

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 366

96TH GENERAL ASSEMBLY

2011

1676L.03T

AN ACT

To repeal section 351.658, RSMo, and to enact in lieu thereof eighty-one new sections relating to the Missouri cooperative associations act, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 351.658, RSMo, is repealed and eighty-one new sections
2 enacted in lieu thereof, to be known as sections 351.408, 351.409, 351.658,
3 351.1000, 351.1003, 351.1006, 351.1009, 351.1012, 351.1015, 351.1018, 351.1021,
4 351.1024, 351.1027, 351.1030, 351.1033, 351.1036, 351.1039, 351.1042, 351.1045,
5 351.1048, 351.1051, 351.1054, 351.1057, 351.1060, 351.1063, 351.1066, 351.1069,
6 351.1072, 351.1075, 351.1078, 351.1081, 351.1084, 351.1087, 351.1090, 351.1093,
7 351.1096, 351.1099, 351.1102, 351.1105, 351.1108, 351.1111, 351.1114, 351.1117,
8 351.1120, 351.1123, 351.1126, 351.1129, 351.1132, 351.1135, 351.1138, 351.1141,
9 351.1144, 351.1147, 351.1150, 351.1153, 351.1156, 351.1159, 351.1162, 351.1165,
10 351.1168, 351.1171, 351.1174, 351.1177, 351.1180, 351.1183, 351.1186, 351.1189,
11 351.1192, 351.1195, 351.1198, 351.1201, 351.1204, 351.1207, 351.1210, 351.1213,
12 351.1216, 351.1219, 351.1222, 351.1225, 351.1227 and 351.1228, to read as
13 follows:

351.408. 1. As used in this section, the term "other entity" means
2 **a limited liability company, statutory trust, business trust or**
3 **association, real estate investment trust, common-law trust or any other**
4 **unincorporated business including a partnership (whether general**
5 **(including a limited liability partnership) or limited (including a**
6 **limited liability limited partnership)), or a foreign corporation.**

7 **2. Any other entity may convert to a corporation of this state by**
8 **complying with subsection 8 of this section and filing in the office of**

9 the secretary of state:

10 (1) A certificate of conversion to corporation that has been
11 executed in accordance with subsection 9 of this section and filed in
12 accordance with section 351.046; and

13 (2) Articles of incorporation that have been executed,
14 acknowledged and filed in accordance with section 351.046.

15 3. The certificate of conversion to corporation shall state:

16 (1) The date on which and jurisdiction where the other entity
17 was first created, incorporated, formed or otherwise came into being
18 and, if it has changed, its jurisdiction immediately prior to its
19 conversion to a domestic corporation;

20 (2) The name of the other entity immediately prior to the filing
21 of the certificate of conversion to corporation; and

22 (3) The name of the corporation as set forth in its articles of
23 incorporation filed in accordance with subsection 2 of this section.

24 4. Upon the effective time of the certificate of conversion to
25 corporation and the articles of incorporation, the other entity shall be
26 converted to a corporation of this state and the corporation shall
27 thereafter be subject to all of the provisions of this title, except that
28 notwithstanding section 351.075, the existence of the corporation shall
29 be deemed to have commenced on the date the other entity commenced
30 its existence in the jurisdiction in which the other entity was first
31 created, formed, incorporated or otherwise came into being.

32 5. The conversion of any other entity to a corporation of this
33 state shall not be deemed to affect any obligations or liabilities of the
34 other entity incurred prior to its conversion to a corporation of this
35 state or the personal liability of any person incurred prior to such
36 conversion.

37 6. When another entity has been converted to a corporation of
38 this state under this section, the corporation of this state shall, for all
39 purposes of the laws of the state of Missouri, be deemed to be the same
40 entity as the converting other entity. When any conversion shall have
41 become effective under this section, for all purposes of the laws of the
42 state of Missouri, all of the rights, privileges and powers of the other
43 entity that has converted, and all property, real, personal and mixed,
44 and all debts due to such other entity, as well as all other things and
45 causes of action belonging to such other entity, shall remain vested in

46 the domestic corporation to which such other entity has converted and
47 shall be the property of such domestic corporation and the title to any
48 real property vested by deed or otherwise in such other entity shall not
49 revert or be in any way impaired by reason of this chapter; but all
50 rights of creditors and all liens upon any property of such other entity
51 shall be preserved unimpaired, and all debts, liabilities and duties of
52 the other entity that has converted shall remain attached to the
53 corporation of this state to which such other entity has converted, and
54 may be enforced against it to the same extent as if said debts, liabilities
55 and duties had originally been incurred or contracted by it in its
56 capacity as a corporation of this state. The rights, privileges, powers
57 and interests in property of the other entity, as well as the debts,
58 liabilities and duties of the other entity, shall not be deemed, as a
59 consequence of the conversion, to have been transferred to the
60 domestic corporation to which such other entity has converted for any
61 purpose of the laws of the state of Missouri.

62 7. Unless otherwise agreed for all purposes of the laws of the
63 state of Missouri or as required under applicable non-Missouri law, the
64 converting other entity shall not be required to wind up its affairs or
65 pay its liabilities and distribute its assets, and the conversion shall not
66 be deemed to constitute a dissolution of such other entity and shall
67 constitute a continuation of the existence of the converting other entity
68 in the form of a corporation of this state.

