

# House Study Bill 211

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON SWAIM)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act providing for unincorporated nonprofit associations, and  
2 providing for fees and penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1166HC 83  
5 da/nh/5

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1 1 DIVISION I  
1 2 REVISED UNIFORM UNINCORPORATED  
1 3 NONPROFIT ASSOCIATION ACT  
1 4 Section 1. NEW SECTION. 501B.1 SHORT TITLE.  
1 5 This Act shall be known and may be cited as the "Revised  
1 6 Uniform Unincorporated Nonprofit Association Act".  
1 7 Sec. 2. NEW SECTION. 501B.2 DEFINITIONS.  
1 8 As used in this chapter:  
1 9 1. "Established practices" means the practices used by an  
1 10 unincorporated nonprofit association without material change  
1 11 during the most recent five years of its existence, or if it  
1 12 has existed for less than five years, during its entire  
1 13 existence.  
1 14 2. "Governing principles" means the agreements, whether  
1 15 oral, in a record, or implied from its established practices,  
1 16 that govern the purpose or operation of an unincorporated  
1 17 nonprofit association and the rights and obligations of its  
1 18 members and managers. "Governing principles" includes any  
1 19 amendment or restatement of the agreements constituting the  
1 20 governing principles.  
1 21 3. "Manager" means a person that is responsible, alone or  
1 22 in concert with others, for the management of an  
1 23 unincorporated nonprofit association and includes but is not  
1 24 limited to persons who may be designated as directors and  
1 25 officers or some other designation indicating that such  
1 26 persons would perform the duties of a manager.  
1 27 4. "Member" means a person that, under the governing  
1 28 principles, may participate in the selection of persons  
1 29 authorized to manage the affairs of the unincorporated  
1 30 nonprofit association or in the development of the policies  
1 31 and activities of the association.  
1 32 5. "Person" means an individual, corporation, business  
1 33 trust, statutory entity trust, estate, trust, partnership,  
1 34 limited liability company, cooperative, association, joint  
1 35 venture, public corporation, government or governmental  
2 1 subdivision, agency, or instrumentality, or any other legal or  
2 2 commercial entity.  
2 3 6. "Record" means information that is inscribed on a  
2 4 tangible medium or that is stored in an electronic or other  
2 5 medium and is retrievable in perceivable form.  
2 6 7. "State" means a state of the United States, the  
2 7 District of Columbia, Puerto Rico, United States Virgin  
2 8 Islands, or any territory or insular possession subject to the  
2 9 jurisdiction of the United States.  
2 10 8. "Unincorporated nonprofit association" or "association"  
2 11 means an unincorporated organization consisting of two or more  
2 12 members joined under an agreement that is oral, in a record,  
2 13 or implied from conduct, for one or more common, nonprofit  
2 14 purposes. "Unincorporated nonprofit association" does not  
2 15 include any of the following:  
2 16 a. A trust.  
2 17 b. A marriage, domestic partnership, common law domestic  
2 18 relationship, civil union, or other domestic living

2 19 arrangement.

2 20 c. An organization formed under any other statute that

2 21 governs the organization and operation of unincorporated

2 22 associations.

2 23 d. A joint tenancy or tenancy in common even if the

2 24 co-owners share use of the property for a nonprofit purpose.

2 25 e. A relationship under an agreement in a record that

2 26 expressly provides that the relationship between the parties

2 27 does not create an unincorporated nonprofit association.

2 28 Sec. 3. NEW SECTION. 501B.3 RELATION TO OTHER LAW.

2 29 1. Principles of law and equity supplement this chapter

2 30 unless displaced by a particular provision of this chapter.

2 31 2. A statute governing a specific type of unincorporated

2 32 nonprofit association prevails over an inconsistent provision

2 33 in this chapter, to the extent of the inconsistency.

2 34 3. This chapter supplements the law of this state that

2 35 applies to nonprofit associations operating in this state. If

3 1 a conflict exists, that law applies.

3 2 Sec. 4. NEW SECTION. 501B.4 GOVERNING LAW.

3 3 1. Except as otherwise provided in subsection 2, this

3 4 chapter governs the operation in this state of all

3 5 unincorporated nonprofit associations formed or operating in

3 6 this state.

3 7 2. Unless the governing principles specify a different

3 8 jurisdiction, the law of the jurisdiction in which an

3 9 unincorporated nonprofit association has its main place of

3 10 activities governs the internal affairs of the association.

3 11 Sec. 5. NEW SECTION. 501B.5 LEGAL ENTITY == PERPETUAL

3 12 EXISTENCE == POWERS.

3 13 1. An unincorporated nonprofit association is a legal

3 14 entity distinct from its members and managers.

3 15 2. An unincorporated nonprofit association has perpetual

3 16 duration unless the governing principles specify otherwise.

3 17 3. An unincorporated nonprofit association has the same

3 18 powers as an individual to do all things necessary or

3 19 convenient to carry on its purposes.

3 20 4. An unincorporated nonprofit association may engage in

3 21 profit-making activities but profits from any activities must

3 22 be used or set aside for the association's nonprofit purposes.

3 23 Sec. 6. NEW SECTION. 501B.6 OWNERSHIP AND TRANSFER OF

3 24 PROPERTY.

3 25 1. An unincorporated nonprofit association may acquire,

3 26 hold, encumber, or transfer in its name an interest in real or

3 27 personal property.

3 28 2. An unincorporated nonprofit association may be a

3 29 beneficiary of a trust or contract, a legatee, or a devisee.

3 30 Sec. 7. NEW SECTION. 501B.7 STATEMENT OF AUTHORITY AS TO

3 31 REAL PROPERTY.

3 32 1. For purposes of this section, "statement of authority"

3 33 means a statement authorizing a person to transfer an interest

3 34 in real property held in the name of an unincorporated

3 35 nonprofit association.

4 1 2. An interest in real property held in the name of an

4 2 unincorporated nonprofit association may be transferred by a

4 3 person authorized to do so in a statement of authority filed

4 4 by the association in the office of the county recorder in

4 5 which a transfer of the property would be recorded.

4 6 3. A statement of authority must set forth all of the

4 7 following:

4 8 a. The name of the unincorporated nonprofit association.

4 9 b. The address in this state, including the street

4 10 address, if any, of the association or, if the association

4 11 does not have an address in this state, its out-of-state

4 12 address.

4 13 c. That the association is an unincorporated nonprofit

4 14 association.

4 15 d. The name, title, or position of a person authorized to

4 16 transfer an estate or interest in real property held in the

4 17 name of the association.

4 18 4. A statement of authority must be executed in the same

4 19 manner as an affidavit by a person other than the person

4 20 authorized in the statement to transfer the interest.

4 21 5. The county recorder may collect a fee as provided in

4 22 sections 331.604 and 331.605 for filing a statement of

4 23 authority in the amount authorized for filing a transfer of

4 24 real property.

4 25 6. A document amending, revoking, or canceling a statement

4 26 of authority or stating that the statement is unauthorized or

4 27 erroneous must meet the requirements for executing and filing

4 28 an original statement.

4 29 7. Unless canceled earlier, a filed statement of authority

4 30 and its most recent amendment expire five years after the date  
4 31 of the most recent filing.

