of its registered office and the business office of
11 its registered agent will be identical.

12 3. a. If a registered agent changes the street address of
13 the registered agent's business office, the registered agent
14 may change the street address of the registered office of any
15 cooperative for which the person is the registered agent by
16 notifying the cooperative in writing of the change and
17 signing, either manually or in facsimile, and delivering to
18 the secretary of state for filing, a statement that provides
19 for a registered office and a registered agent as provided in
20 this section, and which recites that the cooperative has been
21 notified of the change.

22 b. If a registered agent changes the registered agent's
23 business address to another place, the registered agent may
24 change the business address and the address of the registered
25 agent by filing a statement as required in paragraph "a" for
26 each cooperative, or a single statement for all cooperatives
27 named in the notice, except that it need be signed only by the
28 registered agent or agents or be responsive to subsection 2,
29 paragraph "e". The statement must recite that a copy of the
30 statement has been mailed to each cooperative named in the
31 notice.

32 4. A cooperative may also change its registered office or
33 registered agent in its annual report.

34 Sec. 9. NEW SECTION. 501.107 RECORDS AND REPORTS.

35 The provisions of sections 490.1601 through 490.1622 shall

1 apply to cooperatives organized under this chapter in the same
2 manner as the provisions apply to corporations organized under
3 chapter 490.

4 Sec. 10. NEW SECTION. 501.108 QUO WARRANTO.

5 The attorney general alone shall have the right to inquire
6 into whether a cooperative has the right to exist or continue
7 under this chapter. If the secretary of state is informed
8 that a cooperative is not functioning as a cooperative, the
9 secretary of state shall notify the attorney general. If the
10 attorney general finds reasonable cause that the cooperative
11 is not functioning as provided under this chapter, the
12 attorney general shall bring action to wind up the affairs of
13 the cooperative.

14 SUBCHAPTER II

15 ARTICLES AND BYLAWS

16 Sec. 11. NEW SECTION. 501.201 INCORPORATION.

17 Three or more individuals may organize a cooperative under
18 this chapter by executing and delivering articles to the
19 secretary of state.

20 Sec. 12. NEW SECTION. 501.202 ARTICLES OF INCORPORATION.

21 1. The initial articles must set forth all of the
22 following:

- 23 a. The name, address, and occupation of each incorporator.
- 24 b. The names and addresses of the initial directors.
- 25 c. The street address of the cooperative's initial
26 registered office and the name of its initial registered agent
27 at that office.

28 2. The articles must set forth all of the following:

- 29 a. The name that satisfies the requirements of section
30 501.104.
- 31 b. A statement that it is organized under this chapter.
- 32 c. Its duration, which may be perpetual.
- 33 d. The classes of stock and the authorized number of
34 shares of each class.
- 35 e. The quorum required for each member meeting.

1 f. The member voting rules.

2 3. The articles may set forth any other provision
3 consistent with law.

4 Sec. 13. NEW SECTION. 501.203 AMENDED AND RESTATED
5 ARTICLES OF INCORPORATION.

6 1. A cooperative may amend its articles at any time to add
7 or change a provision that is required or permitted in the
8 articles or to delete a provision not required in the
9 articles.

10 2. A cooperative may restate its articles at any time. A
11 restatement of the articles must contain the information
12 required by section 501.202, subsection 2, and may set forth
13 any other provision consistent with law.

14 3. If the board recommends the amendment or restatement to
15 the members, the amendment or restatement must be adopted by
16 the members by a vote of two-thirds of the votes cast.

17 4. If the board does not recommend the amendment or
18 restatement to the members, then the amendment or restatement
19 must be adopted by the members by a vote of two-thirds of the
20 votes cast on a ballot in which a majority of all votes are
21 cast.

22 Sec. 14. NEW SECTION. 501.204 BYLAWS.

23 The board may adopt or amend the cooperative's bylaws by a
24 vote of three-fourths of the board. The members may adopt or
25 amend the cooperative's bylaws by a vote of three-fourths of
26 the votes cast on a ballot in which a majority of all votes
27 are cast. A bylaw provision adopted by the members shall not
28 be amended or repealed by the directors.

29 SUBCHAPTER III

30 MEMBERS

31 Sec. 15. NEW SECTION. 501.301 LIABILITY OF MEMBERS.

32 A member is not personally liable for the acts or debts of
33 the cooperative.

34 Sec. 16. NEW SECTION. 501.302 CALLING AND NOTICE OF
35 MEETINGS.

1 1. A cooperative shall hold an annual member meeting at a
2 time and place fixed in accordance with the bylaws.

3 2. The board may call special member meetings, and the
4 board shall call a special member meeting upon the written
5 demand of twenty percent of the members.

6 3. A cooperative shall give each member at least ten days
7 advanced notice of the time, place, and the issues to be
8 considered at each member meeting. This notice may be given
9 in person or by mail to the last known address of the member,
10 or the notice requirement may be met by the member waiving the
11 notice.

12 4. The record date for determining the members entitled to
13 notice of and to vote at a member meeting is the close of
14 business on the day before the first notices for the meeting
15 are delivered or mailed.

16 Sec. 17. NEW SECTION. 501.303 CONDUCT OF MEETINGS.

17 1. Only those issues included in the notice of a member
18 meeting may be considered at that meeting.

19 2. A member may vote at a member meeting in person or by
20 signed absentee ballot that specifies the issue and the
21 member's vote on that issue. If the board makes available an
22 absentee ballot form, then that form must be used to cast an
23 absentee ballot on that issue.

24 Sec. 18. NEW SECTION. 501.304 MEMBER INFORMATION.

25 1. Within ten days from receiving a demand of a member,
26 the cooperative shall produce and furnish the member with the
27 names and addresses of all members of the cooperative.

28 2. The board shall adopt a policy which permits the
29 distribution of information to all of the members upon the
30 request of a member when the purpose of the request concerns
31 directly the action of the board. Upon receipt of the
32 information and the request of a member, the board shall
33 distribute the information to all of the members. The
34 cooperative may charge the requesting member the costs
35 incurred by the cooperative in distributing the information.

1 SUBCHAPTER IV

2 DIRECTORS AND OFFICERS

3 Sec. 19. NEW SECTION. 501.401 NUMBER AND ELECTION.

4 1. The affairs of a cooperative shall be managed by a
5 board of not less than three directors.

6 2. The members shall elect the directors as prescribed in
7 the articles or bylaws.

8 3. Each director shall serve the term prescribed in the
9 articles or bylaws. The terms may be staggered.

10 Sec. 20. NEW SECTION. 501.402 VACANCIES.

11 1. A director may resign at any time by delivering written
12 notice to the board chairperson or the board secretary. A
13 resignation is effective when the notice is delivered unless
14 the notice specifies a later effective date.

15 2. The members may remove one or more directors with or
16 without cause unless the articles provide that directors may
17 be removed only for cause.

18 3. The articles may authorize the board to remove a
19 director for a cause specified in the articles.

20 4. Unless the articles or bylaws provide otherwise, the
21 board shall fill each vacancy until the members elect a
22 director to fill the vacancy at the next scheduled meeting of
23 the members. If the directors remaining in office constitute
24 fewer than a quorum of the board, they may fill the vacancy by
25 the affirmative vote of a majority of all the directors
26 remaining in office.

27 Sec. 21. NEW SECTION. 501.403 BOARD ACTION.

28 1. The board may hold regular or special meetings in or
29 out of this state. A quorum of the board consists of a
30 majority of the directors.

31 2. Unless the articles or bylaws provide otherwise:

32 a. Regular board meetings may be held without notice of
33 the date, time, place, or purpose of the meeting.

34 b. Special board meetings must be preceded by at least two
35 days' notice of the date, time, and place of the meeting; but

1 the notice need not describe the purpose of the special
2 meeting.

3 c. The board may create one or more committees composed of
4 directors, and specify the duties and authority of each
5 committee.

6 d. The board may permit any number of directors to
7 participate in a regular or special meeting by, or conduct the
8 meeting through, the use of any means of communication by
9 which all directors participating may simultaneously hear each
10 other during the meeting.

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

22 3. A director may waive any notice required by this
23 chapter, the articles, or the bylaws before or after the date
24 and time stated in the notice. The waiver must be in writing,
25 signed by the director entitled to the notice, and filed with
26 the minutes or corporate records. A director's attendance at
27 or participation in a meeting waives any required notice to
28 that director of the meeting unless the director at the
29 beginning of the meeting or promptly upon the director's
30 arrival objects to holding the meeting or transacting business
31 at the meeting and does not thereafter vote for or assent to
32 action taken at the meeting.

33 Sec. 22. NEW SECTION. 501.404 DIRECTOR CONFLICT OF
34 INTEREST.

35 1. A conflict of interest transaction is a transaction

1 with the cooperative in which a director has a direct or
2 indirect interest. A conflict of interest transaction is not
3 voidable by the cooperative solely because of the director's
4 interest in the transaction if any one of the following is
5 true:

6 a. The material facts of the transaction and the
7 director's interest were disclosed or known to the board or a
8 board committee and the board or committee authorized,
9 approved, or ratified the transaction. For purposes of this
10 paragraph, a conflict of interest transaction is authorized,
11 approved, or ratified if it receives the affirmative vote of a
12 majority of the directors on the board or on the committee who
13 have no direct or indirect interest in the transaction, but a
14 transaction may not be authorized, approved, or ratified under
15 this section by a single director. If a majority of the
16 directors who have no direct or indirect interest in the
17 transaction vote to authorize, approve, or ratify the
18 transaction, a quorum is present for the purpose of taking
19 action under this subsection. The presence of, or a vote cast
20 by, a director with a direct or indirect interest in the
21 transaction does not affect the validity of any action taken
22 under this subsection, if the transaction is otherwise
23 authorized, approved, or ratified as provided in this
24 subsection.

25 b. The material facts of the transaction and the
26 director's interest were disclosed or known to the
27 shareholders entitled to vote and they authorized, approved,
28 or ratified the transaction. For purposes of this subsection,
29 a conflict of interest transaction is authorized, approved, or
30 ratified if it receives a majority of the votes entitled to be
31 counted under this subsection. Shares owned by or voted under
32 the control of a director who has a direct or indirect
33 interest in the transaction, and shares owned by or voted
34 under the control of an entity described in paragraph "a",
35 shall not be counted in a vote of members to determine whether

1 to authorize, approve, or ratify a conflict of interest
2 transaction under this subsection. The vote of those shares,
3 however, is counted in determining whether the transaction is
4 approved under other sections of this chapter. A majority of
5 the votes, whether or not the shareholders are present, that
6 are entitled to be counted in a vote on the transaction under
7 this subsection constitutes a quorum for the purpose of taking
8 action under this subsection.

9 c. The transaction was fair to the cooperative.

10 2. For purposes of this section, a director of the
11 cooperative has an indirect interest in a transaction if
12 either:

13 a. Another entity in which the director has a material
14 financial interest is a party to the transaction.

15 b. Another entity of which the director is a director,
16 officer, or trustee is a party to the transaction and the
17 transaction is or should be considered by the board.

18 Sec. 23. NEW SECTION. 501.405 OFFICERS.

19 A cooperative shall have officers described in its bylaws
20 or appointed by the board in accordance with the bylaws. The
21 bylaws or the board shall delegate to one of the officers
22 responsibility for preparing minutes of the directors' and
23 members' meetings and for authenticating records of the
24 cooperative. Each officer has the authority and shall perform
25 the duties set forth in the bylaws or, to the extent
26 consistent with the bylaws, the duties prescribed by the
27 board. The same individual may simultaneously hold more than
28 one office.

29 Sec. 24. NEW SECTION. 501.406 STANDARDS OF CONDUCT.

30 1. A director or officer shall discharge the director's or
31 officer's duties in conformity with all of the following:

32 a. In good faith.

33 b. With the care an ordinarily prudent person in a like
34 position would exercise under similar circumstances.

35 c. In a manner the director or officer reasonably believes

1 to be in the best interests of the cooperative.

2 2. In discharging duties by a director or officer, the
3 director or officer is entitled to rely on information,
4 opinions, reports, or statements, including financial
5 statements and other financial data, if prepared or presented
6 by any of the following:

7 a. One or more officers or employees of the cooperative
8 whom the director or officer reasonably believes to be
9 reliable and competent in the matters presented.

10 b. A person, including but not limited to a legal counsel
11 or public accountant, regarding a matter that the director or
12 officer reasonably believes is within the person's
13 professional or expert competence.

14 c. A committee of the board of which the director or
15 officer is not a member if the director or officer reasonably
16 believes the committee merits confidence.

17 3. A director or officer is not acting in good faith if
18 the director or officer has knowledge concerning a matter in
19 question that makes reliance otherwise permitted by subsection
20 2 unwarranted.

21 4. A director or officer is not liable for any action
22 taken as a director or officer, or the failure to take action,
23 if the director or officer performs the duties of the office
24 in compliance with this section, or if, and to the extent
25 that, liability for the action or failure to act has been
26 limited by the articles pursuant to section 501.407.

27 Sec. 25. NEW SECTION. 501.407 PERSONAL LIABILITY.

28 The articles may contain a provision eliminating or
29 limiting the personal liability of a director, officer, or a
30 shareholder of the cooperative for monetary damages for breach
31 of a fiduciary duty as a director, officer, or shareholder,
32 provided that the provision does not eliminate or limit
33 liability for any of the following:

34 1. A breach of the duty of loyalty to the cooperative or
35 its shareholders.

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

3 3. A transaction from which the director, officer, or
4 shareholder derives an improper personal benefit.

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

7 Sec. 26. NEW SECTION. 501.408 INDEMNIFICATION.

8 A cooperative may indemnify a present or former director,
9 officer, employee, or agent in the manner and in the instances
10 authorized in sections 490.850 through 490.858, provided that
11 where these sections provide for action by the shareholders
12 these sections are applicable to actions by the members, and
13 where these sections refer to the cooperative these sections
14 are applicable to a cooperative.

15 SUBCHAPTER V

16 CAPITAL STRUCTURE

17 Sec. 27. NEW SECTION. 501.501 ISSUANCE AND TRANSFER OF
18 STOCK.

19 1. A cooperative may issue the number of shares of each
20 class authorized by its articles. A cooperative may issue
21 fractional shares. Stock may be represented by certificates
22 or by entry on the cooperative's stock record books.

23 2. A member may sell or otherwise transfer stock to any
24 other member or to any person who has been approved by the
25 board for membership, subject to the limitations in the
26 articles or bylaws on the amount of each class of stock that
27 may be owned by one member.

28 3. A cooperative may acquire its own stock, and shares so
29 acquired constitute authorized but unissued shares.

30 Sec. 28. NEW SECTION. 501.502 TERMINATION OF MEMBERSHIP.

31 1. The articles or bylaws may authorize the board to
32 terminate a membership for any of the following reasons:

33 a. The member has attempted to transfer stock to a person
34 who is not a member and has not been approved for membership.