69 8. Prior to filing a certificate of conversion to corporation with
70 the office of the secretary of state, the conversion shall be approved in
71 the manner provided for by the document, instrument, agreement or
72 other writing, as the case may be, governing the internal affairs of the
73 other entity and the conduct of its business or by applicable law, as
74 appropriate, and articles of incorporation shall be approved by the
75 same authorization required to approve the conversion.

76 9. The certificate of conversion to corporation shall be signed by
77 any person who is authorized to sign the certificate of conversion to
78 corporation on behalf of the other entity.

79 10. In connection with a conversion hereunder, rights or
80 securities of, or interests in, the other entity which is to be converted
81 to a corporation of this state may be exchanged for or converted into
82 cash, property, or shares of stock, rights or securities of such

83 corporation of this state or, in addition to or in lieu thereof, may be
84 exchanged for or converted into cash, property, or shares of stock,
85 rights or securities of or interests in another domestic corporation or
86 other entity or may be cancelled.

351.409. 1. A corporation of this state may, upon the
2 authorization of such conversion in accordance with this section,
3 convert to a limited liability company, statutory trust, business trust
4 or association, real estate investment trust, common—law trust or any
5 other unincorporated business including a partnership (whether
6 general (including a limited liability partnership) or limited (including
7 a limited liability limited partnership)) or a foreign corporation.

8 2. The board of directors of the corporation which desires to
9 convert under this section shall adopt a resolution approving such
10 conversion, specifying the type of entity into which the corporation
11 shall be converted and recommending the approval of such conversion
12 by the shareholders of the corporation. Such resolution shall be
13 submitted to the shareholders of the corporation at an annual or
14 special meeting. Due notice of the time, and purpose of the meeting
15 shall be mailed to each holder of stock, whether voting or nonvoting,
16 of the corporation at the address of the shareholder as it appears on
17 the records of the corporation, at least twenty days prior to the date of
18 the meeting. At the meeting, the resolution shall be considered and a
19 vote taken for its adoption or rejection. If all outstanding shares of
20 stock of the corporation, whether voting or nonvoting, shall be voted
21 for the adoption of the resolution, the conversion shall be authorized.

22 3. If a corporation shall convert in accordance with this section
23 to another entity organized, formed or created under the laws of this
24 state or of a jurisdiction other than the state of Missouri, the
25 corporation shall file with the secretary of state a certificate of
26 conversion executed in accordance with section 351.046, which
27 certifies:

28 (1) The name of the corporation, and if it has been changed, the
29 name under which it was originally incorporated;

30 (2) The date of filing of its original articles of incorporation with
31 the secretary of state;

32 (3) The name and jurisdiction of the entity to which the
33 corporation shall be converted;

34 **(4) That the conversion has been approved in accordance with**
35 **the provisions of this section;**

36 **(5) The agreement of the corporation that it may be served with**
37 **process in the state of Missouri in any action, suit or proceeding for**
38 **enforcement of any obligation of the corporation arising while it was**
39 **a corporation of this state, and that it irrevocably appoints the**
40 **secretary of state as its agent to accept service of process in any such**
41 **action, suit or proceeding; and**

42 **(6) The address to which a copy of the process referred to in**
43 **subdivision (5) of this subsection shall be mailed to it by the secretary**
44 **of state. Process may be served upon the secretary of state in**
45 **accordance with subdivision (5) of this subsection by means of**
46 **electronic transmission but only as prescribed by the secretary of**
47 **state. The secretary of state is authorized to issue such rules and**
48 **regulations with respect to such service as the secretary of state deems**
49 **necessary or appropriate. In the event of such service upon the**
50 **secretary of state in accordance with subdivision (5) of this subsection,**
51 **the secretary of state shall forthwith notify such corporation that has**
52 **converted out of the state of Missouri by letter, directed to such**
53 **corporation that has converted out of the state of Missouri at the**
54 **address so specified, unless such corporation shall have designated in**
55 **writing to the secretary of state a different address for such purpose,**
56 **in which case it shall be mailed to the last address designated. Such**
57 **letter shall be sent by a mail or courier service that includes a record**
58 **of mailing or deposit with the courier and a record of delivery**
59 **evidenced by the signature of the recipient. Such letter shall enclose**
60 **a copy of the process and any other papers served on the secretary of**
61 **state under this subsection. It shall be the duty of the plaintiff in the**
62 **event of such service to serve process and any other papers in**
63 **duplicate, to notify the secretary of state that service is being effected**
64 **under this subsection and to pay the secretary of state the sum of fifty**
65 **dollars for the use of the state, which sum shall be taxed as part of the**
66 **costs in the proceeding, if the plaintiff shall prevail therein. The**
67 **secretary of state shall maintain an alphabetical record of any such**
68 **service setting forth the name of the plaintiff and the defendant, the**
69 **title, docket number and nature of the proceeding in which process has**
70 **been served, the fact that service has been effected under this**

71 subsection, the return date thereof, and the day and hour service was
72 made. The secretary of state shall not be required to retain such
73 information longer than five years from receipt of the service of
74 process.

75 4. Upon the filing in the office of the secretary of state of a
76 certificate of conversion in accordance with subsection 3 of this section
77 or upon the future effective date or time of the certificate of conversion
78 and payment to the secretary of state of all fees prescribed under this
79 chapter, the secretary of state shall certify that the corporation has
80 filed all documents and paid all fees required by this chapter, and
81 thereupon the corporation shall cease to exist as a corporation of this
82 state at the time the certificate of conversion becomes effective in
83 accordance with section 351.075. Such certificate of the secretary of
84 state shall be prima facie evidence of the conversion by such
85 corporation.