4 32 8. If the record title to real property is in the name of  
4 33 an unincorporated nonprofit association and the statement of  
4 34 authority is filed in the office of the county recorder in  
4 35 which a transfer of the property would be filed, the authority  
5 1 of the person named in the statement to transfer is conclusive  
5 2 in favor of a person that gives value without notice that the  
5 3 person lacks authority.

5 4 Sec. 8. NEW SECTION. 501B.8 LIABILITY.

5 5 1. For a debt, obligation, or other liability of an  
5 6 unincorporated nonprofit association, whether arising in  
5 7 contract, tort, or otherwise, all of the following apply:

5 8 a. It is solely the debt, obligation, or other liability  
5 9 of the association.

5 10 b. It does not become a debt, obligation, or other  
5 11 liability of a member, manager, employee, or volunteer solely  
5 12 because the member acts as a member, the manager acts as a  
5 13 manager, the employee acts as an employee, or a volunteer acts  
5 14 as a volunteer.

5 15 2. A person's status as a member, manager, employee, or  
5 16 volunteer does not prevent or restrict law other than this  
5 17 chapter from imposing liability on the person or the  
5 18 association because of the person's conduct.

5 19 3. A person who is a manager, member, employee, or  
5 20 volunteer is not personally liable in that capacity to the  
5 21 unincorporated nonprofit association or any of its members for  
5 22 any action taken or failure to take any action in the  
5 23 discharge of the person's duties except liability for any of  
5 24 the following:

5 25 a. The amount of any financial benefit to which the person  
5 26 is not entitled.

5 27 b. An intentional infliction of harm on the unincorporated  
5 28 nonprofit association or the members.

5 29 c. An intentional violation of criminal law.

5 30 d. Improper distributions.

5 31 Sec. 9. NEW SECTION. 501B.9 ASSERTION AND DEFENSE OF  
5 32 CLAIMS.

5 33 1. An unincorporated nonprofit association may sue or be  
5 34 sued in its own name.

5 35 2. A member or manager may assert a claim the member or  
6 1 manager has against the unincorporated nonprofit association.  
6 2 An association may assert a claim it has against a member or  
6 3 manager.

6 4 Sec. 10. NEW SECTION. 501B.10 EFFECT OF JUDGMENT OR  
6 5 ORDER.

6 6 A judgment or order against an unincorporated nonprofit  
6 7 association is not by itself a judgment or order against a  
6 8 member or manager.

6 9 Sec. 11. NEW SECTION. 501B.11 APPOINTMENT OF AGENT TO  
6 10 RECEIVE SERVICE OF PROCESS.

6 11 1. An unincorporated nonprofit association may file in the  
6 12 office of the secretary of state a statement appointing an  
6 13 agent authorized to receive service of process.

6 14 2. A statement appointing an agent must set forth all of  
6 15 the following:

6 16 a. The name of the unincorporated nonprofit association.

6 17 b. The name of the person in this state authorized to  
6 18 receive service of process and the person's address, including  
6 19 the street address, in this state.

6 20 3. A statement appointing an agent must be signed and  
6 21 acknowledged by a person authorized to manage the affairs of  
6 22 the unincorporated nonprofit association and by the person  
6 23 appointed as the agent. By signing and acknowledging the  
6 24 statement the person becomes the agent.

6 25 4. An amendment to or cancellation of a statement  
6 26 appointing an agent to receive service of process must meet  
6 27 the requirements for executing an original statement. An  
6 28 agent may resign by filing a resignation in the office of the  
6 29 secretary of state and giving notice to the association.

6 30 5. The secretary of state may collect a fee for filing a  
6 31 statement appointing an agent to receive service of process,  
6 32 an amendment, a cancellation, or a resignation in the amount  
6 33 charged for filing similar documents.

6 34 Sec. 12. NEW SECTION. 501B.12 SERVICE OF PROCESS.

6 35 In an action or proceeding against an unincorporated  
7 1 nonprofit association, process may be served on an agent  
7 2 authorized by appointment to receive service of process  
7 3 pursuant to section 501B.11, on a manager of the association,  
7 4 or in any other manner authorized by the law of this state.

7 5 Sec. 13. NEW SECTION. 501B.13 ACTION OR PROCEEDING NOT

7 6 ABATED BY CHANGE.

7 7 An action or proceeding against an unincorporated nonprofit  
7 8 association does not abate merely because of a change in its  
7 9 members or managers.

7 10 Sec. 14. NEW SECTION. 501B.14 VENUE.

7 11 Unless otherwise provided by law other than this chapter,  
7 12 venue of an action against an unincorporated nonprofit  
7 13 association brought in this state is determined under the  
7 14 statutes applicable to an action brought in this state against  
7 15 a corporation under chapter 504.

7 16 Sec. 15. NEW SECTION. 501B.15 MEMBER NOT AGENT.

7 17 A member is not an agent of an unincorporated nonprofit  
7 18 association solely by reason of being a member.

7 19 Sec. 16. NEW SECTION. 501B.16 APPROVAL BY MEMBERS.

7 20 1. Except as otherwise provided in the governing  
7 21 principles, an unincorporated nonprofit association must have  
7 22 the approval of its members to do any of the following:

- 7 23 a. Admit, suspend, dismiss, or expel a member.
- 7 24 b. Select or dismiss a manager.
- 7 25 c. Adopt, amend, or repeal the governing principles.
- 7 26 d. Sell, lease, exchange, or otherwise dispose of all, or  
7 27 substantially all, of the association's property, with or  
7 28 without the association's goodwill, outside the ordinary  
7 29 course of its activities.
- 7 30 e. Dissolve under section 501B.28, or merge under section  
7 31 501B.30.

7 32 f. Undertake any other act outside the ordinary course of  
7 33 the association's activities.

7 34 g. Determine the policy and purposes of the association.

7 35 2. An unincorporated nonprofit association must have the  
8 1 approval of the members to do any other act or exercise a  
8 2 right that the governing principles require to be approved by  
8 3 members.

8 4 Sec. 17. NEW SECTION. 501B.17 MEETINGS OF MEMBERS ==  
8 5 VOTING, NOTICE, AND QUORUM REQUIREMENTS.

8 6 1. Unless the governing principles provide otherwise all  
8 7 of the following apply:

- 8 8 a. Approval of a matter by members requires an affirmative  
8 9 majority of the votes cast at a meeting of members.
- 8 10 b. Each member is entitled to one vote on each matter that  
8 11 is submitted for approval by members.

8 12 2. Notice and quorum requirements for member meetings and  
8 13 the conduct of meetings of members are determined by the  
8 14 governing principles.

8 15 Sec. 18. NEW SECTION. 501B.18 DUTIES OF MEMBER.

8 16 1. A member does not have a fiduciary duty to an  
8 17 unincorporated nonprofit association or to another member  
8 18 solely by being a member.

8 19 2. A member shall discharge the duties to the  
8 20 unincorporated nonprofit association and the other members and  
8 21 exercise any rights under this chapter consistent with the  
8 22 governing principles and the obligation of good faith and fair  
8 23 dealing.