35 b. The member has failed to meet the member's commitment

1 to provide products to the cooperative or to buy the
2 cooperative's products.

3 c. The member is no longer an authorized person.

4 d. The member is no longer a farming entity.

5 2. A member's right to vote at member meetings shall cease
6 upon notification to the member of the board action. The
7 cooperative shall redeem, without interest, the voting stock
8 of a terminated member within two years after the termination
9 decision for the value set in the articles or bylaws.

10 Sec. 29. NEW SECTION. 501.503 DISTRIBUTION OF NET
11 SAVINGS.

12 The board shall annually dispose of the cooperative's
13 earnings in excess of its operating expenses as follows:

14 1. If the articles authorize the payment of dividends on a
15 class of stock, then the directors may declare dividends
16 pursuant to the articles. Dividends may not exceed eight
17 percent of the value of the stock in each fiscal year. The
18 members may control the amount that is allocated under this
19 subsection.

20 2. To provide a reasonable reserve for depreciation,
21 obsolescence, bad debts, or contingent losses or expenses.
22 The members may control the amount that is allocated under
23 this subsection.

24 3. To increase the cooperative's retained savings to the
25 extent determined by the board to be necessary based on its
26 evaluation of the future needs and the competitive position of
27 the cooperative.

28 4. The cooperative shall have an unconditional binding
29 obligation to distribute to the members all remaining net
30 savings as determined under the United States Internal Revenue
31 Code. These net savings shall be allocated to each member in
32 proportion to the business the member did with the cooperative
33 during the preceding fiscal year. The net savings may be
34 separately calculated for two or more categories of business,
35 and allocated to the members on the basis of business done

1 within each of these categories. Net savings shall be
2 distributed in the form of cash or stock, or a combination of
3 cash and stock, as determined by the board.

4

SUBCHAPTER VI

5

CONVERSION, MERGER, SALE, AND DISSOLUTION

6

Sec. 30. NEW SECTION. 501.601 EXISTING CORPORATIONS.

7

1. As used in this section:

8

a. "Dissenting member" means a voting member who votes in
9 opposition to the plan of conversion and who makes a demand
10 for payment as provided in this section not later than the
11 deadline for members to cast ballots on the vote to approve
12 the plan of conversion.

13 b. "Issue price" means the amount paid for an interest in
14 the association or the value stated in a notice of allocation
15 of patronage refunds.

16 2. An association organized under chapter 497, 498, or 499
17 may adopt this chapter pursuant to the following procedures:

18 a. The board must adopt a plan of conversion that
19 specifies the changes in the articles to comply with this
20 chapter, the affect of the conversion on the association's
21 outstanding members' equity, and the option or options
22 available to the equity holders who do not want to continue
23 their investment in the association.

24 b. The members must approve the plan of conversion by the
25 vote of two-thirds of the votes cast on a ballot in which a
26 majority of all votes are cast.

27 3. a. The cooperative shall redeem all of the members'
28 equity held by dissenting members at its issue price within
29 one year after the conversion to this chapter is effective.

30 b. An equity holder who is not a voting member shall have
31 the same rights as a dissenting member if the equity holder
32 makes a demand for payment pursuant to paragraph "a" not later
33 than the deadline for members to cast ballots on the vote to
34 approve the plan of conversion.

35 c. The association shall notify all equity holders of

1 their rights pursuant to paragraph "a" at the same time the
2 association notifies the members of the member meeting to vote
3 on the plan of conversion.

4 Sec. 31. NEW SECTION. 501.602 MERGER AND CONSOLIDATION.

5 A cooperative organized under this chapter may merge or
6 consolidate with one or more other cooperatives organized
7 under this chapter. The provisions of sections 499.61 through
8 499.70 shall apply to such a merger or consolidation.

9 Sec. 32. NEW SECTION. 501.603 SALE OF ASSETS.

10 1. A cooperative may, on the terms and conditions and for
11 the consideration determined by the board, mortgage, pledge,
12 or otherwise encumber any or all of its property.

13 2. A cooperative may sell, lease, exchange, or otherwise
14 dispose of all, or substantially all, of its property, with or
15 without the good will, on the terms and conditions and for the
16 consideration determined by the board, which consideration may
17 include the preferred stock of another cooperative, if the
18 board recommends the proposed transaction to the members, and
19 the members approve it by the vote of two-thirds of the votes
20 cast on a ballot in which a majority of all votes are cast.
21 The board may condition its submission of the proposed
22 transaction on any basis.

23 Sec. 33. NEW SECTION. 501.604 DISSOLUTION.

24 The provisions of sections 490.1401 through 490.1440 shall
25 apply to cooperatives in the same manner as they apply to
26 corporations organized under chapter 490.

27 EXPLANATION

28 This bill provides for the organization of cooperative
29 corporations which are eligible to hold agricultural land.

30 The bill provides for the organization of cooperative
31 corporations based in part on provisions contained in chapter
32 499, the chapter providing for the organization of cooperative
33 associations, and chapter 490, the chapter providing for the
34 organization of corporations. The bill provides as follows:

35 Section 203.1 defines a grain dealer for purposes of

1 chapter 203, the grain dealers law. The bill amends the
2 definition to exclude a cooperative corporation organized
3 under chapter 501, if the cooperative does not buy grain from
4 producers who are not members and does not sell any grain.

5 Section 501.101 provides definitions, including a
6 definition of "authorized person" to mean a farming entity, an
7 individual or general partnership that owns land and receives
8 as rent a share of the crops or the animals raised on the
9 land, or an employee of the cooperative who performs at least
10 1,000 hours of service for the cooperative in a calendar year.
11 A "farming entity" is defined to mean a natural person or a
12 fiduciary for a natural person who regularly participates in
13 physical labor or management in a farming operation; a family
14 farm corporation, family farm limited liability company,
15 family farm limited partnership, or family trust, as defined
16 in Iowa's corporate farming law; or a general partnership,
17 limited partnership, or limited liability partnership composed
18 exclusively of natural persons or persons acting in a
19 fiduciary capacity for the benefit of natural persons, which
20 has received at least 60 percent of gross income over the last
21 consecutive three-year period from farming.

22 Section 501.102 provides that a cooperative organized under
23 the chapter may have any purpose so long as it is lawful, and
24 may have perpetual duration, and has the same general powers
25 as provided to corporations organized under chapter 490.

26 Section 501.103 provides that a cooperative may, directly
27 or indirectly, acquire or otherwise obtain or lease
28 agricultural land in this state for as long as farming
29 entities own sixty percent of the stock and are eligible to
30 cast sixty percent of the votes at member meetings, and
31 authorized persons own at least seventy-five percent of the
32 stock and are eligible to cast at least seventy-five percent
33 of the votes at member meetings. The cooperative claiming
34 that it is exempt from the restrictions of section 9H.4 must
35 file an annual report with the secretary of state on or before

1 March 31. The report must include information relating to the
2 cooperative and its land holdings. The section provides that
3 an officer who falsifies a report is guilty of perjury which
4 is punishable as a class "D" felony. The section provides
5 that a cooperative is prohibited from holding more than 1,500
6 acres of agricultural land.

7 Section 501.104 provides that the name of the cooperative
8 must identify it as a cooperative.

9 Section 501.105 provides for the execution and filing of
10 documents, including providing for standard forms by the
11 secretary of state, the execution and filing of cooperative
12 documents, including the payment of filing fees, and
13 corrective documents.

14 Section 501.106 provides that the cooperative must maintain
15 a registered office and an agent in the state.

16 Section 501.107 provides that a cooperative must provide
17 for records and reports as does a corporation organized
18 pursuant to chapter 490.

19 Section 501.108 provides that the attorney general alone
20 has the right to inquire into whether a cooperative has the
21 right to exist or continue under chapter 501. The attorney
22 general is provided the authority to bring an action to wind
23 up the affairs of a cooperative not functioning as provided in
24 the bill.

25 Section 501.201 provides for the incorporation of the
26 cooperative by three or more individuals.

27 Section 501.202 provides for filing the initial articles of
28 incorporation, including specific information that must be
29 included in the articles.

30 Section 501.203 provides for amending and restating the
31 articles of incorporation. The bill provides that a
32 cooperative may amend its articles at any time to add or
33 change a provision that is required or permitted in the
34 articles or to delete a provision not required in the
35 articles, or to restate its articles at any time. The

1 amendment or restatement must be adopted by the members by a
2 vote of two-thirds.

3 Section 501.204 provides for the cooperative's bylaws. The
4 bill provides that the board or members may adopt or amend the
5 cooperative's bylaws by a vote of three-fourths of the board.

6 Section 501.301 provides that a member is not personally
7 liable for the acts or debts of the cooperative.

8 Section 501.302 provides procedures for calling and holding
9 meetings, including providing for annual and special meetings.
10 The bill provides for notice to members, and determining
11 whether members are entitled to vote.

12 Section 501.303 provides for the conduct of meetings. The
13 bill provides for member voting, including absentee voting.

14 Section 501.304 provides for information relating to
15 members and the distribution of information to members of the
16 cooperative.

17 Section 501.401 provides for the management of a
18 cooperative by a board.

19 Section 501.402 provides for vacancies occurring on the
20 board, including by resignation and removal, and for filling
21 vacancies by the board or as otherwise provided by the
22 articles of incorporation or bylaws.

23 Section 501.403 provides for board action, including
24 providing for quorum requirements, regular board meetings,
25 special board meetings, the establishment of committees, the
26 conduct of meetings, and action that may be taken without a
27 meeting.

28 Section 501.404 provides for resolving conflicts of
29 interest. The bill provides that if a conflict occurs, the
30 board may take action if the conflict was known to other board
31 members and the members without a conflict approve the
32 measure, or the transaction is fair to the cooperative.

33 Section 501.405 provides that the cooperative must
34 establish officers and their duties.

35 Section 501.406 provides that a director or officer must

1 discharge duties in good faith, with the care of an ordinarily
2 prudent person, and in the best interests of the cooperative.
3 The bill provides that the director or officer is entitled to
4 rely on information prepared by reliable sources. A director
5 or officer who performs duties as required under the section
6 cannot be held liable for an action or a failure to act.

7 Section 501.407 provides that the articles of incorporation
8 may contain a provision eliminating or limiting the personal
9 liability of a director or officer or its shareholders. The
10 bill provides that the section does not apply to a breach of
11 the duty of loyalty, an act or omission made in bad faith or
12 misconduct, an action which constitutes improper enrichment,
13 or an act or omission occurring prior to the date when the
14 provision excusing the conduct becomes effective.

15 Section 501.408 provides that a cooperative may indemnify a
16 present or former director, officer, employee, or agent.

17 Section 501.501 provides for the issuance and transfer of
18 stock, including the issuance of different classes of stock,
19 and fractional shares. The bill provides that a member may
20 sell or otherwise transfer stock to any other member or to any
21 person who has been approved by the board for membership.

22 Section 501.502 provides for the termination of membership
23 by the articles of incorporation or bylaws. The bill provides
24 for termination if a member transfers stock to a person who is
25 not a member and has not been approved for membership, the
26 member fails to meet the member's commitment to provide
27 products to the cooperative or to buy the cooperative's
28 products, or the member is no longer an authorized person or a
29 farming entity. The bill provides for the redemption of the
30 terminated member's stock.

31 Section 501.503 provides for the distribution of the
32 cooperative's net earnings. The bill provides that the board
33 must annually dispose of the cooperative's earnings in excess
34 of its operating expenses, including the payment of dividends,
35 the reserve for depreciation, and to increase the

1 cooperative's retained savings. The bill provides that a
2 cooperative has an unconditional binding obligation to
3 distribute to the members all remaining net savings as
4 determined under the United States Internal Revenue Code.

5 Section 501.601 provides for conversion, including a demand
6 for payment for a member who votes in opposition to the plan
7 of conversion. The bill provides that a cooperative
8 association may convert to an organization under this chapter.
9 The bill provides that the board and the members must approve
10 the plan of conversion.

11 Section 501.602 provides that a cooperative may merge or
12 consolidate with one or more other cooperatives organized
13 under chapter 501. The bill provides that sections relating
14 to mergers applicable to cooperative associations as provided
15 in sections 499.61 through 499.70 apply to a merger or
16 consolidation under chapter 501.

17 Section 501.603 provides for the sale of a cooperative's
18 assets. The bill provides that a cooperative may mortgage,
19 pledge, encumber, sell, lease, exchange, or otherwise dispose
20 of its property as determined by the board. If a cooperative
21 disposes of all of its property, the members must approve it
22 by the vote of two-thirds.

23 Section 501.604 provides for the dissolution of the
24 cooperative in the same manner as provided for a corporation
25 in sections 490.1401 through 490.1440.

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SENATE FILE 2135

S-5065

- 1 Amend Senate File 2135 as follows:
 2 1. Page 3, by striking line 33 and inserting the
 3 following: "exceed six hundred forty acres."
 By JOANN DOUGLAS

S-5065 FILED FEBRUARY 15, 1996

ADOPTED (p. 347)

SENATE FILE 2135

S-5073

- 1 Amend Senate File 2135 as follows:
 2 1. Page 10, by inserting after line 35 the
 3 following:
 4 "Sec. ____ . NEW SECTION. 501.305 NUMBER OF VOTES.
 5 A person who is a member or shareholder shall not
 6 own more than one membership or share of voting stock.
 7 The person shall be entitled to cast not more than one
 8 vote regarding any matter in which a vote is
 9 conducted, including any matter subject to a vote
 10 during a cooperative meeting."
 11 2. By renumbering as necessary.
 By BERL E. PRIEBE

S-5073 FILED FEBRUARY 15, 1996

ADOPTED (p. 347)

SENATE FILE 2135

S-5076

- 1 Amend Senate File 2135 as follows:
 2 1. Page 10, by inserting after line 35 the
 3 following:
 4 "Sec. ____ . NEW SECTION. 501.305 MULTIPLE
 5 MEMBERSHIP PROHIBITED.
 6 A person who is a member owning fifteen percent or
 7 more of a cooperative shall not be eligible to be a
 8 member of any other cooperative organized under this
 9 chapter. A person violating this section is subject
 10 to a civil penalty of not more than one hundred
 11 dollars. The person's membership in a cooperative
 12 shall terminate if the person's acquisition of an
 13 interest in that cooperative caused the person to be
 14 in violation of this section."
 By JOANN DOUGLAS
 BERL E. PRIEBE

S-5076 FILED FEBRUARY 15, 1996

ADOPTED (p. 347)

SENATE FILE 2135

S-5061

- 1 Amend Senate File 2135 as follows:
 2 1. By striking page 2, line 31, through page 3,
 3 line 1.
 By TOM VILSACK

S-5061 FILED FEBRUARY 15, 1996

ADOPTED (p. 347)

S-5060

1 Amend Senate File 2135 as follows:

2 1. Page 1, by striking lines 32 through 34 and
3 inserting the following:

4 "i. A cooperative corporation organized under
5 chapter 501, if the cooperative buys grain from
6 producers who are members or a licensed grain dealer,
7 and the cooperative does not resell that grain."