86 5. The conversion of a corporation in accordance with this
87 section and the resulting cessation of its existence as a corporation of
88 this state pursuant to a certificate of conversion shall not be deemed
89 to affect any obligations or liabilities of the corporation incurred prior
90 to such conversion or the personal liability of any person incurred
91 prior to such conversion, nor shall it be deemed to affect the choice of
92 law applicable to the corporation with respect to matters arising prior
93 to such conversion.

94 6. Unless otherwise provided in a resolution of conversion
95 adopted in accordance with this section, the converting corporation
96 shall not be required to wind up its affairs or pay its liabilities and
97 distribute its assets, and the conversion shall not constitute a
98 dissolution of such corporation.

99 7. In connection with a conversion of a domestic corporation to
100 another entity under this section, shares of stock, of the corporation of
101 this state which is to be converted may be exchanged for or converted
102 into cash, property, rights or securities of, or interests in, the entity to
103 which the corporation of this state is being converted or, in addition to
104 or in lieu thereof, may be exchanged for or converted into cash,
105 property, shares of stock, rights or securities of, or interests in, another
106 domestic corporation or other entity or may be cancelled.

107 8. When a corporation has been converted to another entity or

108 **business form under this section, the other entity or business form**
109 **shall, for all purposes of the laws of the state of Missouri, be deemed to**
110 **be the same entity as the corporation. When any conversion shall have**
111 **become effective under this section, for all purposes of the laws of the**
112 **state of Missouri, all of the rights, privileges and powers of the**
113 **corporation that has converted, and all property, real, personal and**
114 **mixed, and all debts due to such corporation, as well as all other things**
115 **and causes of action belonging to such corporation, shall remain vested**
116 **in the other entity or business form to which such corporation has**
117 **converted and shall be the property of such other entity or business**
118 **form, and the title to any real property vested by deed or otherwise in**
119 **such corporation shall not revert or be in any way impaired by reason**
120 **of this chapter; but all rights of creditors and all liens upon any**
121 **property of such corporation shall be preserved unimpaired, and all**
122 **debts, liabilities and duties of the corporation that has converted shall**
123 **remain attached to the other entity or business form to which such**
124 **corporation has converted, and may be enforced against it to the same**
125 **extent as if said debts, liabilities and duties had originally been**
126 **incurred or contracted by it in its capacity as such other entity or**
127 **business form. The rights, privileges, powers and interest in property**
128 **of the corporation that has converted, as well as the debts, liabilities**
129 **and duties of such corporation, shall not be deemed, as a consequence**
130 **of the conversion, to have been transferred to the other entity or**
131 **business form to which such corporation has converted for any purpose**
132 **of the laws of the state of Missouri.**

133 **9. No vote of shareholders of a corporation shall be necessary to**
134 **authorize a conversion if no shares of the stock of such corporation**
135 **shall have been issued prior to the adoption by the board of directors**
136 **of the resolution approving the conversion.**

137 **10. Nothing in this section shall be deemed to authorize the**
138 **conversion of a nonprofit corporation into another entity.**

351.658. Except as otherwise provided in this chapter, the secretary of
2 state shall charge and collect for:

- 3 (1) Filing application for reservation of a corporate name, twenty dollars;
- 4 (2) Filing amendment to articles of incorporation or certificate of authority
- 5 and issuing a certificate of amendment or amended certificate of authority,
- 6 twenty dollars;

- 7 (3) Filing articles of merger or consolidation, twenty-five dollars plus five
8 dollars for each merging or consolidating Missouri corporation or foreign
9 corporation authorized to do business in Missouri over two in number;
- 10 (4) Filing articles of dissolution, twenty dollars; filing articles of
11 liquidation, twenty dollars;
- 12 (5) Filing of revocation of articles of dissolution, twenty dollars;
- 13 (6) Filing of restated articles of incorporation, twenty dollars;
- 14 (7) Filing an application for withdrawal of a foreign corporation and
15 issuing a certificate of withdrawal, twenty dollars;
- 16 (8) Filing statement of change of address of registered office or change of
17 registered agent, or both, five dollars;
- 18 (9) Filing resignation of registered agent, five dollars;
- 19 (10) Certified copy of corporate record, in a written format fifty cents per
20 page plus five dollars for certification, or in an electronic format five dollars for
21 certification and copies;
- 22 (11) Furnishing certificate of corporate existence, five dollars;
- 23 (12) Furnishing certificate--others, twenty dollars;
- 24 (13) Filing evidence of merger by a foreign corporation, twenty dollars
25 plus one dollar for each additional foreign corporation authorized to do business
26 in Missouri over two;
- 27 (14) Filing evidence of dissolution by a foreign corporation, twenty dollars;
- 28 **(15) Filing certificate of conversion to a corporation under**
29 **section 351.408, fifty-three dollars;**
- 30 **(16) Filing certificate of conversion from a corporation under**
31 **section 351.409, fifty dollars.**

351.1000. Sections 351.1000 to 351.1228 shall be known and may
2 **be cited as the "Missouri Cooperative Associations Act". Any**
3 **cooperative formed under sections 351.1000 to 351.1228 shall not be**
4 **subject to the provisions regarding cooperative associations found**
5 **under sections 357.010 to 357.190, and cooperative associations formed**
6 **under sections 357.010 to 357.190 shall not be subject to the provisions**
7 **hereunder.**