8 24 Sec. 19. NEW SECTION. 501B.19 ADMISSION, SUSPENSION,  
8 25 DISMISSAL, OR EXPULSION OF MEMBERS.

8 26 1. A person becomes a member and may be suspended,  
8 27 dismissed, or expelled in accordance with the association's  
8 28 governing principles. If there are no applicable governing  
8 29 principles, a person may become a member or be suspended,  
8 30 dismissed, or expelled from an association only by a vote of  
8 31 its members. A person may not be admitted as a member without  
8 32 the person's consent.

8 33 2. Unless the governing principles provide otherwise, the  
8 34 suspension, dismissal, or expulsion of a member does not  
8 35 relieve the member from any unpaid capital contribution, dues,  
9 1 assessments, fees, or other obligation incurred or commitment  
9 2 made by the member before the suspension, dismissal, or  
9 3 expulsion.

9 4 Sec. 20. NEW SECTION. 501B.20 MEMBER'S RESIGNATION.

9 5 1. A member may resign as a member in accordance with the  
9 6 governing principles. In the absence of applicable governing  
9 7 principles, a member may resign at any time.

9 8 2. Unless the governing principles provide otherwise,  
9 9 resignation of a member does not relieve the member from any  
9 10 unpaid capital contribution, dues, assessments, fees, or other  
9 11 obligation incurred or commitment made by the member before  
9 12 resignation.

9 13 Sec. 21. NEW SECTION. 501B.21 MEMBERSHIP INTEREST NOT  
9 14 TRANSFERABLE.

9 15 Except as otherwise provided in the governing principles, a  
9 16 member's interest or any right under the governing principles

9 17 is not transferable.  
9 18 Sec. 22. NEW SECTION. 501B.22 SELECTION OF MANAGERS ==  
9 19 MANAGEMENT RIGHTS OF MANAGERS.  
9 20 Except as otherwise provided in this chapter or the  
9 21 governing principles, all of the following apply:  
9 22 1. Only the members may select a manager or managers.  
9 23 2. A manager may be a member or a nonmember.  
9 24 3. If a manager is not selected, all members are managers.  
9 25 4. Each manager has equal rights in the management and  
9 26 conduct of the association's activities.  
9 27 5. All matters relating to the association's activities  
9 28 shall be decided by its managers except for matters reserved  
9 29 for approval by members pursuant to section 501B.16.  
9 30 6. A difference among managers is decided by a majority of  
9 31 the managers.  
9 32 Sec. 23. NEW SECTION. 501B.23 DUTIES OF MANAGERS.  
9 33 1. A manager owes to the unincorporated nonprofit  
9 34 association and to its members the fiduciary duties of loyalty  
9 35 and care.  
10 1 2. A manager shall manage the unincorporated nonprofit  
10 2 association in good faith, in a manner the manager reasonably  
10 3 believes to be in the best interests of the association, and  
10 4 with such care, including reasonable inquiry, as a prudent  
10 5 person would reasonably exercise in a similar position and  
10 6 under similar circumstances. A manager may rely in good faith  
10 7 upon any opinion, report, statement, or other information  
10 8 provided by another person that the manager reasonably  
10 9 believes is a competent and reliable source for the  
10 10 information.  
10 11 3. After full disclosure of all material facts, a specific  
10 12 act or transaction that would otherwise violate the duty of  
10 13 loyalty by a manager may be authorized or ratified by a  
10 14 majority of the members that are not interested directly or  
10 15 indirectly in the act or transaction.  
10 16 4. A manager that makes a business judgment in good faith  
10 17 satisfies the duties specified in subsection 1 if all of the  
10 18 following conditions apply:  
10 19 a. The manager is not interested, directly or indirectly,  
10 20 in the subject of the business judgment and is otherwise able  
10 21 to exercise independent judgment.  
10 22 b. The manager is informed with respect to the subject of  
10 23 the business judgment to the extent the manager reasonably  
10 24 believes to be appropriate under the circumstances.  
10 25 c. The manager believes that the business judgment is in  
10 26 the best interests of the unincorporated nonprofit association  
10 27 and in accordance with its purposes.  
10 28 Sec. 24. NEW SECTION. 501B.24 NOTICE AND QUORUM  
10 29 REQUIREMENTS FOR MEETINGS OF MANAGERS.  
10 30 Notice and quorum requirements for meetings of managers and  
10 31 the conduct of meetings of managers are determined by the  
10 32 governing principles.  
10 33 Sec. 25. NEW SECTION. 501B.25 RIGHT OF MEMBER OR MANAGER  
10 34 TO INFORMATION.  
10 35 1. On reasonable notice, a member or manager of an  
11 1 unincorporated nonprofit association may inspect and copy  
11 2 during the unincorporated nonprofit association's regular  
11 3 operating hours, at a reasonable location specified by the  
11 4 association, any record maintained by the association  
11 5 regarding its activities, financial condition, or other  
11 6 circumstances, to the extent the information is material to  
11 7 the member's or manager's rights or duties under the governing  
11 8 principles.  
11 9 2. An unincorporated nonprofit association may impose  
11 10 reasonable restrictions on access to and use of information to  
11 11 be furnished under this section, including designating the  
11 12 information confidential and imposing obligations of  
11 13 nondisclosure and safeguarding on the recipient.  
11 14 3. An unincorporated nonprofit association may charge a  
11 15 person that makes a demand under this section reasonable  
11 16 copying costs, limited to the costs of labor and materials.  
11 17 4. A former member or manager is entitled to information  
11 18 to which the member or manager was entitled while a member or  
11 19 manager if the information pertains to the period during which  
11 20 the person was a member or manager, the former member or  
11 21 manager seeks the information in good faith, and the former  
11 22 member or manager satisfies subsections 1 through 3.  
11 23 Sec. 26. NEW SECTION. 501B.26 DISTRIBUTIONS PROHIBITED  
11 24 == COMPENSATION AND OTHER PERMITTED PAYMENTS.  
11 25 1. Except as otherwise provided in subsection 2, an  
11 26 unincorporated nonprofit association may not pay dividends or  
11 27 make distributions to a member or manager.

11 28 2. An unincorporated nonprofit association may do any of  
11 29 the following:  
11 30 a. Pay reasonable compensation or reimburse reasonable  
11 31 expenses to a member or manager for services rendered.  
11 32 b. Confer benefits on a member or manager in conformity  
11 33 with its nonprofit purposes.  
11 34 c. Repurchase a membership and repay a capital  
11 35 contribution made by a member to the extent authorized by its  
12 1 governing principles.  
12 2 d. Make distributions of property to members upon winding  
12 3 up and termination to the extent permitted by section 501B.29.

12 4 Sec. 27. NEW SECTION. 501B.27 REIMBURSEMENT ==  
12 5 INDEMNIFICATION == ADVANCEMENT OF EXPENSES.