8 2. Page 10, by inserting after line 35 the
9 following:

10 "Sec. ____ . NEW SECTION. 501.305 FINANCIAL
11 INFORMATION.

12 The cooperative shall make available financial
13 information to its membership by doing either of the
14 following:

15 1. Preparing and providing to its members a
16 financial statement for the cooperative's last fiscal
17 year.

18 a. The financial statement must be based upon an
19 unqualified opinion based upon an audit performed by a
20 certified public accountant licensed in this state.
21 However, a qualification in an opinion is valid, if it
22 is unavoidable by any audit procedure that is
23 permitted under generally accepted accounting
24 principles. An opinion that is qualified because of a
25 limited audit procedure or because the scope of an
26 audit is limited is invalid for purposes of this
27 section.

28 b. The financial statement must disclose the
29 assets, liabilities, and net worth of the cooperative.
30 The financial statement must be prepared according to
31 generally accepted accounting principles. Assets must
32 be shown at original cost less depreciation, or based
33 upon a valuation in accordance with a competent
34 appraisal. Unpriced contracts for agricultural
35 commodities or products must be shown as a liability
36 and valued at the applicable current market price of
37 the agricultural commodities or products as of the
38 date the financial statement is prepared.

39 2. Honoring a demand to provide access at all
40 reasonable hours at its offices the books, records,
41 accounts, papers, documents, and computer programs or
42 other recordings relating to the property, assets,
43 business, and financial affairs of the cooperative.
44 The demand shall be in writing and signed by at least
45 fifty percent of all the members of the cooperative.
46 The cooperative shall honor the demand within one day
47 from its receipt. Upon receipt of the demand, the
48 cooperative must provide access to one or more persons
49 selected by the fifty percent of the members to
50 conduct the examination."

S-5060

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S-5060

Page 2

1 3. Page 16, line 23, by inserting after the word
2 "stock" the following: ", other than voting stock,".

3 4. By striking page 16, line 30, through page 17,
4 line 9, and inserting the following:

5 "Sec. ____ . NEW SECTION. 501.502 TERMINATION OF
6 MEMBERSHIP.

7 1. A membership shall terminate upon the death of
8 the member.

9 2. The articles or bylaws may authorize the board
10 to terminate a membership for any of the following
11 reasons:

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

15 b. The member has failed to meet the member's
16 commitment to provide products to the cooperative or
17 to buy the cooperative's products.

18 c. The member is no longer an authorized person.

19 d. The member is no longer a farming entity.

20 3. A member's right to vote at member meetings
21 shall cease upon termination of the membership.

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

32 5. The cooperative shall redeem, without interest,
33 all of the terminated member's allocated patronage
34 refunds and preferred stock originally issued as
35 allocated patronage refunds for the issue price. A
36 cooperative shall make this payment within one year
37 after the termination of the membership. However, if
38 a terminated member's current equity equals or exceeds
39 two percent of the cooperative's total members'
40 equity, the cooperative shall redeem the terminated
41 member's equity in annual amounts of not less than
42 fifteen percent of the total amount provided that the
43 entire amount must be redeemed within seven years."

44 5. By renumbering as necessary.

By BERL E. PRIEBE
DERRYL McLAREN

S-5060 FILED FEBRUARY 14, 1996

*Adopted
(p. 347)*

H. 2/19/96 (Agriculture)
H. 2/22/96 Do Pass

SENATE FILE **2135**
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 2076)

(AS AMENDED AND PASSED BY THE SENATE FEBRUARY 15, 1996)

- New Language by the Senate
- * - Language Stricken by the Senate

Passed Senate, Date 3/12/96 (P.643) Passed House, Date 3/12/96 (P.643)
 Vote: Ayes 92 Nays 1 Vote: Ayes 92 Nays 1
 Approved March 6, 1996

A BILL FOR

1 An Act providing for the organization of cooperative
 2 corporations, providing for fees, and providing for penalties.
 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S.F. 2135

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1 Section 1. PURPOSE. The purpose of chapter 501 is to
2 provide an opportunity for producers of agricultural
3 commodities to contribute a portion of their production for a
4 single enterprise for purposes of enhancing the value of that
5 production and to restrict control of these enterprises to
6 agricultural producers.

7 Sec. 2. Section 203.1, subsection 8, Code Supplement 1995,
8 is amended to read as follows:

9 8. "Grain dealer" means a person who buys during any
10 calendar month five hundred bushels of grain or more from the
11 producers of the grain for purposes of resale, milling, or
12 processing. However, "grain dealer" does not include a any of
13 the following:

14 a. A producer of grain who is buying grain for the
15 producer's own use as seed or feed~~7-a.~~

16 b. A person solely engaged in buying grain future
17 contracts on the board of trade~~7-a.~~

18 c. A person who purchases grain only for sale in a
19 registered feed~~7-a.~~

20 d. A person who purchases grain for sale in a
21 nonregistered customer-formula feed regulated by chapter 198,
22 who purchases less than a total of fifty thousand bushels of
23 grain annually from producers, and who is also exempt as an
24 incidental warehouse operator under chapter 203C~~7-a.~~

25 e. A person engaged in the business of selling
26 agricultural seeds regulated by chapter 199~~7-a.~~

27 f. A person buying grain only as a farm manager~~7-an.~~

28 g. An executor, administrator, trustee, guardian, or
29 conservator of an estate~~7-a.~~

30 h. A bargaining agent as defined in section 203A.1; or a
31 custom livestock feeder.

32 i. A cooperative corporation organized under chapter 501,
33 if the cooperative buys grain from producers who are members
34 or a licensed grain dealer, and the cooperative does not
35 resell that grain.

1 9. "Voting stock" means stock in a cooperative that has
2 voting rights.

3 Sec. 4. NEW SECTION. 501.102 PURPOSES AND POWERS.

4 1. A cooperative organized under this chapter has the
5 purpose of engaging in any lawful business unless a more
6 limited purpose is set forth in the articles.

7 2. Unless its articles provide otherwise, a cooperative
8 has perpetual duration and succession in its corporate name
9 and has the same powers as an individual to do all things
10 necessary or convenient to carry out its business and affairs,
11 including, without limitation, all of the powers enumerated in
12 sections 490.302 and 490.303.

13 Sec. 5. NEW SECTION. 501.103 LIMITED FARMING ACTIVITIES.

14 1. Notwithstanding section 9H.4, a cooperative may,
15 directly or indirectly, acquire or otherwise obtain or lease
16 agricultural land in this state, for as long as the
17 cooperative continues to meet the following requirements:
18 a. Farming entities own sixty percent of the stock and are
19 eligible to cast sixty percent of the votes at member
20 meetings.

21 b. Authorized persons own at least seventy-five percent of
22 the stock and are eligible to cast at least seventy-five
23 percent of the votes at member meetings.

24 c. The cooperative does not, either directly or
25 indirectly, acquire or otherwise obtain or lease agricultural
26 land, if the total agricultural land either directly or
27 indirectly owned or leased by the cooperative would then
28 exceed six hundred forty acres.

29 2. A cooperative that claims that it is exempt from the
30 restrictions of section 9H.4 pursuant to subsection 1 shall
31 file an annual report with the secretary of state on or before
32 March 31 of each year on forms supplied by the secretary of
33 state. The report shall be signed by the president or the
34 vice president of the cooperative and shall contain the
35 following:

1 a. The cooperative's name and address.

2 b. A certification that the cooperative meets both of the
3 requirements of subsection 1.

4 c. The number of acres of agricultural land owned, leased
5 or held by the cooperative, including the following:

6 (1) The total number of acres in the state.

7 (2) The number of acres in each county identified by
8 county name.

9 (3) The number of acres owned.

10 (4) The number of acres leased.

11 (5) The number of acres held other than by ownership or
12 lease.

13 (6) The number of acres used for the production of row
14 crops.

15 3. The president or the vice president of the cooperative
16 who falsifies a report shall be guilty of perjury as provided
17 in section 720.2.

18 4. In the event of a transfer of stock by operation of law
19 as a result of death, divorce, bankruptcy, or pursuant to a
20 security interest, the cooperative may disregard the transfer
21 for purposes of determining compliance with subsection 1 for a
22 period of two years after the transfer.

23 Sec. 6. NEW SECTION. 501.104 NAME.

24 The name of a cooperative organized under this chapter must
25 contain the word "cooperative", "coop", or "co-op", and the
26 name must be distinguishable from the names of cooperatives
27 organized under this chapter or another chapter, or foreign
28 cooperatives authorized to do business in this state.

29 Sec. 7. NEW SECTION. 501.105 EXECUTION AND FILING OF
30 DOCUMENTS.

31 1. The secretary of state may prescribe and furnish on
32 request forms for the proper administration of this chapter.
33 If the secretary of state has prescribed a mandatory form for
34 a document, then that form must be on the prescribed form.

35 2. Articles must be signed by all of the incorporates; and

1 all other documents filed with the secretary of state must be
2 signed by one of the cooperative's officers. The printed name
3 and capacity of each signatory must appear in proximity to the
4 signatory's signature. The secretary of state may accept a
5 document containing a copy of the signature. A document is
6 not required to contain a corporate seal, an acknowledgment,
7 or a verification.

8 3. The secretary of state shall collect the following
9 fees:

10 a. Twenty dollars upon the filing of original or amended
11 articles or articles of merger.

12 b. Five dollars upon the filing of all other required
13 documents.

14 c. Five dollars per document and fifty cents per page for
15 copying and certifying a document.

16 4. A document is effective at the later of the following
17 times:

18 a. The time of filing on the date it is filed, as
19 evidenced by the secretary of state's date and time
20 endorsement on the original document.

21 b. The delayed effective time and date specified in the
22 document. If a delayed effective date but no time is
23 specified in the document, the document is effective at the
24 close of business on that date. A delayed effective date for
25 a document shall not be later than the ninetieth day after the
26 date it is filed.

27 5. A document filed under this section may be corrected if
28 the document contains an incorrect statement or the execution
29 of the document was defective. A document is corrected by
30 filing with the secretary of state articles of correction
31 which describe the document to be corrected, including its
32 filing date or a copy of the document. The articles must
33 specify and correct the incorrect statement or defective
34 execution. Articles of correction are effective on the
35 effective date of the document it corrects except as to

1 persons relying on the original document and adversely
2 affected by the correction. As to those persons, articles of
3 correction are effective when filed.

4 6. The secretary of state shall forward for recording a
5 copy of each original, amended, and restated articles,
6 articles of merger, articles of consolidation, and articles of
7 dissolution to the recorder of the county in which the
8 cooperative has its principal place of business, or in the
9 case of a merger or consolidation, to the recorders of each of
10 the counties in which the merging or consolidating
11 cooperatives have their principal offices.

12 Sec. 8. NEW SECTION. 501.106 REGISTERED OFFICE.

13 1. A cooperative must continuously maintain in this state
14 a registered office that may be the same as any of its places
15 of business, and a registered agent, who may be any of the
16 following:

17 a. An individual who resides in this state and whose
18 business office is identical with the registered office.

19 b. A domestic corporation or not-for-profit domestic
20 corporation whose business office is identical with the
21 registered office.

22 c. A foreign corporation or not-for-profit foreign
23 corporation authorized to transact business in this state
24 whose business office is identical with the registered office.

25 2. A corporation may change its registered office or
26 registered agent by delivering to the secretary of state for
27 filing a statement of change that sets forth all of the
28 following:

29 a. The name of the cooperative.

30 b. The street address of its current registered office.

31 c. If the street address of the current registered office
32 is to be changed, the street address of the new registered
33 office.

34 d. The name of its current registered agent.

35 e. If the current registered agent is to be changed, the

1 name of the new registered agent and the new agent's written
2 consent, either on the statement or attached to it, to the
3 appointment.

4 f. That after the change or changes are made, the street
5 addresses of its registered office and the business office of
6 its registered agent will be identical.

7 3. a. If a registered agent changes the street address of
8 the registered agent's business office, the registered agent
9 may change the street address of the registered office of any
10 cooperative for which the person is the registered agent by
11 notifying the cooperative in writing of the change and
12 signing, either manually or in facsimile, and delivering to
13 the secretary of state for filing, a statement that provides
14 for a registered office and a registered agent as provided in
15 this section, and which recites that the cooperative has been
16 notified of the change.

17 b. If a registered agent changes the registered agent's
18 business address to another place, the registered agent may
19 change the business address and the address of the registered
20 agent by filing a statement as required in paragraph "a" for
21 each cooperative, or a single statement for all cooperatives
22 named in the notice, except that it need be signed only by the
23 registered agent or agents or be responsive to subsection 2,
24 paragraph "e". The statement must recite that a copy of the
25 statement has been mailed to each cooperative named in the
26 notice.

27 4. A cooperative may also change its registered office or
28 registered agent in its annual report.

29 Sec. 9. NEW SECTION. 501.107 RECORDS AND REPORTS.

30 The provisions of sections 490.1601 through 490.1622 shall
31 apply to cooperatives organized under this chapter in the same
32 manner as the provisions apply to corporations organized under
33 chapter 490.

34 Sec. 10. NEW SECTION. 501.108 QUO WARRANTO.

35 The attorney general alone shall have the right to inquire

1 into whether a cooperative has the right to exist or continue
2 under this chapter. If the secretary of state is informed
3 that a cooperative is not functioning as a cooperative, the
4 secretary of state shall notify the attorney general. If the
5 attorney general finds reasonable cause that the cooperative
6 is not functioning as provided under this chapter, the
7 attorney general shall bring action to wind up the affairs of
8 the cooperative.

9
10 SUBCHAPTER II
ARTICLES AND BYLAWS

11 Sec. 11. NEW SECTION. 501.201 INCORPORATION.

12 Three or more individuals may organize a cooperative under
13 this chapter by executing and delivering articles to the
14 secretary of state.

15 Sec. 12. NEW SECTION. 501.202 ARTICLES OF INCORPORATION.

16 1. The initial articles must set forth all of the
17 following:

18 a. The name, address, and occupation of each incorporator.

19 b. The names and addresses of the initial directors.

20 c. The street address of the cooperative's initial
21 registered office and the name of its initial registered agent
22 at that office.

23 2. The articles must set forth all of the following:

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

26 b. A statement that it is organized under this chapter.

27 c. Its duration, which may be perpetual.

28 d. The classes of stock and the authorized number of
29 shares of each class.

30 e. The quorum required for each member meeting.

31 f. The member voting rules.

32 3. The articles may set forth any other provision
33 consistent with law.

34 Sec. 13. NEW SECTION. 501.203 AMENDED AND RESTATED
35 ARTICLES OF INCORPORATION.

1 1. A cooperative may amend its articles at any time to add
2 or change a provision that is required or permitted in the
3 articles or to delete a provision not required in the
4 articles.

5 2. A cooperative may restate its articles at any time. A
6 restatement of the articles must contain the information
7 required by section 501.202, subsection 2, and may set forth
8 any other provision consistent with law.