351.1003. As used in sections 351.1000 to 351.1228, the following
2 **words shall mean:**

- 3 **(1) "Alternative ballot", an alternative method of voting by a**
4 **member, and may include voting by electronic, telephonic, internet, or**

5 other means that reasonably allow members the opportunity to vote;

6 (2) "Articles", the articles of association of a cooperative as
7 originally filed with the secretary of state and as may be subsequently
8 amended from time to time by the cooperative in accordance with
9 sections 351.1000 to 351.1228;

10 (3) "Board", the board of directors of a cooperative;

11 (4) "Business entity", a corporation, limited liability company,
12 limited partnership, limited liability partnership, or other legal entity,
13 association, or body vested with the power or function of a legal entity,
14 whether domestic or foreign;

15 (5) "Bylaws", the bylaws of a cooperative as originally adopted
16 and as may be subsequently amended from time to time in accordance
17 with sections 351.1000 to 351.1228;

18 (6) "Cooperative" and "domestic cooperative", an organization
19 chartered under sections 351.1000 to 351.1228;

20 (7) "Domestic business entity", a business entity organized under
21 the laws of this state;

22 (8) "Financial rights", only that share of profits and losses of the
23 cooperative and the distributions thereof to which a member is
24 entitled, and does not include a member's governance rights;

25 (9) "Foreign business entity", a business entity formed under the
26 laws of any jurisdiction other than the state of Missouri;

27 (10) "Foreign cooperative", a cooperative association formed
28 under the laws of any jurisdiction other than this state, but does not
29 include a foreign business entity which is not organized as a
30 cooperative association, but otherwise operates on a cooperative basis;

31 (11) "Governance rights", those rights of a member to govern the
32 operations of a cooperative as described in, and subject to, any
33 restrictions as set forth in the bylaws or articles of the cooperative,
34 including but not limited to a member's right to vote based on the
35 membership interests of such member;

36 (12) "Member", any person which has been granted membership
37 in a cooperative under the terms of the bylaws of the cooperative
38 including patron and nonpatron members;

39 (13) "Membership interest", a member's interest in a cooperative,
40 including but not limited to a member's financial rights, a member's
41 governance rights, and a member's rights to assign such governance

42 and financial rights. "Membership interest" includes patron
43 membership interests and nonpatron membership interests;

44 (14) "Members' meeting", a regular or special meeting of the
45 members;

46 (15) "Missouri for profit corporation", a corporation governed by
47 chapter 351;

48 (16) "Missouri limited liability company", a limited liability
49 company governed by chapter 347;

50 (17) "Missouri not-for-profit corporation", a corporation governed
51 by chapter 355;

52 (18) "Nonpatron", a person which does not conduct patronage
53 with the cooperative;

54 (19) "Nonpatron member", a member which is a nonpatron;

55 (20) "Nonpatron membership interest", a membership interest
56 that does not require the holder to conduct patronage for or with the
57 cooperative in order to receive distributions or other financial rights
58 with respect to such membership interest;

59 (21) "Patron", a person which conducts patronage with the
60 cooperative;

61 (22) "Patron member", a member which is a patron;

62 (23) "Patron membership interest", a membership interest which
63 requires the holder to conduct patronage for or with the cooperative
64 in order to receive distributions or other financial rights with respect
65 to such membership interest;

66 (24) "Patronage", business, transactions, or services done by, for,
67 through or with the cooperative, as determined by the board;

68 (25) "Person", a natural person or an entity and includes, without
69 limitation, a foreign or domestic corporation whether not-for-profit or
70 for profit, a partnership, a limited liability company, an unincorporated
71 society or association, two or more persons having a joint or common
72 interest, or any other business entity;

73 (26) "Record date", the date fixed by the board for determination
74 of the owners of membership interests entitled to notice of and entitled
75 to vote at a members' meeting as described in subsection 5 of section
76 351.1117;

77 (27) "Secretary of state", the secretary of state of the state of
78 Missouri;

79 **(28) "State", the state of Missouri.**

351.1006. A cooperative may be formed and organized under
2 **sections 351.1000 to 351.1228 and may conduct or promote any lawful**
3 **business or purpose for the mutual welfare of its members within or**
4 **without this state, which may include:**

5 **(1) Providing, directly or indirectly, products, supplies,**
6 **advertising, and marketing programs, or other services to such**
7 **cooperative's members, and acting as the cooperative members' agent**
8 **in the negotiation for and procurement of such products, supplies,**
9 **programs, or services;**

10 **(2) Marketing, processing, or otherwise changing the form or**
11 **marketability of products, supplies, programs, or services, either**
12 **directly or indirectly; manufacturing and further processing of such**
13 **products, supplies, programs, or services; other purposes that are**
14 **necessary or convenient to facilitate the production, distribution or**
15 **marketing of products, supplies, programs, or services by patron**
16 **members and others; and other purposes that are related to the**
17 **business of the cooperative;**

18 **(3) Any other lawful purpose that aids, assists, or is beneficial to**
19 **the cooperative; and**

20 **(4) Any other lawful purpose.**

351.1009. 1. A cooperative may be organized by one or more
2 **persons. If any organizer shall be a business entity, then such**
3 **organizer shall be represented by an authorized officer or director of**
4 **such business entity who shall execute any documents on the**
5 **organizer's behalf. The organizer or organizers forming the**
6 **cooperative need not be members of the cooperative.**