12 6 1. Except as otherwise provided in the governing  
12 7 principles, an unincorporated nonprofit association shall  
12 8 reimburse a member, manager, employee, or volunteer for  
12 9 authorized expenses reasonably incurred in the course of the  
12 10 member's, manager's, employee's, or volunteer's activities on  
12 11 behalf of the association.  
12 12 2. An unincorporated nonprofit association may indemnify a  
12 13 member, manager, employee, or volunteer for any debt,  
12 14 obligation, or other liability incurred in the course of the  
12 15 member's, manager's, employee's, or volunteer's activities on  
12 16 behalf of the association if the person seeking  
12 17 indemnification has complied with section 501B.18 or 501B.23,  
12 18 or other law, as applicable. Governing principles in a record  
12 19 may broaden or limit indemnification.

12 20 3. If a person is made or threatened to be made a party in  
12 21 an action based on that person's activities on behalf of an  
12 22 unincorporated nonprofit association and the person makes a  
12 23 request in a record to the association, a majority of the  
12 24 disinterested managers may approve in a record advance  
12 25 payment, or reimbursement, by the association, of all or a  
12 26 part of the reasonable expenses, including attorney fees and  
12 27 costs, incurred by the person before the final disposition of  
12 28 the proceeding. To be entitled to an advance payment or  
12 29 reimbursement, the person must state in a record that the  
12 30 person has a good faith belief that the criteria for  
12 31 indemnification in subsection 2 have been satisfied and that  
12 32 the person will repay the amounts advanced or reimbursed if  
12 33 the criteria for payment have not been satisfied. Governing  
12 34 principles in a record may broaden or limit the advance  
12 35 payments or reimbursements.

13 1 4. An unincorporated nonprofit association may purchase  
13 2 insurance on behalf of a member, manager, employee, or  
13 3 volunteer for liability asserted against or incurred by the  
13 4 member, manager, employee, or volunteer in the capacity of a  
13 5 member, manager, employee, or volunteer whether or not the  
13 6 association has authority under this chapter to reimburse,  
13 7 indemnify, or advance expenses to the member, manager,  
13 8 employee, or volunteer against the liability.

13 9 5. The rights of reimbursement, indemnification, and  
13 10 advancement of expenses under this section apply to a former  
13 11 member, manager, employee, or volunteer for an activity  
13 12 undertaken on behalf of the unincorporated nonprofit  
13 13 association while a member, manager, employee, or volunteer.

13 14 Sec. 28. NEW SECTION. 501B.28 DISSOLUTION.

13 15 1. An unincorporated nonprofit association may be  
13 16 dissolved pursuant to any of the following:

13 17 a. If the governing principles provide a time or method  
13 18 for dissolution, at that time or by that method.

13 19 b. If the governing principles do not provide a time or  
13 20 method for dissolution, upon approval by the members.

13 21 c. If no member can be located and the association's  
13 22 operations have been discontinued for at least three years, by  
13 23 the managers or, if the association has no current manager, by  
13 24 its last manager.

13 25 d. By court order.

13 26 e. Under law other than this chapter.

13 27 2. After dissolution, an unincorporated nonprofit  
13 28 association continues in existence until its activities have  
13 29 been wound up and it is terminated pursuant to section  
13 30 501B.29.

13 31 Sec. 29. NEW SECTION. 501B.29 WINDING UP AND  
13 32 TERMINATION.

13 33 Winding up and termination of an unincorporated nonprofit  
13 34 association shall proceed in accordance with all of the  
13 35 following rules:

14 1 1. All known debts and liabilities must be paid or  
14 2 adequately provided for.

14 3 2. Any property subject to a condition requiring return to

14 4 the person designated by the donor must be transferred to that  
14 5 person.

14 6 3. Any property subject to a trust must be distributed in  
14 7 accordance with the trust agreement.

14 8 4. Any remaining property must be distributed as follows:

14 9 a. As required by law other than this chapter that  
14 10 requires assets of an association to be distributed to another  
14 11 person with similar nonprofit purposes.

14 12 b. In accordance with the association's governing  
14 13 principles or in the absence of applicable governing  
14 14 principles, to the members of the association per capita or as  
14 15 the members direct.

14 16 c. If neither paragraph "a" nor "b" applies, under chapter  
14 17 556.

14 18 Sec. 30. NEW SECTION. 501B.30 MERGERS.

14 19 1. For purposes of this section all of the following  
14 20 definitions apply:

14 21 a. "Constituent organization" means an organization that  
14 22 is merged with one or more other organizations including the  
14 23 surviving organization.

14 24 b. "Nonsurviving organization" means a constituent  
14 25 organization that is not the surviving organization.

14 26 c. "Organization" means an unincorporated nonprofit  
14 27 association; a general partnership, including a limited  
14 28 liability partnership; limited partnership, including a  
14 29 limited liability limited partnership; limited liability  
14 30 company; business or statutory trust; corporation; or any  
14 31 other legal or commercial entity having a statute governing  
14 32 its formation and operation. "Organization" includes a  
14 33 for-profit or nonprofit organization.

14 34 d. "Surviving organization" means an organization into  
14 35 which one or more other organizations are merged.

15 1 2. An unincorporated nonprofit association may merge with  
15 2 any organization that is authorized by law to merge with an  
15 3 unincorporated nonprofit association.

15 4 3. A merger involving an unincorporated nonprofit  
15 5 association is subject to the following rules:

15 6 a. Each constituent organization shall comply with its  
15 7 governing law.

15 8 b. Each party to the merger shall approve a plan of  
15 9 merger. The plan, which must be in a record, must include all  
15 10 of the following provisions:

15 11 (1) The name and form of each organization that is a party  
15 12 to the merger.

15 13 (2) The name and form of the surviving organization and,  
15 14 if the surviving organization is to be created by the merger,  
15 15 a statement to that effect.

15 16 (3) If the surviving organization is to be created by the  
15 17 merger, the surviving organization's organizational documents  
15 18 that are proposed to be in a record.

15 19 (4) If the surviving organization is not to be created by  
15 20 the merger, any amendments to be made by the merger to the  
15 21 surviving organization's organizational documents that are, or  
15 22 are proposed to be, in a record.

15 23 (5) The terms and conditions of the merger, including the  
15 24 manner and basis for converting the interests in each  
15 25 constituent organization into any combination of money,  
15 26 interests in the surviving organization, and other  
15 27 consideration except that the plan of merger may not permit  
15 28 members of an unincorporated nonprofit association to receive  
15 29 merger consideration if a distribution of such consideration  
15 30 would not be permitted in the absence of a merger under  
15 31 section 501B.26 or 501B.29.

15 32 c. The plan of merger must be approved by the members of  
15 33 each unincorporated nonprofit association that is a  
15 34 constituent organization in the merger. If a plan of merger  
15 35 would impose personal liability for an obligation of a  
16 1 constituent or surviving organization on a member of an  
16 2 association that is a party to the merger, the plan may not  
16 3 take effect unless it is approved in a record by the member.

16 4 d. Subject to the contractual rights of third parties,  
16 5 after a plan of merger is approved and at any time before the  
16 6 merger is effective, a constituent organization may amend the  
16 7 plan or abandon the merger as provided in the plan, or except  
16 8 as otherwise prohibited in the plan, with the same consent as  
16 9 was required to approve the plan.