9 3. If the board recommends the amendment or restatement to
10 the members, the amendment or restatement must be adopted by
11 the members by a vote of two-thirds of the votes cast.

12 4. If the board does not recommend the amendment or
13 restatement to the members, then the amendment or restatement
14 must be adopted by the members by a vote of two-thirds of the
15 votes cast on a ballot in which a majority of all votes are
16 cast.

17 Sec. 14. NEW SECTION. 501.204 BYLAWS.

18 The board may adopt or amend the cooperative's bylaws by a
19 vote of three-fourths of the board. The members may adopt or
20 amend the cooperative's bylaws by a vote of three-fourths of
21 the votes cast on a ballot in which a majority of all votes
22 are cast. A bylaw provision adopted by the members shall not
23 be amended or repealed by the directors.

24 SUBCHAPTER III

25 MEMBERS

26 Sec. 15. NEW SECTION. 501.301 LIABILITY OF MEMBERS.

27 A member is not personally liable for the acts or debts of
28 the cooperative.

29 Sec. 16. NEW SECTION. 501.302 CALLING AND NOTICE OF
30 MEETINGS.

31 1. A cooperative shall hold an annual member meeting at a
32 time and place fixed in accordance with the bylaws.

33 2. The board may call special member meetings, and the
34 board shall call a special member meeting upon the written
35 demand of twenty percent of the members.

1 3. A cooperative shall give each member at least ten days
2 advanced notice of the time, place, and the issues to be
3 considered at each member meeting. This notice may be given
4 in person or by mail to the last known address of the member,
5 or the notice requirement may be met by the member waiving the
6 notice.

7 4. The record date for determining the members entitled to
8 notice of and to vote at a member meeting is the close of
9 business on the day before the first notices for the meeting
10 are delivered or mailed.

11 Sec. 17. NEW SECTION. 501.303 CONDUCT OF MEETINGS.

12 1. Only those issues included in the notice of a member
13 meeting may be considered at that meeting.

14 2. A member may vote at a member meeting in person or by
15 signed absentee ballot that specifies the issue and the
16 member's vote on that issue. If the board makes available an
17 absentee ballot form, then that form must be used to cast an
18 absentee ballot on that issue.

19 Sec. 18. NEW SECTION. 501.304 MEMBER INFORMATION.

20 1. Within ten days from receiving a demand of a member,
21 the cooperative shall produce and furnish the member with the
22 names and addresses of all members of the cooperative.

23 2. The board shall adopt a policy which permits the
24 distribution of information to all of the members upon the
25 request of a member when the purpose of the request concerns
26 directly the action of the board. Upon receipt of the
27 information and the request of a member, the board shall
28 distribute the information to all of the members. The
29 cooperative may charge the requesting member the costs
30 incurred by the cooperative in distributing the information.

31 Sec. 19. NEW SECTION. 501.305 MULTIPLE MEMBERSHIP
32 PROHIBITED.

33 A person who is a member owning fifteen percent or more of
34 a cooperative shall not be eligible to be a member of any
35 other cooperative organized under this chapter. A person

1 violating this section is subject to a civil penalty of not
2 more than one hundred dollars. The person's membership in a
3 cooperative shall terminate if the person's acquisition of an
4 interest in that cooperative caused the person to be in
5 violation of this section.

6 Sec. 20. NEW SECTION. 501.306 NUMBER OF VOTES.

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

12 Sec. 21. NEW SECTION. 501.307 FINANCIAL INFORMATION.

13 The cooperative shall make available financial information
14 to its membership by doing either of the following:

15 1. Preparing and providing to its members a financial
16 statement for the cooperative's last fiscal year.

17 a. The financial statement must be based upon an
18 unqualified opinion based upon an audit performed by a
19 certified public accountant licensed in this state. However,
20 a qualification in an opinion is valid, if it is unavoidable
21 by any audit procedure that is permitted under generally
22 accepted accounting principles. An opinion that is qualified
23 because of a limited audit procedure or because the scope of
24 an audit is limited is invalid for purposes of this section.

25 b. The financial statement must disclose the assets,
26 liabilities, and net worth of the cooperative. The financial
27 statement must be prepared according to generally accepted
28 accounting principles. Assets must be shown at original cost
29 less depreciation, or based upon a valuation in accordance
30 with a competent appraisal. Unpriced contracts for
31 agricultural commodities or products must be shown as a
32 liability and valued at the applicable current market price of
33 the agricultural commodities or products as of the date the
34 financial statement is prepared.

35 2. Honoring a demand to provide access at all reasonable

1 hours at its offices the books, records, accounts, papers,
2 documents, and computer programs or other recordings relating
3 to the property, assets, business, and financial affairs of
4 the cooperative. The demand shall be in writing and signed by
5 at least fifty percent of all the members of the cooperative.
6 The cooperative shall honor the demand within one day from its
7 receipt. Upon receipt of the demand, the cooperative must
8 provide access to one or more persons selected by the fifty
9 percent of the members to conduct the examination.

10 SUBCHAPTER IV

11 DIRECTORS AND OFFICERS

12 Sec. 22. NEW SECTION. 501.401 NUMBER AND ELECTION.

13 1. The affairs of a cooperative shall be managed by a
14 board of not less than three directors.

15 2. The members shall elect the directors as prescribed in
16 the articles or bylaws.

17 3. Each director shall serve the term prescribed in the
18 articles or bylaws. The terms may be staggered.

19 Sec. 23. NEW SECTION. 501.402 VACANCIES.

20 1. A director may resign at any time by delivering written
21 notice to the board chairperson or the board secretary. A
22 resignation is effective when the notice is delivered unless
23 the notice specifies a later effective date.

24 2. The members may remove one or more directors with or
25 without cause unless the articles provide that directors may
26 be removed only for cause.

27 3. The articles may authorize the board to remove a
28 director for a cause specified in the articles.

29 4. Unless the articles or bylaws provide otherwise, the
30 board shall fill each vacancy until the members elect a
31 director to fill the vacancy at the next scheduled meeting of
32 the members. If the directors remaining in office constitute
33 fewer than a quorum of the board, they may fill the vacancy by
34 the affirmative vote of a majority of all the directors
35 remaining in office.

1 Sec. 24. NEW SECTION. 501.403 BOARD ACTION.

2 1. The board may hold regular or special meetings in or
3 out of this state. A quorum of the board consists of a
4 majority of the directors.

5 2. Unless the articles or bylaws provide otherwise:

6 a. Regular board meetings may be held without notice of
7 the date, time, place, or purpose of the meeting.

8 b. Special board meetings must be preceded by at least two
9 days' notice of the date, time, and place of the meeting; but
10 the notice need not describe the purpose of the special
11 meeting.

12 c. The board may create one or more committees composed of
13 directors, and specify the duties and authority of each
14 committee.

15 d. The board may permit any number of directors to
16 participate in a regular or special meeting by, or conduct the
17 meeting through, the use of any means of communication by
18 which all directors participating may simultaneously hear each
19 other during the meeting.

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

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

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

7 Sec. 25. NEW SECTION. 501.404 DIRECTOR CONFLICT OF
8 INTEREST.

9 1. A conflict of interest transaction is a transaction
10 with the cooperative in which a director has a direct or
11 indirect interest. A director shall be deemed to have a
12 conflict of interest in a matter concerning a transaction
13 between the cooperative and another entity, if the director
14 owns a twenty-five percent or greater ownership interest in
15 the other entity. A conflict of interest transaction is not
16 voidable by the cooperative solely because of the director's
17 interest in the transaction if any one of the following is
18 true:

19 a. The material facts of the transaction and the
20 director's interest were disclosed or known to the board or a
21 board committee and the board or committee authorized,
22 approved, or ratified the transaction. For purposes of this
23 paragraph, a conflict of interest transaction is authorized,
24 approved, or ratified if it receives the affirmative vote of a
25 majority of the directors on the board or on the committee who
26 have no direct or indirect interest in the transaction, but a
27 transaction may not be authorized, approved, or ratified under
28 this section by a single director. If a majority of the
29 directors who have no direct or indirect interest in the
30 transaction vote to authorize, approve, or ratify the
31 transaction, a quorum is present for the purpose of taking
32 action under this subsection. The presence of, or a vote cast
33 by, a director with a direct or indirect interest in the
34 transaction does not affect the validity of any action taken
35 under this subsection, if the transaction is otherwise

1 authorized, approved, or ratified as provided in this
2 subsection.

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

22 c. The transaction was fair to the cooperative.

23 2. For purposes of this section, a director of the
24 cooperative has an indirect interest in a transaction if
25 either:

26 a. Another entity in which the director has a material
27 financial interest is a party to the transaction.

28 b. Another entity of which the director is a director,
29 officer, or trustee is a party to the transaction and the
30 transaction is or should be considered by the board.

31 Sec. 26. NEW SECTION. 501.405 OFFICERS.

32 A cooperative shall have officers described in its bylaws
33 or appointed by the board in accordance with the bylaws. The
34 bylaws or the board shall delegate to one of the officers
35 responsibility for preparing minutes of the directors' and

1 members' meetings and for authenticating records of the
2 cooperative. Each officer has the authority and shall perform
3 the duties set forth in the bylaws or, to the extent
4 consistent with the bylaws, the duties prescribed by the
5 board. The same individual may simultaneously hold more than
6 one office.

7 Sec. 27. NEW SECTION. 501.406 STANDARDS OF CONDUCT.

8 1. A director or officer shall discharge the director's or
9 officer's duties in conformity with all of the following:

10 a. In good faith.

11 b. With the care an ordinarily prudent person in a like
12 position would exercise under similar circumstances.

13 c. In a manner the director or officer reasonably believes
14 to be in the best interests of the cooperative.

15 2. In discharging duties by a director or officer, the
16 director or officer is entitled to rely on information,
17 opinions, reports, or statements, including financial
18 statements and other financial data, if prepared or presented
19 by any of the following:

20 a. One or more officers or employees of the cooperative
21 whom the director or officer reasonably believes to be
22 reliable and competent in the matters presented.

23 b. A person, including but not limited to a legal counsel
24 or public accountant, regarding a matter that the director or
25 officer reasonably believes is within the person's
26 professional or expert competence.

27 c. A committee of the board of which the director or
28 officer is not a member if the director or officer reasonably
29 believes the committee merits confidence.

30 3. A director or officer is not acting in good faith if
31 the director or officer has knowledge concerning a matter in
32 question that makes reliance otherwise permitted by subsection
33 2 unwarranted.

34 4. A director or officer is not liable for any action
35 taken as a director or officer, or the failure to take action,

1 if the director or officer performs the duties of the office
2 in compliance with this section, or if, and to the extent
3 that, liability for the action or failure to act has been
4 limited by the articles pursuant to section 501.407.

5 Sec. 28. NEW SECTION. 501.407 PERSONAL LIABILITY.

6 The articles may contain a provision eliminating or
7 limiting the personal liability of a director, officer, or a
8 shareholder of the cooperative for monetary damages for breach
9 of a fiduciary duty as a director, officer, or shareholder,
10 provided that the provision does not eliminate or limit
11 liability for any of the following:

12 1. A breach of the duty of loyalty to the cooperative or
13 its shareholders.

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

16 3. A transaction from which the director, officer, or
17 shareholder derives an improper personal benefit.

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

20 Sec. 29. NEW SECTION. 501.408 INDEMNIFICATION.

21 A cooperative may indemnify a present or former director,
22 officer, employee, or agent in the manner and in the instances
23 authorized in sections 490.850 through 490.858, provided that
24 where these sections provide for action by the shareholders
25 these sections are applicable to actions by the members, and
26 where these sections refer to the cooperative these sections
27 are applicable to a cooperative.

28 SUBCHAPTER V

29 CAPITAL STRUCTURE

30 Sec. 30. NEW SECTION. 501.501 ISSUANCE AND TRANSFER OF
31 STOCK.

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

1 2. A member may sell or otherwise transfer stock, other
2 than voting stock, to any other member or to any person who
3 has been approved by the board for membership, subject to the
4 limitations in the articles or bylaws on the amount of each
5 class of stock that may be owned by one member.

6 3. A cooperative may acquire its own stock, and shares so
7 acquired constitute authorized but unissued shares.

8 Sec. 31. NEW SECTION. 501.502 TERMINATION OF MEMBERSHIP.

9 1. A membership shall terminate upon the death of the
10 member.

11 2. The articles or bylaws may authorize the board to
12 terminate a membership for any of the following reasons:

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

15 b. The member has failed to meet the member's commitment
16 to provide products to the cooperative or to buy the
17 cooperative's products.

18 c. The member is no longer an authorized person.

19 d. The member is no longer a farming entity.

20 3. A member's right to vote at member meetings shall cease
21 upon termination of the membership.

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

31 5. The cooperative shall redeem, without interest, all of
32 the terminated member's allocated patronage refunds and
33 preferred stock originally issued as allocated patronage
34 refunds for the issue price. A cooperative shall make this
35 payment within one year after the termination of the

1 membership. However, if a terminated member's current equity
2 equals or exceeds two percent of the cooperative's total
3 members' equity, the cooperative shall redeem the terminated
4 member's equity in annual amounts of not less than fifteen
5 percent of the total amount provided that the entire amount
6 must be redeemed within seven years.

7 Sec. 32. NEW SECTION. 501.503 DISTRIBUTION OF NET
8 SAVINGS.

9 The board shall annually dispose of the cooperative's
10 earnings in excess of its operating expenses as follows:

11 1. If the articles authorize the payment of dividends on a
12 class of stock, then the directors may declare dividends
13 pursuant to the articles. Dividends may not exceed eight
14 percent of the value of the stock in each fiscal year. The
15 members may control the amount that is allocated under this
16 subsection.

17 2. To provide a reasonable reserve for depreciation,
18 obsolescence, bad debts, or contingent losses or expenses.
19 The members may control the amount that is allocated under
20 this subsection.

21 3. To increase the cooperative's retained savings to the
22 extent determined by the board to be necessary based on its
23 evaluation of the future needs and the competitive position of
24 the cooperative.

25 4. The cooperative shall have an unconditional binding
26 obligation to distribute to the members all remaining net
27 savings as determined under the United States Internal Revenue
28 Code. These net savings shall be allocated to each member in
29 proportion to the business the member did with the cooperative
30 during the preceding fiscal year. The net savings may be
31 separately calculated for two or more categories of business,
32 and allocated to the members on the basis of business done
33 within each of these categories. Net savings shall be
34 distributed in the form of cash or stock, or a combination of
35 cash and stock, as determined by the board.

1 SUBCHAPTER VI

2 CONVERSION, MERGER, SALE, AND DISSOLUTION

3 Sec. 33. NEW SECTION. 501.601 EXISTING CORPORATIONS.

4 1. As used in this section:

5 a. "Dissenting member" means a voting member who votes in
6 opposition to the plan of conversion and who makes a demand
7 for payment as provided in this section not later than the
8 deadline for members to cast ballots on the vote to approve
9 the plan of conversion.