7 **2. If the persons constituting the first board are not named in the**
8 **articles, then the organizer or organizers, by majority vote at a meeting**
9 **or by unanimous written consent, shall have the power to adopt the**
10 **bylaws and name the persons to serve as the first directors of the**
11 **board.**

12 **3. As soon as convenient after the first board has been named, an**
13 **organizational meeting of the board shall be held within or without this**
14 **state at the call of a majority of the directors for the purposes of**
15 **electing officers, adopting bylaws if not previously adopted by the**
16 **organizers, and performing any other acts to finalize the cooperative's**

17 organization and transact any other business as may come before the
18 board at a meeting.

351.1012. 1. The name of each cooperative shall include the
2 words "Cooperative", "Association", "Cooperative Association", "Co-op",
3 or "C.A." and, except to the extent a cooperative transacts business
4 under a fictitious name registered in this state to the cooperative, shall
5 be the name under which the cooperative transacts business in this
6 state. The name shall not contain any word or phrase which indicates
7 or implies that the cooperative is any governmental agency.

8 2. The name of a cooperative shall distinguish the cooperative
9 upon the records in the office of the secretary of state from the name
10 of a domestic business entity or a foreign business entity which is
11 authorized or registered to do business in this state, or a name the
12 right to which is, at the time of organization, reserved or as otherwise
13 provided for by law.

351.1015. 1. (1) The articles shall include:

2 (a) The name of the cooperative;

3 (b) The purpose of the cooperative, which may be or may include
4 the transaction of any lawful business for which a cooperative may be
5 organized under sections 351.1000 to 351.1228;

6 (c) The name and physical business or residence address of each
7 organizer;

8 (d) The effective date of the articles if other than the date of
9 filing, provided that such effective date can be no longer than ninety
10 days after the date of filing;

11 (e) The address, including street and number, of the
12 cooperative's registered office, which address may not be a post office
13 box, and the name of the cooperative's registered agent at such address;
14 and

15 (f) The period of duration for the cooperative, if not perpetual.

16 (2) The articles may contain any other lawful provision.

17 (3) The articles shall be signed by the organizers.

18 2. The articles shall be filed with the secretary of state. The fee
19 for filing the articles with the secretary of state is one hundred dollars.

20 3. A cooperative shall be formed when the articles, and
21 appropriate filing fee, are filed with and stamped "Filed" by the
22 secretary of state. In the case of all articles which are accepted and

23 stamped "Filed" by the secretary of state, it shall be presumed that:

24 (1) All conditions precedent that are required to be performed
25 by the organizer or organizers have been so performed;

26 (2) The organization of the cooperative has been chartered by
27 the state as a separate legal entity; and

28 (3) The secretary of state shall issue a certificate of organization
29 to the cooperative.

30 4. A cooperative shall not transact business prior to formation.
31 A cooperative shall not transact business in this state as an entity
32 under sections 351.1000 to 351.1228 until the articles have been stamped
33 "Filed" by the secretary of state, whether on the date of filing or at a
34 later effective date as specified in the articles.

351.1018. 1. Unless otherwise set forth in the articles or bylaws,
2 the articles may be amended as follows:

3 (1) The board, by majority vote, shall pass a resolution stating
4 the text of the proposed amendment, a copy of which shall be
5 forwarded by mail or otherwise distributed with a regular or special
6 members' meeting notice to each member. The notice shall designate
7 the time and place of the members' meeting at which the proposed
8 amendment is to be considered and voted on by the members;

9 (2) At a meeting where a quorum of the members is registered as
10 being present or represented by alternative ballot, the proposed
11 amendment shall be adopted:

12 (a) If approved by a majority of the votes cast; or

13 (b) For a cooperative with articles or bylaws requiring more
14 than majority approval or other conditions for approval, the
15 amendment is approved by a proportion of the votes cast or a number
16 of total members as required by the articles or bylaws and the
17 conditions for approval as set forth in the articles or bylaws, if any,
18 have been satisfied.

19 2. (1) Upon approval of an amendment under subsection 1 of this
20 section, articles of amendment shall then be prepared stating:

21 (a) The name of the cooperative;

22 (b) The effective date of the amendment, if the effective date is
23 not the date of filing with the secretary of state;

24 (c) The text of the amendment; and

25 (d) A statement that the amendment has been duly authorized in

26 accordance with the cooperative's articles and bylaws and sections
27 351.1000 to 351.1228.

28 (2) The articles of amendment shall be signed by an authorized
29 officer of the cooperative or a member of the board.

30 3. The articles of amendment shall be filed with the secretary of
31 state with a filing fee of twenty dollars, and provided such articles of
32 amendment shall meet the requirements found in this section, shall be
33 effective as of the date of filing, unless a later date is specified
34 therein. Upon acceptance and filing by the secretary of state, the
35 secretary of state shall stamp the articles of amendment as "Filed" and
36 shall cause the issuance of a certificate of amendment, which shall then
37 be forwarded to the party filing the articles of amendment and held
38 and filed by the secretary of state with the records of the cooperative.

351.1021. Upon notification that a filing by a cooperative has
2 been made in error and receipt of a court order directing him or her to
3 do so, the secretary of state shall revoke the erroneous filing and
4 authorize a curative document to be filed. A filing fee of five dollars
5 shall be charged for any such revocation and subsequent curative
6 filing.