16 10 e. Following approval of the plan, a merger under this  
16 11 section is effective as follows:

16 12 (1) If a constituent organization is required to give  
16 13 notice to or obtain the approval of a governmental agency or  
16 14 officer in order to be a party to a merger, when the notice

16 15 has been given and the approval has been obtained.  
16 16 (2) For the surviving organization the following apply:  
16 17 (a) If the surviving organization is an unincorporated  
16 18 nonprofit association, as specified in the plan of merger and  
16 19 upon compliance by any constituent organization that is not an  
16 20 association with any requirements, including any required  
16 21 filings in the office of the secretary of state, of the  
16 22 organization's governing statute.

16 23 (b) If the surviving organization is not an unincorporated  
16 24 nonprofit association, as provided by the statute governing  
16 25 the surviving organization.

16 26 4. When a merger becomes effective all of the following  
16 27 apply:

16 28 a. The surviving organization continues or comes into  
16 29 existence.

16 30 b. Each constituent organization that merges into the  
16 31 surviving organization ceases to exist as a separate entity.

16 32 c. All property owned by each constituent organization  
16 33 that ceases to exist vests in the surviving organization.

16 34 d. All debts, obligations, or other liabilities of each  
16 35 nonsurviving organization continue as debts, obligations, or  
17 1 other liabilities of the surviving organization.

17 2 e. An action or proceeding pending by or against any  
17 3 nonsurviving organization may be continued as if the merger  
17 4 had not occurred.

17 5 f. Except as prohibited by law other than this chapter,  
17 6 all of the rights, privileges, immunities, powers, and  
17 7 purposes of each constituent organization that ceases to exist  
17 8 vest in the surviving organization.

17 9 g. Except as otherwise provided in the plan of merger, the  
17 10 terms and conditions of the plan of merger take effect.

17 11 h. The merger does not affect the personal liability, if  
17 12 any, of a member or manager of a constituent organization for  
17 13 a debt, obligation, or other liability incurred before the  
17 14 merger is effective.

17 15 i. A surviving organization that is not organized in this  
17 16 state is subject to the jurisdiction of the courts of this  
17 17 state to enforce any debt, obligation, or other liability owed  
17 18 by a constituent organization, if before the merger the  
17 19 constituent organization was subject to suit in this state for  
17 20 the debt, obligation, or other liability.

17 21 5. Property held for a charitable purpose under the law of  
17 22 this state by a constituent organization immediately before a  
17 23 merger under this section becomes effective may not, as a  
17 24 result of the merger, be diverted from the objects for which  
17 25 it was given, unless, to the extent required by or pursuant to  
17 26 the law of this state concerning cy pres or other law dealing  
17 27 with nondiversion of charitable assets, the organization  
17 28 obtains an appropriate order from the district court  
17 29 specifying the disposition of the property.

17 30 6. A bequest, devise, gift, grant, or promise contained in  
17 31 a will or other instrument of donation, subscription, or  
17 32 conveyance that is made to a nonsurviving organization and  
17 33 that takes effect or remains payable after the merger inures  
17 34 to the surviving organization. A trust obligation that would  
17 35 govern property if transferred to the nonsurviving  
18 1 organization applies to property that is transferred to the  
18 2 surviving organization under this section.

18 3 Sec. 31. NEW SECTION. 501B.31 UNIFORMITY OF APPLICATION  
18 4 AND CONSTRUCTION.

18 5 In applying and construing this chapter, consideration  
18 6 shall be given to the need to promote uniformity of the law  
18 7 with respect to its subject matter among states that enact the  
18 8 revised uniform unincorporated nonprofit association Act as  
18 9 recommended by the national conference of commissioners on  
18 10 uniform state laws.

18 11 Sec. 32. NEW SECTION. 501B.32 RELATION TO ELECTRONIC  
18 12 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

18 13 This chapter modifies, limits, and supersedes the federal  
18 14 Electronic Signatures in Global and National Commerce Act, 15  
18 15 U.S.C. } 7001, et seq., but does not modify, limit, or  
18 16 supersede section 101(c) of that Act, 15 U.S.C. } 7001(c), or  
18 17 authorize electronic delivery of any of the notices described  
18 18 in section 103(b) of that Act, 15 U.S.C. } 7003(b).

18 19 Sec. 33. SAVINGS CLAUSE. This division of this Act does  
18 20 not affect an action or proceeding commenced or right accrued  
18 21 before the effective date of this division of this Act.

18 22 DIVISION II  
18 23 OTHER AMENDMENTS

18 24 Sec. 34. Section 9H.1, Code 2009, is amended by adding the  
18 25 following new subsections:



18 26 NEW SUBSECTION. 5A. "Authorized unincorporated nonprofit  
18 27 association" means an unincorporated nonprofit association to  
18 28 which all of the following apply:  
18 29 a. The members do not exceed twenty-five in number.  
18 30 b. The members are all natural persons or persons acting  
18 31 in a fiduciary capacity for the benefit of a natural person or  
18 32 unincorporated nonprofit association.

18 33 NEW SUBSECTION. 11A. "Family farm unincorporated  
18 34 nonprofit association" means an unincorporated nonprofit  
18 35 association to which all of the following apply:  
19 1 a. The association is founded for the purpose of farming  
19 2 and the ownership of agricultural land and the majority of the  
19 3 members are persons related to each other as spouse, parent,  
19 4 grandparent, lineal ascendants of grandparents or their  
19 5 spouses and other lineal descendants of the grandparents or  
19 6 their spouses, or persons acting in a fiduciary capacity for  
19 7 persons so related.  
19 8 b. All of its members are natural persons or persons  
19 9 acting in a fiduciary capacity for the benefit of natural  
19 10 persons or family trusts.  
19 11 c. Sixty percent of the gross revenues of the  
19 12 unincorporated nonprofit association over the last consecutive  
19 13 three-year period comes from farming.

19 14 NEW SUBSECTION. 23. "Unincorporated nonprofit  
19 15 association" means the same as defined in section 501B.2.  
19 16 Sec. 35. Section 9H.4, subsection 1, unnumbered paragraph  
19 17 1, Code 2009, is amended to read as follows:  
19 18 A corporation, limited liability company, ~~or~~ trust, ~~or~~  
19 19 ~~unincorporated nonprofit association~~, other than a family farm  
19 20 corporation, authorized farm corporation, family farm limited  
19 21 liability company, authorized limited liability company,  
19 22 family trust, authorized trust, revocable trust, ~~or~~  
19 23 testamentary trust, family farm unincorporated nonprofit  
19 24 association, or authorized unincorporated nonprofit  
19 25 association shall not, either directly or indirectly, acquire  
19 26 or otherwise obtain or lease any agricultural land in this  
19 27 state. However, the restrictions provided in this section  
19 28 shall not apply to the following:  
19 29 Sec. 36. Section 9H.4, subsection 1, Code 2009, is amended  
19 30 by adding the following new paragraph:  
19 31 NEW PARAGRAPH. 1. Agricultural land that is owned,  
19 32 leased, or otherwise held by an unincorporated nonprofit  
19 33 association on the effective date of this Act, as long as the  
19 34 unincorporated nonprofit association continues to hold or  
19 35 lease such agricultural land.