10 b. "Issue price" means the amount paid for an interest in
11 the association or the value stated in a notice of allocation
12 of patronage refunds.

13 2. An association organized under chapter 497, 498, or 499
14 may adopt this chapter pursuant to the following procedures:

15 a. The board must adopt a plan of conversion that
16 specifies the changes in the articles to comply with this
17 chapter, the affect of the conversion on the association's
18 outstanding members' equity, and the option or options
19 available to the equity holders who do not want to continue
20 their investment in the association.

21 b. The members must approve the plan of conversion by the
22 vote of two-thirds of the votes cast on a ballot in which a
23 majority of all votes are cast.

24 3. a. The cooperative shall redeem all of the members'
25 equity held by dissenting members at its issue price within
26 one year after the conversion to this chapter is effective.

27 b. An equity holder who is not a voting member shall have
28 the same rights as a dissenting member if the equity holder
29 makes a demand for payment pursuant to paragraph "a" not later
30 than the deadline for members to cast ballots on the vote to
31 approve the plan of conversion.

32 c. The association shall notify all equity holders of
33 their rights pursuant to paragraph "a" at the same time the
34 association notifies the members of the member meeting to vote
35 on the plan of conversion.

Priebe
Boswell
Banks

SSB-2076

Agriculture

Succeeded By
SENATE FILE # HF 2135
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON PRIEBE)

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

A BILL FOR

1 An Act providing for the organization of cooperative
2 corporations, providing for fees, and providing for penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. PURPOSE. The purpose of chapter 501 is to
2 provide an opportunity for producers of agricultural
3 commodities to contribute a portion of their production for a
4 single enterprise for purposes of enhancing the value of that
5 production and to restrict control of these enterprises to
6 agricultural producers.

7 Sec. 2. Section 203.1, subsection 8, Code Supplement 1995,
8 is amended to read as follows:

9 8. "Grain dealer" means a person who buys during any
10 calendar month five hundred bushels of grain or more from the
11 producers of the grain for purposes of resale, milling, or
12 processing. However, "grain dealer" does not include a any of
13 the following:

14 a. A producer of grain who is buying grain for the
15 producer's own use as seed or feed~~-a.~~

16 b. A person solely engaged in buying grain future
17 contracts on the board of trade~~-a.~~

18 c. A person who purchases grain only for sale in a
19 registered feed~~-a.~~

20 d. A person who purchases grain for sale in a
21 nonregistered customer-formula feed regulated by chapter 198,
22 who purchases less than a total of fifty thousand bushels of
23 grain annually from producers, and who is also exempt as an
24 incidental warehouse operator under chapter 203C~~-a.~~

25 e. A person engaged in the business of selling
26 agricultural seeds regulated by chapter 199~~-a.~~

27 f. A person buying grain only as a farm manager~~-an.~~

28 g. An executor, administrator, trustee, guardian, or
29 conservator of an estate~~-a.~~

30 h. A bargaining agent as defined in section 203A.1; or a
31 custom livestock feeder.

32 i. A cooperative corporation organized under chapter 501
33 that does not buy any grain from producers who are not members
34 and does not sell any grain.

1 GENERAL PROVISIONS

2 Sec. 3. NEW SECTION. 501.101 DEFINITIONS.

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

5 1. "Articles" means the cooperative's articles of
6 incorporation.

7 2. "Authorized person" means a person who is one of the
8 following:

9 a. A farming entity.

10 b. An individual or general partnership that owns land and
11 receives as rent a share of the crops or the animals raised on
12 the land if those crops or animals are a significant component
13 of the cooperative's business operations.

14 c. An employee of the cooperative who performs at least
15 one thousand hours of service for the cooperative in each
16 calendar year.

17 3. "Board" means the cooperative's board of directors.

18 4. "Cooperative" means a cooperative corporation organized
19 under this chapter or converted to this chapter pursuant to
20 section 501.601.

21 5. "Farming" means the same as section 9H.1

22 6. "Farming entity" means any one of the following:

23 a. A natural person or a fiduciary for a natural person
24 who regularly participates in physical labor or operations
25 management in a farming operation and files schedule F as part
26 of the person's annual form 1040 or form 1041 filing with the
27 United States internal revenue service.

28 b. A family farm corporation, family farm limited
29 liability company, family farm limited partnership, or family
30 trust, as defined in section 9H.1.

31 c. A general partnership, limited partnership, or limited
32 liability partnership composed exclusively of natural persons
33 or persons acting in a fiduciary capacity for the benefit of
34 natural persons, which has received at least sixty percent of
35 gross income from farming over its entire duration or the last

1 consecutive three-year period, whichever is less.

2 7. "Member" means a person who owns voting stock in a
3 cooperative.

4 8. "Shareholder" means a person who owns stock in a
5 cooperative, whether or not that stock has voting rights.

6 9. "Voting stock" means stock in a cooperative that has
7 voting rights.

8 Sec. 4. NEW SECTION. 501.102 PURPOSES AND POWERS.

9 1. A cooperative organized under this chapter has the
10 purpose of engaging in any lawful business unless a more
11 limited purpose is set forth in the articles.

12 2. Unless its articles provide otherwise, a cooperative
13 has perpetual duration and succession in its corporate name
14 and has the same powers as an individual to do all things
15 necessary or convenient to carry out its business and affairs,
16 including, without limitation, all of the powers enumerated in
17 sections 490.302 and 490.303.

18 Sec. 5. NEW SECTION. 501.103 LIMITED FARMING ACTIVITIES.

19 1. Notwithstanding section 9H.4, a cooperative may,
20 directly or indirectly, acquire or otherwise obtain or lease
21 agricultural land in this state, for as long as the
22 cooperative continues to meet the following requirements:

23 a. Farming entities own a majority of the stock and are
24 eligible to cast a majority of the votes at member meetings.

25 b. Authorized persons own at least three-fourths of the
26 stock and are eligible to cast at least three-fourths of the
27 votes at member meetings.

28 c. The cooperative does not, either directly or
29 indirectly, acquire or otherwise obtain or lease agricultural
30 land, if the total agricultural land either directly or
31 indirectly owned or leased by the cooperative would then
32 exceed one thousand five hundred acres.

33 2. A cooperative that claims that it is exempt from the
34 restrictions of section 9H.4 pursuant to subsection 1 shall
35 file an annual report with the secretary of state on or before

1 March 31 of each year on forms supplied by the secretary of
2 state. The report shall be signed by the president or the
3 vice president of the cooperative and shall contain the
4 following:

5 a. The cooperative's name and address.

6 b. A certification that the cooperative meets both of the
7 requirements of subsection 1.

8 c. The number of acres of agricultural land owned, leased
9 or held by the cooperative, including the following:

10 (1) The total number of acres in the state.

11 (2) The number of acres in each county identified by
12 county name.

13 (3) The number of acres owned.

14 (4) The number of acres leased.

15 (5) The number of acres held other than by ownership or
16 lease.

17 (6) The number of acres used for the production of row
18 crops.

19 3. The president or the vice president of the cooperative
20 who falsifies a report shall be guilty of perjury as provided
21 in section 720.2.

22 4. In the event of a transfer of stock by operation of law
23 as a result of death, divorce, bankruptcy, or pursuant to a
24 security interest, the cooperative may disregard the transfer
25 for purposes of determining compliance with subsection 1 for a
26 period of two years after the transfer.

27 Sec. 6. NEW SECTION. 501.104 NAME.

28 The name of a cooperative organized under this chapter must
29 contain the word "cooperative", "coop", or "co-op", and the
30 name must be distinguishable from the names of cooperatives
31 organized under this chapter or another chapter, or foreign
32 cooperatives authorized to do business in this state.

33 Sec. 7. NEW SECTION. 501.105 EXECUTION AND FILING OF
34 DOCUMENTS.

35 1. The secretary of state may prescribe and furnish on

1 request forms for the proper administration of this chapter.

2 If the secretary of state has prescribed a mandatory form for
3 a document, then that form must be on the prescribed form.

4 2. Articles must be signed by all of the incorporates; and
5 all other documents filed with the secretary of state must be
6 signed by one of the cooperative's officers. The printed name
7 and capacity of each signatory must appear in proximity to the
8 signatory's signature. The secretary of state may accept a
9 document containing a copy of the signature. A document is
10 not required to contain a corporate seal, an acknowledgment,
11 or a verification.

12 3. The secretary of state shall collect the following
13 fees:

14 a. Twenty dollars upon the filing of original or amended
15 articles or articles of merger.

16 b. Five dollars upon the filing of all other required
17 documents.

18 c. Five dollars per document and fifty cents per page for
19 copying and certifying a document.

20 4. A document is effective at the later of the following
21 times:

22 a. The time of filing on the date it is filed, as
23 evidenced by the secretary of state's date and time
24 endorsement on the original document.

25 b. The delayed effective time and date specified in the
26 document. If a delayed effective date but no time is
27 specified in the document, the document is effective at the
28 close of business on that date. A delayed effective date for
29 a document shall not be later than the ninetieth day after the
30 date it is filed.

31 5. A document filed under this section may be corrected if
32 the document contains an incorrect statement or the execution
33 of the document was defective. A document is corrected by
34 filing with the secretary of state articles of correction
35 which describe the document to be corrected, including its

1 filing date or a copy of the document. The articles must
2 specify and correct the incorrect statement or defective
3 execution. Articles of correction are effective on the
4 effective date of the document it corrects except as to
5 persons relying on the original document and adversely
6 affected by the correction. As to those persons, articles of
7 correction are effective when filed.

8 6. The secretary of state shall forward for recording a
9 copy of each original, amended, and restated articles,
10 articles of merger, articles of consolidation, and articles of
11 dissolution to the recorder of the county in which the
12 cooperative has its principal place of business, or in the
13 case of a merger or consolidation, to the recorders of each of
14 the counties in which the merging or consolidating
15 cooperatives have their principal offices.

16 Sec. 8. NEW SECTION. 501.106 REGISTERED OFFICE.

17 1. A cooperative must continuously maintain in this state
18 a registered office that may be the same as any of its places
19 of business, and a registered agent, who may be any of the
20 following:

21 a. An individual who resides in this state and whose
22 business office is identical with the registered office.

23 b. A domestic corporation or not-for-profit domestic
24 corporation whose business office is identical with the
25 registered office.

26 c. A foreign corporation or not-for-profit foreign
27 corporation authorized to transact business in this state
28 whose business office is identical with the registered office.

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

33 a. The name of the cooperative.

34 b. The street address of its current registered office.

35 c. If the street address of the current registered office

1 is to be changed, the street address of the new registered
2 office.

3 d. The name of its current registered agent.

4 e. If the current registered agent is to be changed, the
5 name of the new registered agent and the new agent's written
6 consent, either on the statement or attached to it, to the
7 appointment.

8 f. That after the change or changes are made, the street
9 addresses of its registered office and the business office of
10 its registered agent will be identical.

11 3. a. If a registered agent changes the street address of
12 the registered agent's business office, the registered agent
13 may change the street address of the registered office of any
14 cooperative for which the person is the registered agent by
15 notifying the cooperative in writing of the change and
16 signing, either manually or in facsimile, and delivering to
17 the secretary of state for filing, a statement that provides
18 for a registered office and a registered agent as provided in
19 this section, and which recites that the cooperative has been
20 notified of the change.

21 b. If a registered agent changes the registered agent's
22 business address to another place, the registered agent may
23 change the business address and the address of the registered
24 agent by filing a statement as required in paragraph "a" for
25 each cooperative, or a single statement for all cooperatives
26 named in the notice, except that it need be signed only by the
27 registered agent or agents or be responsive to subsection 2,
28 paragraph "e". The statement must recite that a copy of the
29 statement has been mailed to each cooperative named in the
30 notice.

31 4. A cooperative may also change its registered office or
32 registered agent in its annual report.

33 Sec. 9. NEW SECTION. 501.107 RECORDS AND REPORTS.

34 The provisions of sections 490.1601 through 490.1622 shall
35 apply to cooperatives organized under this chapter in the same

1 manner as the provisions apply to corporations organized under
2 chapter 490.

3 Sec. 10. NEW SECTION. 501.108 QUO WARRANTO.

4 The attorney general alone shall have the right to inquire
5 into whether a cooperative has the right to exist or continue
6 under this chapter. If the secretary of state is informed
7 that a cooperative is not functioning as a cooperative, the
8 secretary of state shall notify the attorney general. If the
9 attorney general finds reasonable cause that the cooperative
10 is not functioning as provided under this chapter, the
11 attorney general shall bring action to wind up the affairs of
12 the cooperative.

13 SUBCHAPTER II

14 ARTICLES AND BYLAWS

15 Sec. 11. NEW SECTION. 501.201 INCORPORATION.

16 Three or more individuals may organize a cooperative under
17 this chapter by executing and delivering articles to the
18 secretary of state.

19 Sec. 12. NEW SECTION. 501.202 ARTICLES OF INCORPORATION.

20 1. The initial articles must set forth all of the
21 following:

- 22 a. The name, address, and occupation of each incorporator.
- 23 b. The names and addresses of the initial directors.
- 24 c. The street address of the cooperative's initial
25 registered office and the name of its initial registered agent
26 at that office.

27 2. The articles must set forth all of the following:

- 28 a. The name that satisfies the requirements of section
29 501.104.
- 30 b. A statement that it is organized under this chapter.
- 31 c. Its duration, which may be perpetual.
- 32 d. The classes of stock and the authorized number of
33 shares of each class.
- 34 e. The quorum required for each member meeting.
- 35 f. The member voting rules.

1 3. The articles may set forth any other provision
2 consistent with law.

3 Sec. 13. NEW SECTION. 501.203 AMENDED AND RESTATED
4 ARTICLES OF INCORPORATION.

5 1. A cooperative may amend its articles at any time to add
6 or change a provision that is required or permitted in the
7 articles or to delete a provision not required in the
8 articles.

9 2. A cooperative may restate its articles at any time. A
10 restatement of the articles must contain the information
11 required by section 501.202, subsection 2, and may set forth
12 any other provision consistent with law.

13 3. If the board recommends the amendment or restatement to
14 the members, the amendment or restatement must be adopted by
15 the members by a vote of two-thirds of the votes cast.

16 4. If the board does not recommend the amendment or
17 restatement to the members, then the amendment or restatement
18 must be adopted by the members by a vote of two-thirds of the
19 votes cast on a ballot in which a majority of all votes are
20 cast.

21 Sec. 14. NEW SECTION. 501.204 BYLAWS.

22 The board may adopt or amend the cooperative's bylaws by a
23 vote of three-fourths of the board. The members may adopt or
24 amend the cooperative's bylaws by a vote of three-fourths of
25 the votes cast on a ballot in which a majority of all votes
26 are cast. A bylaw provision adopted by the members shall not
27 be amended or repealed by the directors.