351.1024. 1. The existence of a cooperative shall commence when
2 the articles are filed with the secretary of state, unless a later date is
3 specified in the articles.

4 2. A cooperative shall have a perpetual duration unless the
5 cooperative otherwise provides for a limited period of duration in the
6 articles.

351.1027. 1. Each cooperative shall have and shall continuously
2 maintain in this state:

3 (1) A registered office that may be, but need not be, the same as
4 its place of business in this state, the mailing address of which shall not
5 be a post office box; and

6 (2) A registered agent for service of any process, notice, or
7 demand required or permitted by law to be served upon the
8 cooperative, which may be either an individual resident in this state
9 whose business office is identical with the registered office, or a
10 domestic business entity or a foreign business entity authorized to
11 transact business in this state having an office identical with the
12 registered office.

13 2. A cooperative may from time to time change its registered
14 office or registered agent, or both, upon filing in the office of the
15 secretary of state, a statement setting forth:

16 (1) The name of the cooperative;

17 (2) The address, including street and number, of its then
18 registered office;

19 (3) If the address of its registered office is to be changed, the
20 address, including street and number, to which the registered office is
21 to be changed, which address shall not be a post office box;

22 (4) The name of its then registered agent;

23 (5) If its registered agent is to be changed, the name of its
24 successor registered agent, and the successor registered agent's written
25 consent to the appointment either on the statement or attached thereto;

26 (6) That the address of its registered office and the address of
27 the business office of its registered agent, as changed, will be identical;
28 and

29 (7) That the change was authorized by the board in accordance
30 with sections 351.1000 to 351.1228, the articles, or the bylaws.

31 3. The statement shall be signed by an officer or director and
32 delivered to the secretary of state. If the secretary of state finds that
33 the statement conforms to the provisions of this section, the secretary
34 of state shall stamp the statement as "Filed", a copy of which shall be
35 forwarded to the party filing the statement, and upon filing the change
36 of address of the registered office or the appointment of a new
37 registered agent or both, as the case may be, the statement shall be
38 effective.

39 4. A cooperative shall change its registered agent if the office of
40 its registered agent shall become vacant for any reason, if its registered
41 agent becomes disqualified or incapable of acting, or if the cooperative
42 revokes the appointment of its registered agent.

43 5. Any registered agent of a cooperative may resign as agent
44 upon filing with the secretary of state a statement of resignation, on a
45 form approved by the secretary of state, setting forth:

46 (1) The name of the cooperative;

47 (2) The address, including street and number, of the
48 cooperative's then registered office;

49 (3) The name of such registered agent; and

50 **(4) A representation that such registered agent has given written**
51 **notice of such agent's resignation to an officer of the cooperative at the**
52 **cooperative's last known business address.**

53 **The appointment of the agent shall terminate upon the first to occur of:**

54 **(a) The expiration of thirty days after receipt of notice by the**
55 **secretary of state; or**

56 **(b) The appointment of a new registered agent by the**
57 **cooperative as evidenced by the cooperative's filing of a statement as**
58 **set forth in subsections 2, 3, and 4 of this section.**

59 **6. In the event that a cooperative shall fail to appoint or**
60 **maintain a registered agent in this state or in the event the registered**
61 **agent cannot be located in the exercise of due diligence, then the**
62 **secretary of state shall be automatically appointed as an agent of the**
63 **cooperative upon whom any process, notice, or demand required or**
64 **permitted by law to be served upon the cooperative may be**
65 **served. Service on the secretary of state of any process, notice, or**
66 **demand against a cooperative shall be made by delivering to and**
67 **leaving with the secretary of state, a copy of such process, notice, or**
68 **demand. In the event that any process, notice, or demand is served on**
69 **the secretary of state, the secretary of state shall immediately cause a**
70 **copy thereof to be forwarded by registered mail to the address for any**
71 **organizer as set forth in the articles. The secretary of state shall keep**
72 **copies of any process, notice, or demand served upon the secretary of**
73 **state under this section for a period of five years. Nothing contained**
74 **in this section shall limit or affect the right to serve any process,**
75 **notice, or demand, which is required or permitted by law to be served**
76 **upon a cooperative, in any other manner now or hereafter permitted by**
77 **law.**

351.1030. 1. A cooperative shall have bylaws governing the
2 **cooperative's business affairs and structure; the qualifications,**
3 **classification, rights, and obligations of its members; and the**
4 **classifications, allocations, and distributions of membership interests,**
5 **which are not otherwise provided in the articles or by sections 351.1000**
6 **to 351.1228.**

7 **2. (1) To the extent not stated in the articles, the bylaws shall**
8 **state:**

9 **(a) The purpose of the cooperative;**

10 **(b) The capital structure of the cooperative, including a**
11 **statement of the classes and relative rights, preferences, and**
12 **restrictions granted to or imposed upon each class of membership**
13 **interests, including the governance rights and financial rights afforded**
14 **to each class of membership interests, and the cooperative's authority**
15 **to issue membership interests, which may be determined by the board;**

16 **(c) The taxation structure of the cooperative, including a**
17 **statement of the taxation classification of the cooperative as decided**
18 **by the board. A cooperative may elect to be taxed as a corporation or**
19 **as a partnership under sections 351.1000 to 351.1228;**