20 1 Sec. 37. Section 9H.4, subsection 2, Code 2009, is amended  
20 2 to read as follows:  
20 3 2. A corporation, limited liability company, ~~or~~ trust, ~~or~~  
20 4 ~~unincorporated nonprofit association~~, other than a family farm  
20 5 corporation, authorized farm corporation, family farm limited  
20 6 liability company, authorized limited liability company,  
20 7 family trust, authorized trust, revocable trust, ~~or~~  
20 8 testamentary trust, family farm unincorporated nonprofit  
20 9 association, or authorized unincorporated nonprofit  
20 10 association, violating this section shall be assessed a civil  
20 11 penalty of not more than twenty-five thousand dollars and  
20 12 shall divest itself of any land held in violation of this  
20 13 section within one year after judgment. The courts of this  
20 14 state may prevent and restrain violations of this section  
20 15 through the issuance of an injunction. The attorney general  
20 16 or a county attorney shall institute suits on behalf of the  
20 17 state to prevent and restrain violations of this section.

20 18 Sec. 38. Section 9H.5, subsection 1, Code 2009, is amended  
20 19 to read as follows:  
20 20 1. An authorized farm corporation, authorized limited  
20 21 liability company, or authorized trust shall not, on or after  
20 22 July 1, 1987, ~~and~~ a limited partnership other than a family  
20 23 farm limited partnership shall not, on or after July 1, 1988,  
20 24 and an authorized unincorporated nonprofit association shall  
20 25 not, on or after the effective date of this Act, either  
20 26 directly or indirectly, acquire or otherwise obtain or lease  
20 27 agricultural land, if the total agricultural land either  
20 28 directly or indirectly owned or leased by the authorized farm  
20 29 corporation, authorized limited liability company, limited  
20 30 partnership, ~~or~~ authorized trust, ~~or~~ authorized unincorporated  
20 31 nonprofit association would then exceed one thousand five  
20 32 hundred acres.  
20 33 a. However, the restrictions provided in this subsection  
20 34 do not apply to agricultural land that is leased by an  
20 35 authorized farm corporation, authorized trust, ~~or~~ limited  
21 1 partnership, ~~or~~ authorized unincorporated nonprofit

21 2 association to the immediate prior owner of the land for the  
21 3 purpose of farming, as defined in section 9H.1. Upon  
21 4 cessation of the lease to the immediate prior owner, the  
21 5 authorized farm corporation, authorized trust, ~~or~~ limited  
21 6 partnership, or authorized unincorporated nonprofit  
21 7 association shall, within three years following the date of  
21 8 the cessation, sell or otherwise dispose of the agricultural  
21 9 land leased to the immediate prior owner.

21 10 b. This subsection also does not apply to land that is  
21 11 held or acquired and maintained by an authorized farm  
21 12 corporation, authorized trust, ~~or~~ limited partnership, or  
21 13 authorized unincorporated nonprofit association to protect  
21 14 significant elements of the state's natural open space  
21 15 heritage, including but not limited to significant river,  
21 16 lake, wetland, prairie, forest areas, other biologically  
21 17 significant areas, land containing significant archaeological,  
21 18 historical, or cultural value, or fish or wildlife habitats,  
21 19 as defined in rules adopted by the department of natural  
21 20 resources.

21 21 Sec. 39. Section 9H.5, Code 2009, is amended by adding the  
21 22 following new subsection:

21 23 NEW SUBSECTION. 2A. a. A person shall not, after the  
21 24 effective date of this Act, become a member of an authorized  
21 25 unincorporated nonprofit association, that owns or leases  
21 26 agricultural land if the person is also any of the following:

- 21 27 (1) A stockholder of an authorized farm corporation.
- 21 28 (2) A beneficiary of an authorized trust.
- 21 29 (3) A limited partner in a limited partnership which owns  
21 30 or leases agricultural land.
- 21 31 (4) A member of an authorized limited liability company.
- 21 32 (5) A member of another authorized unincorporated  
21 33 nonprofit association.

21 34 b. A person shall not, after the effective date of this  
21 35 Act, become a stockholder of an authorized farm corporation, a  
22 1 beneficiary of an authorized trust, a limited partner in a  
22 2 limited partnership, or a member of an authorized limited  
22 3 liability company that owns or leases agricultural land, if  
22 4 the person is a member of an authorized unincorporated  
22 5 nonprofit association.

22 6 c. This subsection shall not apply to limited partners in  
22 7 a family farm limited partnership.

22 8 Sec. 40. Section 9H.5, subsection 3, paragraph a, Code  
22 9 2009, is amended to read as follows:

22 10 a. An authorized farm corporation, authorized trust,  
22 11 authorized limited liability company, ~~or~~ limited partnership,  
22 12 or unincorporated nonprofit association violating this section  
22 13 shall be assessed a civil penalty of not more than twenty-five  
22 14 thousand dollars and shall divest itself of any land held in  
22 15 violation of this section within one year after judgment. A  
22 16 civil penalty of not more than one thousand dollars may be  
22 17 imposed on a person who becomes a stockholder of an authorized  
22 18 farm corporation, beneficiary of an authorized trust, member  
22 19 of an authorized limited liability company, ~~or~~ limited partner  
22 20 in a limited partnership, or member in an unincorporated  
22 21 nonprofit association in violation of this section. The

22 22 person shall divest the interest held by the person in the  
22 23 corporation, trust, limited liability company, ~~or~~ limited  
22 24 partnership, or unincorporated nonprofit association to comply  
22 25 with this section. The court may determine the method of  
22 26 divesting an interest held by a person found to be in  
22 27 violation of this chapter. A financial gain realized by a  
22 28 person who disposes of an interest held in violation of this  
22 29 chapter shall be forfeited to the state's general fund. All  
22 30 court costs and fees shall be paid by the person holding the  
22 31 interest in violation of this chapter.

22 32 EXPLANATION  
22 33 DIVISION I == REVISED UNIFORM UNINCORPORATED NONPROFIT  
22 34 ASSOCIATION ACT. This bill creates a new Code chapter 501B  
22 35 which creates the "Revised Uniform Unincorporated Nonprofit  
23 1 Association Act" (new Code section 501B.1). The provisions  
23 2 are based on those drafted by the national conference of  
23 3 commissioners on uniform state laws and approved for enactment  
23 4 by states by that organization in 2008.

23 5 DESCRIPTION. An unincorporated nonprofit association (UNA)  
23 6 is a nonprofit entity created to carry out a philanthropic,  
23 7 beneficial, or religious purpose, which may or may not be  
23 8 tax-exempt, and which is not organized under another statute  
23 9 (new Code section 501B.2). Moreover, it excludes certain  
23 10 relationships which are based on the special legal status of  
23 11 the parties, including a domestic relationship (e.g.,  
23 12 marriage) or a property holding relationship (e.g., joint

23 13 tenancy). A UNA may engage in profit-making activities so  
23 14 long as the profits are set aside for nonprofit purposes. The  
23 15 parties to an agreement may specifically provide that they are  
23 16 not subject to the new Code chapter's provisions (new Code  
23 17 section 501B.2(8)).