28 SUBCHAPTER III

29 MEMBERS

30 Sec. 15. NEW SECTION. 501.301 LIABILITY OF MEMBERS.

31 A member is not personally liable for the acts or debts of
32 the cooperative.

33 Sec. 16. NEW SECTION. 501.302 CALLING AND NOTICE OF
34 MEETINGS.

35 1. A cooperative shall hold an annual member meeting at a

1 time and place fixed in accordance with the bylaws.

2 2. The board may call special member meetings, and the
3 board shall call a special member meeting upon the written
4 demand of twenty percent of the members.

5 3. A cooperative shall give each member at least ten days
6 advanced notice of the time, place, and the issues to be
7 considered at each member meeting. This notice may be given
8 in person or by mail to the last known address of the member,
9 or the notice requirement may be met by the member waiving the
10 notice.

11 4. The record date for determining the members entitled to
12 notice of and to vote at a member meeting is the close of
13 business on the day before the first notices for the meeting
14 are delivered or mailed.

15 Sec. 17. NEW SECTION. 501.303 CONDUCT OF MEETINGS.

16 1. Only those issues included in the notice of a member
17 meeting may be considered at that meeting.

18 2. A member may vote at a member meeting in person or by
19 signed absentee ballot that specifies the issue and the
20 member's vote on that issue. If the board makes available an
21 absentee ballot form, then that form must be used to cast an
22 absentee ballot on that issue.

23 Sec. 18. NEW SECTION. 501.304 MEMBER INFORMATION.

24 The board shall adopt a policy which permits the
25 distribution of information to all of the members upon the
26 request of a member when the purpose of the request concerns
27 directly the action of the board. Upon receipt of the
28 information and the request of a member, the board shall
29 distribute the information to all of the members. The
30 cooperative may charge the requesting member the costs
31 incurred by the cooperative in distributing the information.

32 SUBCHAPTER IV

33 DIRECTORS AND OFFICERS

34 Sec. 19. NEW SECTION. 502.401 NUMBER AND ELECTION.

35 1. The affairs of a cooperative shall be managed by a

1 board of not less than three directors.

2 2. The members shall elect the directors as prescribed in
3 the articles or bylaws.

4 3. Each director shall serve the term prescribed in the
5 articles or bylaws. The terms may be staggered.

6 Sec. 20. NEW SECTION. 502.402 VACANCIES.

7 1. A director may resign at any time by delivering written
8 notice to the board chairperson or the board secretary. A
9 resignation is effective when the notice is delivered unless
10 the notice specifies a later effective date.

11 2. The members may remove one or more directors with or
12 without cause unless the articles provide that directors may
13 be removed only for cause.

14 3. The articles may authorize the board to remove a
15 director for a cause specified in the articles.

16 4. Unless the articles or bylaws provide otherwise, the
17 board shall fill each vacancy for the remainder of the vacant
18 term. If the directors remaining in office constitute fewer
19 than a quorum of the board, they may fill the vacancy by the
20 affirmative vote of a majority of all the directors remaining
21 in office.

22 Sec. 21. NEW SECTION. 502.403 BOARD ACTION.

23 1. The board may hold regular or special meetings in or
24 out of this state. A quorum of the board consists of a
25 majority of the directors.

26 2. Unless the articles or bylaws provide otherwise:

27 a. Regular board meetings may be held without notice of
28 the date, time, place, or purpose of the meeting.

29 b. Special board meetings must be preceded by at least two
30 days' notice of the date, time, and place of the meeting; but
31 the notice need not describe the purpose of the special
32 meeting.

33 c. The board may create one or more committees composed of
34 directors, and specify the duties and authority of each
35 committee.

1 d. The board may permit any number of directors to
2 participate in a regular or special meeting by, or conduct the
3 meeting through, the use of any means of communication by
4 which all directors participating may simultaneously hear each
5 other during the meeting.

6 e. Action required or permitted by this chapter to be
7 taken at a board meeting may be taken without a meeting if the
8 action is taken by all members of the board. The action must
9 be evidenced by one or more written consents describing the
10 action taken, signed by each director, and included in the
11 minutes or filed with the corporate records reflecting the
12 action taken. Action taken under this section is effective
13 when the last director signs the consent, unless the consent
14 specifies a different effective date. A consent signed under
15 this section has the effect of a meeting vote and may be
16 described as such in any document.

17 3. A director may waive any notice required by this
18 chapter, the articles, or the bylaws before or after the date
19 and time stated in the notice. The waiver must be in writing,
20 signed by the director entitled to the notice, and filed with
21 the minutes or corporate records. A director's attendance at
22 or participation in a meeting waives any required notice to
23 that director of the meeting unless the director at the
24 beginning of the meeting or promptly upon the director's
25 arrival objects to holding the meeting or transacting business
26 at the meeting and does not thereafter vote for or assent to
27 action taken at the meeting.

28 Sec. 22. NEW SECTION. 502.404 DIRECTOR CONFLICT OF
29 INTEREST.

30 1. A conflict of interest transaction is a transaction
31 with the cooperative in which a director has a direct or
32 indirect interest. A conflict of interest transaction is not
33 voidable by the cooperative solely because of the director's
34 interest in the transaction if any one of the following is
35 true:

1 a. The material facts of the transaction and the
2 director's interest were disclosed or known to the board or a
3 board committee and the board or committee authorized,
4 approved, or ratified the transaction. For purposes of this
5 paragraph, a conflict of interest transaction is authorized,
6 approved, or ratified if it receives the affirmative vote of a
7 majority of the directors on the board or on the committee who
8 have no direct or indirect interest in the transaction, but a
9 transaction may not be authorized, approved, or ratified under
10 this section by a single director. If a majority of the
11 directors who have no direct or indirect interest in the
12 transaction vote to authorize, approve, or ratify the
13 transaction, a quorum is present for the purpose of taking
14 action under this subsection. The presence of, or a vote cast
15 by, a director with a direct or indirect interest in the
16 transaction does not affect the validity of any action taken
17 under this subsection, if the transaction is otherwise
18 authorized, approved, or ratified as provided in this
19 subsection.

20 b. The material facts of the transaction and the
21 director's interest were disclosed or known to the
22 shareholders entitled to vote and they authorized, approved,
23 or ratified the transaction. For purposes of this subsection,
24 a conflict of interest transaction is authorized, approved, or
25 ratified if it receives a majority of the votes entitled to be
26 counted under this subsection. Shares owned by or voted under
27 the control of a director who has a direct or indirect
28 interest in the transaction, and shares owned by or voted
29 under the control of an entity described in paragraph "a",
30 shall not be counted in a vote of members to determine whether
31 to authorize, approve, or ratify a conflict of interest
32 transaction under this subsection. The vote of those shares,
33 however, is counted in determining whether the transaction is
34 approved under other sections of this chapter. A majority of
35 the votes, whether or not the shareholders are present, that

1 are entitled to be counted in a vote on the transaction under
2 this subsection constitutes a quorum for the purpose of taking
3 action under this subsection.

4 c. The transaction was fair to the cooperative.

5 2. For purposes of this section, a director of the
6 cooperative has an indirect interest in a transaction if
7 either:

8 a. Another entity in which the director has a material
9 financial interest is a party to the transaction.

10 b. Another entity of which the director is a director,
11 officer, or trustee is a party to the transaction and the
12 transaction is or should be considered by the board.

13 Sec. 23. NEW SECTION. 502.405 OFFICERS.

14 A cooperative shall have officers described in its bylaws
15 or appointed by the board in accordance with the bylaws. The
16 bylaws or the board shall delegate to one of the officers
17 responsibility for preparing minutes of the directors' and
18 members' meetings and for authenticating records of the
19 cooperative. Each officer has the authority and shall perform
20 the duties set forth in the bylaws or, to the extent
21 consistent with the bylaws, the duties prescribed by the
22 board. The same individual may simultaneously hold more than
23 one office.

24 Sec. 24. NEW SECTION. 502.406 STANDARDS OF CONDUCT.

25 1. A director or officer shall discharge the director's or
26 officer's duties in conformity with all of the following:

27 a. In good faith.

28 b. With the care an ordinarily prudent person in a like
29 position would exercise under similar circumstances.

30 c. In a manner the director or officer reasonably believes
31 to be in the best interests of the cooperative.

32 2. In discharging duties by a director or officer, the
33 director or officer is entitled to rely on information,
34 opinions, reports, or statements, including financial
35 statements and other financial data, if prepared or presented

1 by any of the following:

2 a. One or more officers or employees of the cooperative
3 whom the director or officer reasonably believes to be
4 reliable and competent in the matters presented.

5 b. A person, including but not limited to a legal counsel
6 or public accountant, regarding a matter that the director or
7 officer reasonably believes is within the person's
8 professional or expert competence.

9 c. A committee of the board of which the director or
10 officer is not a member if the director or officer reasonably
11 believes the committee merits confidence.

12 3. A director or officer is not acting in good faith if
13 the director or officer has knowledge concerning a matter in
14 question that makes reliance otherwise permitted by subsection
15 2 unwarranted.

16 4. A director or officer is not liable for any action
17 taken as a director or officer, or the failure to take action,
18 if the director or officer performs the duties of the office
19 in compliance with this section, or if, and to the extent
20 that, liability for the action or failure to act has been
21 limited by the articles pursuant to section 501.407.

22 Sec. 25. NEW SECTION. 501.407 PERSONAL LIABILITY.

23 The articles may contain a provision eliminating or
24 limiting the personal liability of a director, officer, or a
25 shareholder of the cooperative for monetary damages for breach
26 of a fiduciary duty as a director, officer, or shareholder,
27 provided that the provision does not eliminate or limit
28 liability for any of the following:

29 1. A breach of the duty of loyalty to the cooperative or
30 its shareholders.

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

33 3. A transaction from which the director, officer, or
34 shareholder derives an improper personal benefit.

35 4. An act or omission occurring prior to the date when the

1 provision in the articles becomes effective.

2 Sec. 26. NEW SECTION. 501.408 INDEMNIFICATION.

3 A cooperative may indemnify a present or former director,
4 officer, employee, or agent in the manner and in the instances
5 authorized in sections 490.850 through 490.858, provided that
6 where these sections provide for action by the shareholders
7 these sections are applicable to actions by the members, and
8 where these sections refer to the cooperative these sections
9 are applicable to a cooperative.

10 SUBCHAPTER V
11 CAPITAL STRUCTURE

12 Sec. 27. NEW SECTION. 501.501 ISSUANCE AND TRANSFER OF
13 STOCK.

14 1. A cooperative may issue the number of shares of each
15 class authorized by its articles. A cooperative may issue
16 fractional shares. Stock may be represented by certificates
17 or by entry on the cooperative's stock record books.

18 2. A member may sell or otherwise transfer stock to any
19 other member or to any person who has been approved by the
20 board for membership, subject to the limitations in the
21 articles or bylaws on the amount of each class of stock that
22 may be owned by one member.

23 3. A cooperative may acquire its own stock, and shares so
24 acquired constitute authorized but unissued shares.

25 Sec. 28. NEW SECTION. 501.502 TERMINATION OF MEMBERSHIP.

26 1. The articles or bylaws may authorize the board to
27 terminate a membership for any of the following reasons:

28 a. The member has attempted to transfer stock to a person
29 who is not a member and has not been approved for membership.

30 b. The member has failed to meet the member's commitment
31 to provide products to the cooperative or to buy the
32 cooperative's products.

33 c. The member is no longer an authorized person.

34 d. The member is no longer a farming entity.

35 2. A member's right to vote at member meetings shall cease

1 upon notification to the member of the board action. The
2 cooperative shall redeem, without interest, the voting stock
3 of a terminated member within two years after the termination
4 decision for the value set in the articles or bylaws.

5 Sec. 29. NEW SECTION. 501.503 DISTRIBUTION OF NET
6 SAVINGS.

7 The board shall annually dispose of the cooperative's
8 earnings in excess of its operating expenses as follows:

9 1. If the articles authorize the payment of dividends on a
10 class of stock, then the directors may declare dividends
11 pursuant to the articles. Dividends may not exceed eight
12 percent of the value of the stock in each fiscal year. The
13 members may control the amount that is allocated under this
14 subsection.

15 2. To provide a reasonable reserve for depreciation,
16 obsolescence, bad debts, or contingent losses or expenses.
17 The members may control the amount that is allocated under
18 this subsection.

19 3. To increase the cooperative's retained savings to the
20 extent determined by the board to be necessary based on its
21 evaluation of the future needs and the competitive position of
22 the cooperative.

23 4. The cooperative shall have an unconditional binding
24 obligation to distribute to the members all remaining net
25 savings as determined under the United States Internal Revenue
26 Code. These net savings shall be allocated to each member in
27 proportion to the business the member did with the cooperative
28 during the preceding fiscal year. The net savings may be
29 separately calculated for two or more categories of business,
30 and allocated to the members on the basis of business done
31 within each of these categories. Net savings shall be
32 distributed in the form of cash or stock, or a combination of
33 cash and stock, as determined by the board.

34 SUBCHAPTER VI
35 CONVERSION, MERGER, SALE, AND DISSOLUTION

1 Sec. 30. NEW SECTION. 501.601 EXISTING CORPORATIONS.

2 1. As used in this section:

3 a. "Dissenting member" means a voting member who votes in
4 opposition to the plan of conversion and who makes a demand
5 for payment as provided in this section not later than the
6 deadline for members to cast ballots on the vote to approve
7 the plan of conversion.

8 b. "Issue price" means the amount paid for an interest in
9 the association or the value stated in a notice of allocation
10 of patronage refunds.

11 2. An association organized under chapter 497, 498, or 499
12 may adopt this chapter pursuant to the following procedures:

13 a. The board must adopt a plan of conversion that
14 specifies the changes in the articles to comply with this
15 chapter, the affect of the conversion on the association's
16 outstanding members' equity, and the option or options
17 available to the equity holders who do not want to continue
18 their investment in the association.

19 b. The members must approve the plan of conversion by the
20 vote of two-thirds of the votes cast on a ballot in which a
21 majority of all votes are cast.

22 3. a. The cooperative shall redeem all of the members'
23 equity held by dissenting members at its issue price within
24 sixty days after the conversion to this chapter is effective.
25 At the time of redemption, the cooperative shall pay to each
26 dissenting member in cash the amount paid in cash by that
27 member for the member's interest in the old association. The
28 cooperative shall pay the remainder of the issue price without
29 interest in ten annual equal payments, with the final payment
30 being made not later than fifteen years after the conversion
31 becomes effective. The cooperative shall reflect the unpaid
32 portion as a liability in the records of the cooperative. The
33 cooperative shall pay the unpaid portion to the estate of a
34 dissenting member who is a natural person who dies before the
35 entire issue price has been paid with the same priority as if

1 the person was a member at the time of death.

2 b. An equity holder who is not a voting member shall have
3 the same rights as a dissenting member if the equity holder
4 makes a demand for payment pursuant to paragraph "a" not later
5 than the deadline for members to cast ballots on the vote to
6 approve the plan of conversion.