20 **(d) A provision designating the governance rights of each class**
21 **of membership interests, including which membership interests have**
22 **voting power and any limitations or restrictions on the voting power,**
23 **which shall be in accordance with the provisions of sections 351.1000**
24 **to 351.1228;**

25 **(e) A statement that patron membership interests with voting**
26 **power shall be restricted to one vote for each member regardless of the**
27 **amount of patronage transacted with or for such member or the amount**
28 **of patron membership interests held by a member in the affairs of the**
29 **cooperative, or a statement describing such different allocation of**
30 **voting power to the extent permitted under sections 351.1000 to**
31 **351.1228;**

32 **(f) A statement that membership interests held by a member are**
33 **transferable only with the approval of the board or as provided in the**
34 **bylaws;**

35 **(g) A statement as to how profits and losses will be allocated and**
36 **cash will be distributed among the members;**

37 **(h) A statement that the records of the cooperative shall include**
38 **patron membership interests and, if authorized, nonpatron membership**
39 **interests, which may be further described in the bylaws.**

40 **(2) The bylaws may contain any provision relating to the**
41 **management or regulation of the affairs of the cooperative that is not**
42 **inconsistent with sections 351.1000 to 351.1228 or the articles, and**
43 **which may include the following:**

44 **(a) The number of directors and the qualifications, manner of**
45 **election, powers, duties, and compensation, if any, of directors;**

46 **(b) The qualifications of members and any limitations on their**

47 **number;**

48 **(c) The manner of admission, withdrawal, suspension, and**
49 **expulsion of members;**

50 **(d) Generally, the governance rights, financial rights,**
51 **assignability of governance rights and financial rights, and other**
52 **rights, privileges, and obligations of members and their membership**
53 **interests;**

54 **(e) Authorization to permit a manager, which may be a person**
55 **that is not otherwise related to the cooperative, to provide outside**
56 **management services to the cooperative; and**

57 **(f) Any other provisions required by the articles to be in the**
58 **bylaws.**

59 **3. Bylaws shall be adopted before the acceptance of any**
60 **contributions to the cooperative by any member, except in the case of**
61 **a conversion of a foreign business entity or domestic business entity to**
62 **a cooperative, in which case the bylaws shall be adopted as soon as is**
63 **practical following the filing of the articles.**

64 **4. The board may amend the bylaws at any time and without**
65 **further approval by the members to add, change, or delete a provision**
66 **or multiple provisions, unless:**

67 **(1) Sections 351.1000 to 351.1228, the articles, or the bylaws**
68 **otherwise reserve the power exclusively to the members; or**

69 **(2) A particular bylaw expressly prohibits the board from doing**
70 **so and provided the members shall receive a notice and summary of the**
71 **amendments or the actual amendments to the bylaws as adopted by the**
72 **board.**

73 **5. The bylaws may be amended, including, but not limited to, the**
74 **addition, deletion, or restatement of any bylaw or bylaws, by the**
75 **members at a regular or special members' meeting if:**

76 **(1) The notice of the regular or special members' meeting**
77 **contains a statement that the proposed amended bylaws will be voted**
78 **upon at the meeting and copies of such proposed amended bylaws are**
79 **included with the notice, or copies are available upon request from the**
80 **cooperative and a summary statement of the proposed amended bylaw**
81 **or bylaws are included with the notice;**

82 **(2) A quorum is registered at the members' meeting as being**
83 **present or represented by mail or alternative ballot if the mail or**

84 alternative ballot is authorized by the board; and

85 (3) The proposed amended bylaw or bylaws are approved by a
86 majority vote cast at the meeting, except that if a cooperative's articles
87 or bylaws require more than majority approval or other conditions for
88 approval, the proposed amended bylaw or bylaws shall only be
89 approved by a proportion of the vote cast or a number of the total
90 members as required by the articles or bylaws and any other such
91 conditions for approval which are contained in the articles or bylaws
92 have been satisfied.

93 6. (1) Unless otherwise provided in the articles or bylaws, the
94 board may adopt emergency bylaws, at any time, to be effective only in
95 the event of an emergency as provided in subdivision (4) of this
96 subsection. The emergency bylaws, which are subject to amendment or
97 repeal by the members, may include all provisions necessary for
98 managing the cooperative during the emergency, including:

99 (a) Procedures for calling a meeting of the board;

100 (b) Quorum requirements for the meeting; and

101 (c) Designation of additional or substitute directors.

102 (2) All provisions of the regular bylaws consistent with the
103 emergency bylaws shall remain in effect during the emergency. The
104 emergency bylaws shall not be effective after the emergency ends.

105 (3) Action taken in good faith in accordance with the emergency
106 bylaws:

107 (a) Binds the cooperative; and

108 (b) Shall not be the basis for imposition of liability on any
109 director, officer, employee, or agent of the cooperative on the grounds
110 that the action was not an authorized action of the cooperative.

111 (4) An emergency exists for the purposes of this section, if a
112 quorum of the directors cannot readily be obtained because of some
113 catastrophic event.

351.1033. 1. (1) A cooperative shall keep as permanent records,
2 minutes of all meetings of its members and of the board, a record of all
3 actions taken by the members or the board without a meeting, and a
4 record of all waivers of notices of meetings of the members and of the
5 board.

6 (2) A cooperative shall maintain appropriate accounting records.