23 18 GOVERNING PRINCIPLES AND ORGANIZATION. A UNA is subject to  
23 19 "governing principles" that govern the internal affairs of the  
23 20 organization (new Code section 501B.2(2)). A UNA's governing  
23 21 principles are not required to be in writing. An agreement to  
23 22 form a UNA may be in writing (in a "record"), or may be by  
23 23 oral consent or implied from "established practices". The  
23 24 agreement to form a UNA becomes part of its governing  
23 25 principles.

23 26 MEMBERS AND MANAGERS. A distinction is created between a  
23 27 UNA's members and managers (new Code section 501B.2(3),(4)).  
23 28 A manager is authorized to make decisions affecting the  
23 29 policies of the UNA and the conduct of its affairs.

23 30 APPLICATION OF OTHER LAW. The provisions of the new Code  
23 31 chapter are to be supplemented by other principles of law and  
23 32 equity (new Code section 501B.3). If another statute  
23 33 governing a specific type of UNA conflicts with a provision in  
23 34 the new Code chapter, the other statute prevails. The law of  
23 35 Iowa governs the operation of all UNAs formed or operating in  
24 1 this state, unless the UNA's main place of activities is  
24 2 located in another state (new Code section 501B.4).

24 3 SEPARATE LEGAL ENTITY. A UNA is recognized as a distinct  
24 4 legal entity separate from its members and managers and has  
24 5 perpetual duration unless its governing principles specify  
24 6 otherwise. This reverses the common law rule of aggregation  
24 7 that recognizes the participants of the entity rather than the  
24 8 entity. Two consequences result from this special  
24 9 recognition:

24 10 1. HOLDING PROPERTY. A UNA may hold, convey, or encumber  
24 11 real or personal property in its name (new Code section  
24 12 501B.6). However, a UNA acquiring, disposing, or encumbering  
24 13 real property must record a statement of authority with the  
24 14 county recorder where the real property is located and the  
24 15 county recorder may charge the UNA a filing fee (new Code  
24 16 section 501B.7).

24 17 2. LEGAL ACTIONS. Code section 613.19 provides a limited  
24 18 shield for persons associated with UNAs. The bill adds a  
24 19 provision that shields a member or manager from personal  
24 20 liability for breach of contract or for a tortious act or  
24 21 omission solely because the person has a participatory  
24 22 interest in the organization (new Code section 501B.8). A UNA  
24 23 may sue or be sued in its own name (new Code section 501B.9),  
24 24 and as a corollary to new Code section 501B.9, a judgment or  
24 25 order against a UNA is not a judgment or order against a  
24 26 member or manager (new Code section 501B.10).

24 27 A UNA is allowed but not required to file with the  
24 28 secretary of state a statement appointing an agent authorized  
24 29 to receive service of process, and the secretary of state is  
24 30 authorized to charge a filing fee (new Code section 501B.11).  
24 31 Since a UNA may elect not to file a statement of appointment,  
24 32 process may be served on a manager of the UNA (new Code  
24 33 section 501B.12).

24 34 Since a UNA is treated as a distinct entity with perpetual  
24 35 duration, an action brought against a UNA is not abated merely  
25 1 because of a change in its members or managers (new Code  
25 2 section 501B.13).

25 3 For purposes of venue, an action against a UNA is  
25 4 determined in the same manner as the same action brought  
25 5 against a nonprofit corporation under Code chapter 504 (new  
25 6 Code section 501B.14).

25 7 Finally, a member of a UNA is not the agent of the  
25 8 association, and therefore does not have apparent authority to  
25 9 bind the UNA in a contractual relationship with another party  
25 10 solely because of their status (new Code section 501B.15).

25 11 MEMBERS. A number of provisions control the conduct of  
25 12 members. In most cases, the provisions may be altered by the  
25 13 UNA's governing principles.

25 14 DECISION MAKING. By default, fundamental decisions  
25 15 regarding the UNA are to be made by the members, including  
25 16 those that affect the composition of the membership, the  
25 17 governing principles, the disposition of the UNA's property  
25 18 outside the ordinary course of its activities, or dissolving  
25 19 the UNA or merging the UNA with another entity (new Code  
25 20 section 501B.16). By default, the members vote on a per  
25 21 capita basis and a majority of votes are required to approve  
25 22 an action (new Code section 501B.17). The governing  
25 23 principles may provide that these decisions may be made by

25 24 managers.

25 25 STANDARD OF CONDUCT. A member of a UNA does not have a  
25 26 fiduciary duty to the UNA or to another member, but does have  
25 27 an obligation to exercise rights and duties in accordance with  
25 28 the UNA's governing principles and obligations of "good faith  
25 29 and fair dealing" (new Code section 501B.18).

25 30 CHANGE IN COMPOSITION. A UNA may suspend, dismiss, or  
25 31 expel a member upon a vote of the membership, unless the  
25 32 governing principles provide otherwise (new Code section  
25 33 501B.19). A member of a UNA may resign their membership at  
25 34 any time unless the governing principles provide otherwise  
25 35 (new Code section 501B.20).

26 1 TRANSFERABILITY. A member cannot transfer an interest in a  
26 2 UNA, unless otherwise provided in its governing principles  
26 3 (new Code section 501B.20).

26 4 MANAGERS. A UNA must have one or more managers (new Code  
26 5 section 501B.22). By default all members are managers,  
26 6 although the members may select a manager or managers and in  
26 7 that case a manager is not required to be a member.

26 8 1. DECISION MAKING. If there is more than one manager,  
26 9 each manager has equal rights in the conduct of the UNA's  
26 10 activities. If there are more than two managers, issues of  
26 11 difference are to be decided by majority vote. However,  
26 12 certain issues which fundamentally impact the UNA are reserved  
26 13 to the members (new Code section 501B.16).

26 14 2. STANDARD OF CONDUCT. A manager has a fiduciary duty to  
26 15 the UNA and its members which includes a duty of loyalty and  
26 16 care (new Code section 501B.23). Nevertheless, a managerial  
26 17 decision which would otherwise be a breach of a fiduciary duty  
26 18 may be excused if the manager's decision is ratified by a  
26 19 majority of the members, or the manager makes a business  
26 20 judgment in good faith so long as the manager is not  
26 21 personally interested in the outcome of the decision, is  
26 22 reasonably informed, and believes that the decision is in the  
26 23 UNA's best interest.

26 24 3. MEETING PROCEDURES. Manager meetings and the conduct  
26 25 of such meetings are to be determined by the UNA's governing  
26 26 principles which may be controlled by its (unwritten)  
26 27 established practices (new Code section 501B.24).

26 28 ACCESS TO INFORMATION. Although a UNA is not required to  
26 29 keep books or records, a member or manager has the right to  
26 30 inspect any of them during regular operating hours at a  
26 31 reasonable location as designated by the UNA (new Code section  
26 32 501B.25).

26 33 DISTRIBUTIONS. An organization which made a distribution  
26 34 (e.g., dividend) to a member or manager which was not  
26 35 permitted by law would disqualify it as a UNA (in effect,  
27 1 convert the organization to a general partnership) (new Code  
27 2 sections 501B.26 and 501B.27). However, there are a number of  
27 3 exceptions, including the payment of reasonable expenses to a  
27 4 member or manager for services, to confer benefits on a member  
27 5 or manager in conformity with the UNA's purpose, to repurchase  
27 6 a membership or repay a member's capital contribution, or to  
27 7 make distributions to a UNA's membership when the UNA is  
27 8 winding up its affairs (new Code section 501B.29). A UNA may,  
27 9 in accordance with its governing principles, pay a member's or  
27 10 manager's reasonable litigation expenses and attorney fees  
27 11 arising from their conduct as a member or manager and may make  
27 12 such payments in advance upon approval by a majority of  
27 13 disinterested managers.