7 c. The association shall notify all equity holders of
8 their rights pursuant to paragraph "a" at the same time the
9 association notifies the members of the member meeting to vote
10 on the plan of conversion.

11 Sec. 31. NEW SECTION. 501.602 MERGER AND CONSOLIDATION.

12 A cooperative organized under this chapter may merge or
13 consolidate with one or more other cooperatives organized
14 under this chapter. The provisions of sections 499.61 through
15 499.70 shall apply to such a merger or consolidation.

16 Sec. 32. NEW SECTION. 501.603 SALE OF ASSETS.

17 1. A cooperative may, on the terms and conditions and for
18 the consideration determined by the board, mortgage, pledge,
19 or otherwise encumber any or all of its property.

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

30 Sec. 33. NEW SECTION. 501.604 DISSOLUTION.

31 The provisions of sections 490.1401 through 490.1440 shall
32 apply to cooperatives in the same manner as they apply to
33 corporations organized under chapter 490.

34 EXPLANATION

35 This bill provides for the organization of cooperative

1 corporations which are eligible to hold agricultural land.

2 The bill provides for the organization of cooperative
3 corporations based in part on provisions contained in chapter
4 499, the chapter providing for the organization of cooperative
5 associations, and chapter 490, the chapter providing for the
6 organization of corporations. The bill provides as follows:

7 Section 203.1 defines a grain dealer for purposes of
8 chapter 203, the grain dealers law. The bill amends the
9 definition to exclude a cooperative corporation organized
10 under chapter 501, if the cooperative does not buy grain from
11 producers who are not members and does not sell any grain.

12 Section 501.101 provides definitions, including a
13 definition of "authorized person" to mean a farming entity, an
14 individual or general partnership that owns land and receives
15 as rent a share of the crops or the animals raised on the
16 land, or an employee of the cooperative who performs at least
17 1,000 hours of service for the cooperative in a calendar year.
18 A "farming entity" is defined to mean a natural person or a
19 fiduciary for a natural person who regularly participates in
20 physical labor or management in a farming operation; a family
21 farm corporation, family farm limited liability company,
22 family farm limited partnership, or family trust, as defined
23 in Iowa's corporate farming law; or a general partnership,
24 limited partnership, or limited liability partnership composed
25 exclusively of natural persons or persons acting in a
26 fiduciary capacity for the benefit of natural persons, which
27 has received at least 60 percent of gross income over the last
28 consecutive three-year period from farming.

29 Section 501.102 provides that a cooperative organized under
30 the chapter may have any purpose so long as it is lawful, and
31 may have perpetual duration, and has the same general powers
32 as provided to corporations organized under chapter 490.

33 Section 501.103 provides that a cooperative may, directly
34 or indirectly, acquire or otherwise obtain or lease
35 agricultural land in this state for as long as farming

1 entities own a majority of the stock and are eligible to cast
2 a majority of the votes at member meetings, and authorized
3 persons own at least three-fourths of the stock and are
4 eligible to cast at least three-fourths of the votes at member
5 meetings. The cooperative claiming that it is exempt from the
6 restrictions of section 9H.4 must file an annual report with
7 the secretary of state on or before March 31. The report must
8 include information relating to the cooperative and its land
9 holdings. The section provides that an officer who falsifies
10 a report is guilty of perjury which is punishable as class "D"
11 felony. The section provides that a cooperative is prohibited
12 from holding more than 1,500 acres of agricultural land.

13 Section 501.104 provides that the name of the cooperative
14 must identify it as a cooperative.

15 Section 501.105 provides for the execution and filing of
16 documents, including providing for standard forms by the
17 secretary of state, the execution and filing of cooperative
18 documents, including the payment of filing fees, and
19 corrective documents.

20 Section 501.106 provides that the cooperative must maintain
21 a registered office and an agent in the state.

22 Section 501.107 provides that a cooperative must provide
23 for records and reports as does a corporation organized
24 pursuant to chapter 490.

25 Section 501.108 provides that the attorney general alone
26 has the right to inquire into whether a cooperative has the
27 right to exist or continue under chapter 501. The attorney
28 general is provided the authority to bring an action to wind
29 up the affairs of a cooperative not functioning as provided in
30 the bill.

31 Section 501.201 provides for the incorporation of the
32 cooperative by three or more individuals.

33 Section 501.202 provides for filing the initial articles of
34 incorporation, including specific information that must be
35 included in the articles.

1 Section 501.203 provides for amending and restating the
2 articles of incorporation. The bill provides that a
3 cooperative may amend its articles at any time to add or
4 change a provision that is required or permitted in the
5 articles or to delete a provision not required in the
6 articles, or to restate its articles at any time. The
7 amendment or restatement must be adopted by the members by a
8 vote of two-thirds.

9 Section 501.204 provides for the cooperative's bylaws. The
10 bill provides that the board or members may adopt or amend the
11 cooperative's bylaws by a vote of three-fourths of the board.

12 Section 501.301 provides that a member is not personally
13 liable for the acts or debts of the cooperative.

14 Section 501.302 provides procedures for calling and holding
15 meetings, including providing for annual and special meetings.
16 The bill provides for notice to members, and determining
17 whether members are entitled to vote.

18 Section 501.303 provides for the conduct of meetings. The
19 bill provides for member voting, including absentee voting.

20 Section 501.304 provides for the distribution of
21 information to members of the cooperative.

22 Section 502.401 provides for the management of a
23 cooperative by a board of directors, which is elected and
24 serves terms as prescribed in the articles or bylaws.

25 Section 502.402 provides for vacancies occurring on the
26 board, including by resignation and removal, and for filling
27 vacancies by the board or as otherwise provided by the
28 articles of incorporation or bylaws.

29 Section 502.403 provides for board action, including
30 providing for quorum requirements, regular board meetings,
31 special board meetings, the establishment of committees, the
32 conduct of meetings, and action that may be taken without a
33 meeting.

34 Section 502.404 provides for resolving conflicts of
35 interest. The bill provides that if a conflict occurs, the

1 board may take action if the conflict was known to other board
2 members and the members without a conflict approve the
3 measure, or the transaction is fair to the cooperative.

4 Section 502.405 provides that the cooperative must
5 establish officers and their duties.

6 Section 502.406 provides that a director or officer must
7 discharge duties in good faith, with the care of an ordinarily
8 prudent person, and in the best interests of the cooperative.
9 The bill provides that the director or officer is entitled to
10 rely on information prepared by reliable sources. A director
11 or officer who performs duties as required under the section
12 cannot be held liable for an action or a failure to act.

13 Section 501.407 provides that the articles of incorporation
14 may contain a provision eliminating or limiting the personal
15 liability of a director or officer or its shareholders. The
16 bill provides that the section does not apply to a breach of
17 the duty of loyalty, an act or omission made in bad faith or
18 misconduct, an action which constitutes improper enrichment,
19 or an act or omission occurring prior to the date when the
20 provision excusing the conduct becomes effective.

21 Section 501.408 provides that a cooperative may indemnify a
22 present or former director, officer, employee, or agent.

23 Section 501.501 provides for the issuance and transfer of
24 stock, including the issuance of different classes of stock,
25 and fractional shares. The bill provides that a member may
26 sell or otherwise transfer stock to any other member or to any
27 person who has been approved by the board for membership.

28 Section 501.502 provides for the termination of membership
29 by the articles of incorporation or bylaws. The bill provides
30 for termination if a member transfers stock to a person who is
31 not a member and has not been approved for membership, the
32 member fails to meet the member's commitment to provide
33 products to the cooperative or to buy the cooperative's
34 products, or the member is no longer an authorized person or a
35 farming entity. The bill provides for the redemption of the

1 terminated member's stock.

2 Section 501.503 provides for the distribution of the
3 cooperative's net earnings. The bill provides that the board
4 must annually dispose of the cooperative's earnings in excess
5 of its operating expenses, including the payment of dividends,
6 the reserve for depreciation, and to increase the
7 cooperative's retained savings. The bill provides that a
8 cooperative has an unconditional binding obligation to
9 distribute to the members all remaining net savings as
10 determined under the United States Internal Revenue Code.

11 Section 501.601 provides for conversion, including a demand
12 for payment for a member who votes in opposition to the plan
13 of conversion. The bill provides that a cooperative
14 association may convert to an organization under this chapter.
15 The bill provides that the board and the members must approve
16 the plan of conversion.

17 Section 501.602 provides that a cooperative may merge or
18 consolidate with one or more other cooperatives organized
19 under chapter 501. The bill provides that sections relating
20 to mergers applicable to cooperative associations as provided
21 in sections 499.61 through 499.70 apply to a merger or
22 consolidation under chapter 501.

23 Section 501.603 provides for the sale of a cooperative's
24 assets. The bill provides that a cooperative may mortgage,
25 pledge, encumber, sell, lease, exchange, or otherwise dispose
26 of its property as determined by the board. If a cooperative
27 disposes of all of its property, the members must approve it
28 by the vote of two-thirds.

29 Section 501.604 provides for the dissolution of the
30 cooperative in the same manner as provided for a corporation
31 in sections 490.1401 through 490.1440.

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SENATE FILE 2135

AN ACT

PROVIDING FOR THE ORGANIZATION OF COOPERATIVE CORPORATIONS,
PROVIDING FOR FEES, AND PROVIDING FOR PENALTIES.

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

Section 1. PURPOSE. The purpose of chapter 501 is to provide an opportunity for producers of agricultural commodities to contribute a portion of their production for a single enterprise for purposes of enhancing the value of that production and to restrict control of these enterprises to agricultural producers.

Sec. 2. Section 203.1, subsection 8, Code Supplement 1995, is amended to read as follows:

8. "Grain dealer" means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of resale, milling, or processing. However, "grain dealer" does not include a any of the following:

- a. A producer of grain who is buying grain for the producer's own use as seed or feed~~,-a.~~
- b. A person solely engaged in buying grain future contracts on the board of trade~~,-a.~~

c. A person who purchases grain only for sale in a registered feed~~,-a.~~

d. A person who purchases grain for sale in a nonregistered customer-formula feed regulated by chapter 198, who purchases less than a total of fifty thousand bushels of grain annually from producers, and who is also exempt as an incidental warehouse operator under chapter 203C~~,-a.~~

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199~~,-a.~~

f. A person buying grain only as a farm manager~~,-an.~~

g. An executor, administrator, trustee, guardian, or conservator of an estate~~,-a.~~

h. A bargaining agent as defined in section 203A.1; or a custom livestock feeder.

i. A cooperative corporation organized under chapter 501, if the cooperative buys grain from producers who are members or a licensed grain dealer, and the cooperative does not resell that grain.

SUBCHAPTER I

GENERAL PROVISIONS

Sec. 3. NEW SECTION. 501.101 DEFINITIONS.

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

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

2. "Authorized person" means a person who is one of the following:

- a. A farming entity.
- b. An individual or general partnership that owns land and receives as rent a share of the crops or the animals raised on the land if those crops or animals are a significant component of the cooperative's business operations.
- c. An employee of the cooperative who performs at least one thousand hours of service for the cooperative in each calendar year.

3. "Board" means the cooperative's board of directors.

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

5. "Farming" means the same as section 9H.1.

6. "Farming entity" means any one of the following:

a. A natural person or a fiduciary for a natural person who regularly participates in physical labor or operations management in a farming operation and files schedule F as part of the person's annual form 1040 or form 1041 filing with the United States internal revenue service.

b. A family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

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

8. "Shareholder" means a person who owns stock in a cooperative, whether or not that stock has voting rights.

9. "Voting stock" means stock in a cooperative that has voting rights.

Sec. 4. NEW SECTION. 501.102 PURPOSES AND POWERS.

1. A cooperative organized under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles.

2. Unless its articles provide otherwise, a cooperative has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, all of the powers enumerated in sections 490.302 and 490.303.

Sec. 5. NEW SECTION. 501.103 LIMITED FARMING ACTIVITIES.

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

a. Farming entities own sixty percent of the stock and are eligible to cast sixty percent of the votes at member meetings.

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

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

2. A cooperative that claims that it is exempt from the restrictions of section 9H.4 pursuant to subsection 1 shall file an annual report with the secretary of state on or before March 31 of each year on forms supplied by the secretary of state. The report shall be signed by the president or the vice president of the cooperative and shall contain the following:

a. The cooperative's name and address.

b. A certification that the cooperative meets both of the requirements of subsection 1.

c. The number of acres of agricultural land owned, leased or held by the cooperative, including the following:

(1) The total number of acres in the state.

(2) The number of acres in each county identified by county name.

(3) The number of acres owned.

(4) The number of acres leased.

(5) The number of acres held other than by ownership or lease.

(6) The number of acres used for the production of row crops.

3. The president or the vice president of the cooperative who falsifies a report shall be guilty of perjury as provided in section 720.2.

4. In the event of a transfer of stock by operation of law as a result of death, divorce, bankruptcy, or pursuant to a security interest, the cooperative may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

Sec. 6. NEW SECTION. 501.104 NAME.

The name of a cooperative organized under this chapter must contain the word "cooperative", "coop", or "co-op", and the name must be distinguishable from the names of cooperatives organized under this chapter or another chapter, or foreign cooperatives authorized to do business in this state.

Sec. 7. NEW SECTION. 501.105 EXECUTION AND FILING OF DOCUMENTS.

1. The secretary of state may prescribe and furnish on request forms for the proper administration of this chapter. If the secretary of state has prescribed a mandatory form for a document, then that form must be on the prescribed form.

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

3. The secretary of state shall collect the following fees:

a. Twenty dollars upon the filing of original or amended articles or articles of merger.

b. Five dollars upon the filing of all other required documents.

c. Five dollars per document and fifty cents per page for copying and certifying a document.

4. A document is effective at the later of the following times:

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

b. The delayed effective time and date specified in the document. If a delayed effective date but no time is specified in the document, 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 it is filed.

5. A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary of state articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify and correct the incorrect statement or defective execution. Articles of correction are effective on the effective date of the document it corrects except as to persons relying on the original document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

6. The secretary of state shall forward for recording a copy of each original, amended, and restated articles, articles of merger, articles of consolidation, and articles of dissolution to the recorder of the county in which the cooperative has its principal place of business, or in the case of a merger or consolidation, to the recorders of each of the counties in which the merging or consolidating cooperatives have their principal offices.

Sec. 8. NEW SECTION. 501.106 REGISTERED OFFICE.

1. A cooperative must continuously maintain in this state a registered office that may be the same as any of its places of business, and a registered agent, who may be any of the following:

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

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

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

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

a. The name of the cooperative.

- b. The street address of its current registered office.
- c. If the street address of the current registered office is to be changed, the street address of the new registered office.
- d. The name of its current registered agent.
- e. 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 it, to the appointment.
- f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

3. a. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any cooperative for which the person is the registered agent by notifying the cooperative in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing, a statement that provides for a registered office and a registered agent as provided in this section, and which recites that the cooperative has been notified of the change.

b. 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 paragraph "a" for each cooperative, or a single statement for all cooperatives named in the notice, except that it need be signed only by the registered agent or agents or be responsive to subsection 2, paragraph "e". The statement must recite that a copy of the statement has been mailed to each cooperative named in the notice.