27 14 DISSOLUTION AND WINDING UP. A UNA may be dissolved upon a  
27 15 vote by the members, unless the UNA's governing principles  
27 16 provide another mechanism (i.e., by the manager).  
27 17 Alternatively the dissolution occurs upon the UNA's  
27 18 discontinuance (e.g., no manager), or by court order (new Code  
27 19 section 501B.28). During the dissolution process, the UNA's  
27 20 assets are to be allocated according to a three-tier priority  
27 21 system (new Code section 501B.29). The first tier recognizes  
27 22 the rights of three classes without apparent order of  
27 23 priority: satisfying the claims by creditors, giving back  
27 24 property donated upon condition of return, and distributing  
27 25 trust property in accordance with a trust agreement. The  
27 26 second tier provides for two classes of recipients again  
27 27 without apparent order of priority: to persons carrying out a  
27 28 similar nonprofit purpose and members of the UNA (by default  
27 29 on a per capita basis, or the affirmative action taken by the  
27 30 members, or as otherwise specified in the governing  
27 31 principles). The third tier provides that any of the UNA's  
27 32 remaining assets are to be considered as unclaimed property  
27 33 under Code chapter 556 and administered by the secretary of  
27 34 state.

27 35 MERGERS. A UNA may merge into another UNA, if the merger  
28 1 complies with certain preconditions. First, the parties to  
28 2 the merger, the "constituent organization" being absorbed, and  
28 3 the "surviving organization" remaining after the merger must  
28 4 both approve the plan of merger (new Code section 501B.30(2)).  
28 5 The plan must be in a "record" (i.e., in writing), contain  
28 6 information regarding the identify of the parties and account  
28 7 for conversion of the interests of the membership, and be  
28 8 approved by the members of the constituent organization in a  
28 9 record. If a UNA merges with another UNA, the merger is  
28 10 effective upon approval of the plan without further action.  
28 11 There are no corresponding provisions for other entities that  
28 12 would allow for a merger with a UNA.

28 13 SPECIAL PROVISIONS. The bill provides for a number of  
28 14 special provisions.

28 15 1. TRANSFER OF INTERESTS. The bill departs from the model  
28 16 Act by omitting an optional provision that accounts for  
28 17 interests in real and personal property that have been  
28 18 transferred to a UNA prior to the effective date of the bill  
28 19 but are vested in another person.

28 20 2. UNIFORMITY OF APPLICATION. The new Code chapter is to  
28 21 be construed to promote the uniformity of the law with respect  
28 22 to the same law enacted in other states (new Code section  
28 23 501B.32).

28 24 3. ELECTRONIC SIGNATURES. The new Code chapter limits the  
28 25 application of the federal Electronic Signatures in Global and  
28 26 National Commerce Act (new Code section 501B.33).

28 27 4. SAVINGS CLAUSE. The provisions of the division do not  
28 28 affect an action or proceeding commenced or right accrued  
28 29 prior to the bill's effective date.

28 30 DEPARTURES FROM THE UNIFORM ACT. The bill departs from the  
28 31 uniform Act as follows:

28 32 1. The definition of UNA is changed to include a tenancy  
28 33 by the entirety (new Code section 501B.2(8)(d)).

28 34 2. The shield against liability provided to a member or  
28 35 manager of a UNA is extended to similarly shield an employee  
29 1 or volunteer of the UNA (new Code section 501B.8).

29 2 3. Express authorization is removed which would otherwise  
29 3 allow a UNA's governing principles to limit or eliminate the  
29 4 liability of a manager or members for acting or failing to act  
29 5 in their capacities, but would prohibit the governing  
29 6 principles from affecting their liability in cases involving  
29 7 an improper financial benefit received by a manager, an  
29 8 intentional infliction of harm on the association or its  
29 9 members, an intentional violation of criminal law, a breach of  
29 10 the duty of loyalty, or an improper distribution (new Code  
29 11 section 501B.23(5) omitted).

29 12 4. Unless its governing principles provide otherwise, a  
29 13 UNA must reimburse an employee or volunteer for authorized  
29 14 expenses which is similar to its reimbursement of expenses for  
29 15 a member or manager (new Code section 501B.27(1)). The UNA  
29 16 may also indemnify a former or existing employee or volunteer  
29 17 for liabilities assumed by the employee or volunteer and  
29 18 purchase insurance on their behalf, similar to its right to  
29 19 reimburse a member or manager and purchase insurance on their  
29 20 behalf (new Code section 501B.27(2) through (5)).

29 21 DIVISION II == OTHER AMENDMENTS. The division amends  
29 22 provisions in Code chapter 9H which restrict corporate  
29 23 entities from holding agricultural land. The division  
29 24 prohibits an unincorporated nonprofit association from  
29 25 acquiring agricultural land to the same extent currently  
29 26 applicable to other entities including nonprofit corporations  
29 27 (Code section 9H.4). Code chapter 9H does allow certain  
29 28 special types of corporate entities to hold agricultural land,  
29 29 generally designated as a "family" entity. The division  
29 30 provides for a family farm unincorporated nonprofit  
29 31 association based on qualifications for family farm  
29 32 corporations. In order to be exempt from the chapter's  
29 33 restrictions, the UNA must be founded for the purpose of  
29 34 farming, all of its members must be natural persons or persons  
29 35 acting in a fiduciary capacity for its members, and 60 percent  
30 1 of its revenue must come from farming (Code section 9H.1).

30 2 Code chapter 9H creates a special classification for  
30 3 certain "authorized" entities including authorized  
30 4 corporations, but also including authorized limited liability  
30 5 companies, and authorized trusts. These authorized entities  
30 6 along with limited partnerships (other than family farm  
30 7 limited partnerships) cannot hold more than 1,500 acres of  
30 8 agricultural land. Moreover a person belonging to an  
30 9 authorized entity or limited partnership cannot belong to a  
30 10 second authorized entity or limited partnership (Code section

30 11 9H.5). The division creates a new entity referred to as an  
30 12 authorized unincorporated nonprofit corporation based on the  
30 13 qualifications for an authorized corporation. In order to  
30 14 qualify, the UNA's membership cannot exceed 25 in number and  
30 15 the members must all be natural persons or persons acting in a  
30 16 fiduciary capacity (Code section 9H.1). An authorized  
30 17 unincorporated nonprofit association cannot hold more than  
30 18 1,500 acres. In addition, a member of an authorized  
30 19 unincorporated nonprofit association cannot belong to another  
30 20 authorized entity or limited partnership.  
30 21 Persons who violate Code chapter 9H are subject to a civil  
30 22 penalty of up to \$25,000 and must divest themselves of any  
30 23 prohibited interest.  
30 24 LSB 1166HC 83  
30 25 da/nh/5.1