4. A cooperative may also change its registered office or registered agent in its annual report.

Sec. 9. NEW SECTION. 501.107 RECORDS AND REPORTS.

The provisions of sections 490.1601 through 490.1622 shall apply to cooperatives organized under this chapter in the same

manner as the provisions apply to corporations organized under chapter 490.

Sec. 10. NEW SECTION. 501.108 QUO WARRANTO.

The attorney general alone shall have the right to inquire into whether a cooperative has the right to exist or continue under this chapter. If the secretary of state is informed that a cooperative is not functioning as a cooperative, the secretary of state shall notify the attorney general. If the attorney general finds reasonable cause that the cooperative is not functioning as provided under this chapter, the attorney general shall bring action to wind up the affairs of the cooperative.

SUBCHAPTER II

ARTICLES AND BYLAWS

Sec. 11. NEW SECTION. 501.201 INCORPORATION.

Three or more individuals may organize a cooperative under this chapter by executing and delivering articles to the secretary of state.

Sec. 12. NEW SECTION. 501.202 ARTICLES OF INCORPORATION.

1. The initial articles must set forth all of the following:
 - a. The name, address, and occupation of each incorporator.
 - b. The names and addresses of the initial directors.
 - c. The street address of the cooperative's initial registered office and the name of its initial registered agent at that office.
2. The articles must set forth all of the following:
 - a. The name that satisfies the requirements of section 501.104.
 - b. A statement that it is organized under this chapter.
 - c. Its duration, which may be perpetual.
 - d. The classes of stock and the authorized number of shares of each class.
 - e. The quorum required for each member meeting.
 - f. The member voting rules.
3. The articles may set forth any other provision consistent with law.

Sec. 13. NEW SECTION. 501.203 AMENDED AND RESTATED ARTICLES OF INCORPORATION.

1. A cooperative may amend its articles at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles.

2. A cooperative may restate its articles at any time. A restatement of the articles must contain the information required by section 501.202, subsection 2, and may set forth any other provision consistent with law.

3. If the board recommends the amendment or restatement to the members, the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast.

4. If the board does not recommend the amendment or restatement to the members, then the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast.

Sec. 14. NEW SECTION. 501.204 BYLAWS.

The board may adopt or amend the cooperative's bylaws by a vote of three-fourths of the board. The members may adopt or amend the cooperative's bylaws by a vote of three-fourths of the votes cast on a ballot in which a majority of all votes are cast. A bylaw provision adopted by the members shall not be amended or repealed by the directors.

SUBCHAPTER III
MEMBERS

Sec. 15. NEW SECTION. 501.301 LIABILITY OF MEMBERS.

A member is not personally liable for the acts or debts of the cooperative.

Sec. 16. NEW SECTION. 501.302 CALLING AND NOTICE OF MEETINGS.

1. A cooperative shall hold an annual member meeting at a time and place fixed in accordance with the bylaws.

2. The board may call special member meetings, and the board shall call a special member meeting upon the written demand of twenty percent of the members.

3. A cooperative shall give each member at least ten days advanced notice of the time, place, and the issues to be considered at each member meeting. This notice may be given in person or by mail to the last known address of the member, or the notice requirement may be met by the member waiving the notice.

4. The record date for determining the members entitled to notice of and to vote at a member meeting is the close of business on the day before the first notices for the meeting are delivered or mailed.

Sec. 17. NEW SECTION. 501.303 CONDUCT OF MEETINGS.

1. Only those issues included in the notice of a member meeting may be considered at that meeting.

2. A member may vote at a member meeting in person or by signed absentee ballot that specifies the issue and the member's vote on that issue. If the board makes available an absentee ballot form, then that form must be used to cast an absentee ballot on that issue.

Sec. 18. NEW SECTION. 501.304 MEMBER INFORMATION.

1. Within ten days from receiving a demand of a member, the cooperative shall produce and furnish the member with the names and addresses of all members of the cooperative.

2. The board shall adopt a policy which permits the distribution of information to all of the members upon the request of a member when the purpose of the request concerns directly the action of the board. Upon receipt of the information and the request of a member, the board shall distribute the information to all of the members. The cooperative may charge the requesting member the costs incurred by the cooperative in distributing the information.

Sec. 19. NEW SECTION. 501.305 MULTIPLE MEMBERSHIP PROHIBITED.

A person who is a member owning fifteen percent or more of a cooperative shall not be eligible to be a member of any other cooperative organized under this chapter. A person violating this section is subject to a civil penalty of not more than one hundred dollars. The person's membership in a

cooperative shall terminate if the person's acquisition of an interest in that cooperative caused the person to be in violation of this section.

Sec. 20. NEW SECTION. 501.306 NUMBER OF VOTES.

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

Sec. 21. NEW SECTION. 501.307 FINANCIAL INFORMATION.

The cooperative shall make available financial information to its membership by doing either of the following:

1. Preparing and providing to its members a financial statement for the cooperative's last fiscal year.
 - a. The financial statement must be based upon an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, a qualification in an opinion is valid, if it is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited is invalid for purposes of this section.
 - b. The financial statement must disclose the assets, liabilities, and net worth of the cooperative. The financial statement must be prepared according to generally accepted accounting principles. Assets must be shown at original cost less depreciation, or based upon a valuation in accordance with a competent appraisal. Unpriced contracts for agricultural commodities or products must be shown as a liability and valued at the applicable current market price of the agricultural commodities or products as of the date the financial statement is prepared.

2. Honoring a demand to provide access at all reasonable hours at its offices the books, records, accounts, papers, documents, and computer programs or other recordings relating to the property, assets, business, and financial affairs of the cooperative. The demand shall be in writing and signed by

at least fifty percent of all the members of the cooperative. The cooperative shall honor the demand within one day from its receipt. Upon receipt of the demand, the cooperative must provide access to one or more persons selected by the fifty percent of the members to conduct the examination.

SUBCHAPTER IV

DIRECTORS AND OFFICERS

Sec. 22. NEW SECTION. 501.401 NUMBER AND ELECTION.

1. The affairs of a cooperative shall be managed by a board of not less than three directors.
2. The members shall elect the directors as prescribed in the articles or bylaws.
3. Each director shall serve the term prescribed in the articles or bylaws. The terms may be staggered.

Sec. 23. NEW SECTION. 501.402 VACANCIES.

1. A director may resign at any time by delivering written notice to the board chairperson or the board secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.
2. The members may remove one or more directors with or without cause unless the articles provide that directors may be removed only for cause.
3. The articles may authorize the board to remove a director for a cause specified in the articles.
4. Unless the articles or bylaws provide otherwise, the board shall fill each vacancy until the members elect a director to fill the vacancy at the next scheduled meeting of the members. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

Sec. 24. NEW SECTION. 501.403 BOARD ACTION.

1. The board may hold regular or special meetings in or out of this state. A quorum of the board consists of a majority of the directors.
2. Unless the articles or bylaws provide otherwise:

- a. Regular board meetings may be held without notice of the date, time, place, or purpose of the meeting.
 - b. Special board meetings must be preceded by at least two days' notice of the date, time, and place of the meeting; but the notice need not describe the purpose of the special meeting.
 - c. The board may create one or more committees composed of directors, and specify the duties and authority of each committee.
 - d. The board may permit any number of directors to participate in a regular or special meeting by, or conduct the meeting through, the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.
 - e. Action required or permitted by this chapter to be taken at a board meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.
3. A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Sec. 25. NEW SECTION. 501.404 DIRECTOR CONFLICT OF INTEREST.

1. A conflict of interest transaction is a transaction with the cooperative in which a director has a direct or indirect interest. A director shall be deemed to have a conflict of interest in a matter concerning a transaction between the cooperative and another entity, if the director owns a twenty-five percent or greater ownership interest in the other entity. A conflict of interest transaction is not voidable by the cooperative solely because of the director's interest in the transaction if any one of the following is true:
 - a. The material facts of the transaction and the director's interest were disclosed or known to the board or a board committee and the board or committee authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this subsection. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under this subsection, if the transaction is otherwise authorized, approved, or ratified as provided in this subsection.
 - b. The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction. For purposes of this subsection, a conflict of interest transaction is authorized, approved, or ratified if it receives a majority of the votes entitled to be

counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in paragraph "a", shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under this subsection. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the votes, whether or not the shareholders are present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this subsection.

c. The transaction was fair to the cooperative.

2. For purposes of this section, a director of the cooperative has an indirect interest in a transaction if either:

a. Another entity in which the director has a material financial interest is a party to the transaction.

b. Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board.

Sec. 26. NEW SECTION. 501.405 OFFICERS.

A cooperative shall have officers described in its bylaws or appointed by the board in accordance with the bylaws. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the cooperative. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board. The same individual may simultaneously hold more than one office.

Sec. 27. NEW SECTION. 501.406 STANDARDS OF CONDUCT.

1. A director or officer shall discharge the director's or officer's duties in conformity with all of the following:

a. In good faith.

b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

c. In a manner the director or officer reasonably believes to be in the best interests of the cooperative.

2. In discharging duties by a director or officer, the director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

a. One or more officers or employees of the cooperative whom the director or officer reasonably believes to be reliable and competent in the matters presented.

b. A person, including but not limited to a legal counsel or public accountant, regarding a matter that the director or officer reasonably believes is within the person's professional or expert competence.

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

3. A director or officer is not acting in good faith if the director or officer has knowledge concerning a matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A director or officer is not liable for any action taken as a director or officer, or the failure to take action, if the director or officer performs the duties of the office in compliance with this section, or if, and to the extent that, liability for the action or failure to act has been limited by the articles pursuant to section 501.407.

Sec. 28. NEW SECTION. 501.407 PERSONAL LIABILITY.

The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or a shareholder of the cooperative for monetary damages for breach of a fiduciary duty as a director, officer, or shareholder, provided that the provision does not eliminate or limit liability for any of the following:

1. A breach of the duty of loyalty to the cooperative or its shareholders.
2. An act or omission not in good faith or which involves intentional misconduct or a knowing violation of law.
3. A transaction from which the director, officer, or shareholder derives an improper personal benefit.
4. An act or omission occurring prior to the date when the provision in the articles becomes effective.

Sec. 29. NEW SECTION. 501.408 INDEMNIFICATION.

A cooperative may indemnify a present or former director, officer, employee, or agent in the manner and in the instances authorized in sections 490.850 through 490.858, provided that where these sections provide for action by the shareholders these sections are applicable to actions by the members, and where these sections refer to the cooperative these sections are applicable to a cooperative.

SUBCHAPTER V
CAPITAL STRUCTURE

Sec. 30. NEW SECTION. 501.501 ISSUANCE AND TRANSFER OF STOCK.

1. A cooperative may issue the number of shares of each class authorized by its articles. A cooperative may issue fractional shares. Stock may be represented by certificates or by entry on the cooperative's stock record books.
2. A member may sell or otherwise transfer stock, other than voting stock, to any other member or to any person who has been approved by the board for membership, subject to the limitations in the articles or bylaws on the amount of each class of stock that may be owned by one member.
3. A cooperative may acquire its own stock, and shares so acquired constitute authorized but unissued shares.

Sec. 31. NEW SECTION. 501.502 TERMINATION OF MEMBERSHIP.

1. A membership shall terminate upon the death of the member.
2. The articles or bylaws may authorize the board to terminate a membership for any of the following reasons:

- a. The member has attempted to transfer stock to a person who is not a member and has not been approved for membership.
 - b. The member has failed to meet the member's commitment to provide products to the cooperative or to buy the cooperative's products.
 - c. The member is no longer an authorized person.
 - d. The member is no longer a farming entity.
3. A member's right to vote at member meetings shall cease upon termination of the membership.

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

5. The cooperative shall redeem, without interest, all of the terminated member's allocated patronage refunds and preferred stock originally issued as allocated patronage refunds for the issue price. A cooperative shall make this payment within one year after the termination of the membership. However, if a terminated member's current equity equals or exceeds two percent of the cooperative's total members' equity, the cooperative shall redeem the terminated member's equity in annual amounts of not less than fifteen percent of the total amount provided that the entire amount must be redeemed within seven years.

Sec. 32. NEW SECTION. 501.503 DISTRIBUTION OF NET SAVINGS.

The board shall annually dispose of the cooperative's earnings in excess of its operating expenses as follows:

1. If the articles authorize the payment of dividends on a class of stock, then the directors may declare dividends pursuant to the articles. Dividends may not exceed eight percent of the value of the stock in each fiscal year. The

members may control the amount that is allocated under this subsection.

2. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses. The members may control the amount that is allocated under this subsection.

3. To increase the cooperative's retained savings to the extent determined by the board to be necessary based on its evaluation of the future needs and the competitive position of the cooperative.

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

SUBCHAPTER VI

CONVERSION, MERGER, SALE, AND DISSOLUTION

Sec. 33. NEW SECTION. 501.601 EXISTING CORPORATIONS.

1. As used in this section:

a. "Dissenting member" means a voting member who votes in opposition to the plan of conversion and who makes a demand for payment as provided in this section not later than the deadline for members to cast ballots on the vote to approve the plan of conversion.

b. "Issue price" means the amount paid for an interest in the association or the value stated in a notice of allocation of patronage refunds.

2. An association organized under chapter 497, 498, or 499 may adopt this chapter pursuant to the following procedures:

a. The board must adopt a plan of conversion that specifies the changes in the articles to comply with this

chapter, the affect of the conversion on the association's outstanding members' equity, and the option or options available to the equity holders who do not want to continue their investment in the association.

b. The members must approve the plan of conversion by the vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast.

3. a. The cooperative shall redeem all of the members' equity held by dissenting members at its issue price within one year after the conversion to this chapter is effective.

b. An equity holder who is not a voting member shall have the same rights as a dissenting member if the equity holder makes a demand for payment pursuant to paragraph "a" not later than the deadline for members to cast ballots on the vote to approve the plan of conversion.

c. The association shall notify all equity holders of their rights pursuant to paragraph "a" at the same time the association notifies the members of the member meeting to vote on the plan of conversion.

Sec. 34. NEW SECTION. 501.602 MERGER AND CONSOLIDATION.

A cooperative organized under this chapter may merge or consolidate with one or more other cooperatives organized under this chapter. The provisions of sections 499.61 through 499.70 shall apply to such a merger or consolidation.

Sec. 35. NEW SECTION. 501.603 SALE OF ASSETS.

1. A cooperative may, on the terms and conditions and for the consideration determined by the board, mortgage, pledge, or otherwise encumber any or all of its property.

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

Sec. 36. NEW SECTION. 501.604 DISSOLUTION.

The provisions of sections 490.1401 through 490.1440 shall apply to cooperatives in the same manner as they apply to corporations organized under chapter 490.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2135, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved March 21, 1996

TERRY E. BRANSTAD
Governor