7 (3) A cooperative shall keep a copy of each of the following

8 records at its principal office:

9 (a) Its current articles and other governing instruments, and all
10 amendments thereto or restatements thereof;

11 (b) Its current bylaws or other similar instruments, and all
12 amendments thereto or restatements thereof;

13 (c) A record of the names and last known addresses of its current
14 and past members in a form that allows preparation of an alphabetical
15 list of members with each member's address;

16 (d) A list of the names and last known business addresses of its
17 current board members and officers;

18 (e) All interim financial statements prepared for periods ending
19 during the last fiscal year, and all year-end financial statements, if any,
20 prepared for the previous four fiscal years; and

21 (f) Copies of all tax returns filed by the cooperative for the
22 previous four tax years.

23 (4) Except as otherwise limited by sections 351.1000 to 351.1228,
24 the board shall have discretion to determine what records are
25 appropriate for the purposes of the cooperative, the length of time
26 records are to be retained, and policies relating to the confidentiality,
27 disclosure, inspection, and copying of the records of the cooperative.

28 (5) A cooperative shall maintain its records in written form or in
29 another form, which may be electronic or otherwise paperless, so long
30 as such form is capable of conversion into written form within a
31 reasonable time.

32 2. Each member shall, at proper times and upon three days' prior
33 written notice, have access to the books and records of the cooperative
34 as identified in subdivisions (1) to (4) of subsection 1 of this section, to
35 examine same, under such regulations and conditions as set forth in the
36 bylaws or as otherwise set forth by the board. In all events, a member's
37 demand to examine the books and records of the cooperative shall be
38 in good faith and for a proper cooperative purpose, and in no event
39 shall a member have the right to inspect or copy, if otherwise allowed,
40 for any person other than the member, any records relating to the
41 amount of any equity capital in the cooperative held by any person; any
42 financial information or patronage history, including but not limited
43 to, amounts of patronage done by or for a member or the amounts of
44 patronage dividends received by such member; any accounts receivable

45 or other amounts due to the cooperative from any person; any
46 personnel or employment records related to the cooperative; any
47 records subject to confidentiality agreements with third parties or
48 under court order; any records deemed confidential under any federal,
49 state, or municipal law, regulation, or ruling, including but not limited
50 to, personal health information as defined under federal law; or any
51 trade secret.

351.1036. 1. In addition to other powers, a cooperative as an
2 agent or otherwise:

3 (1) May perform every act necessary or proper to conduct of the
4 cooperative's business or accomplish the purposes of the cooperative;

5 (2) Has all other rights, powers, or privileges granted by the laws
6 of this state to any business entity, except those that are inconsistent
7 with the express provisions of sections 351.1000 to 351.1228; and

8 (3) Has the powers given in this section.

9 2. The cooperative may act as the agent of its members, either
10 collectively or individually, in the negotiation for and procurement of
11 all goods, services, and programs which may be provided to the
12 members by or through the cooperative, provided, however, that unless
13 the cooperative has affirmatively accepted responsibility, the
14 cooperative shall have no liability for its members' failure, whether
15 collective or individual, to perform or pay for such goods, services or
16 programs.

17 3. A cooperative may enter into or become a party to a contract
18 or agreement for the cooperative or for or on behalf of the members or
19 patrons, including but not limited to, contracts related to prices for and
20 types of products, goods, or services to be supplied or sold to the
21 members, goods manufactured and sold by the members through the
22 cooperative, the management of the cooperative by a third party
23 manager, and any other contract deemed by the board to be in the best
24 interests of the cooperative or the members, or between the cooperative
25 and its members.

26 4. (1) A cooperative may purchase and hold, lease, mortgage,
27 encumber, sell, exchange, and convey as a legal entity, property of any
28 kind including but not limited to real property, personal property,
29 intellectual property, real estate, buildings, equipment, products,
30 patents, and copyrights as the business of the cooperative may require,

31 including the sale or other disposition of assets required by the
32 business of the cooperative as determined by the board.

33 (2) A cooperative may take, receive, and hold real and personal
34 property, including the principal and interest of money or other funds
35 and rights in a contract, for any purpose not inconsistent with the
36 purposes of the cooperative as set forth in its articles or bylaws, or as
37 otherwise determined by the board.

38 5. A cooperative may own, lease, construct, and develop
39 buildings or other structures or facilities on the property owned or
40 leased by the cooperative or on a right-of-way legally acquired by the
41 cooperative.

42 6. A cooperative may issue bonds, debentures, or other evidence
43 of indebtedness and may borrow money, may secure any of its
44 obligations by mortgage of or creation of a security interest in or other
45 encumbrances or assignment of all or any of its property, or income,
46 and may issue guarantees for any legal purpose.

47 7. A cooperative may make advances to its members or patrons
48 on products or services delivered by the members or patrons to the
49 cooperative.

50 8. A cooperative may accept donations or deposits of money, real
51 property, or personal property from other cooperatives or associations
52 from which it is constituted, and from members.

53 9. A cooperative may loan money to and borrow money from
54 members, cooperatives, or associations from which it is constituted
55 with security that it considers sufficient. A cooperative may invest and
56 reinvest its funds.

57 10. A cooperative may pay pensions, retirement allowances, and
58 compensation for past services to and for the benefit of and establish,
59 maintain, continue, and carry out, wholly or partially at the expense of
60 the cooperative, employee or incentive benefit plans, trusts, and
61 provisions to or for the benefit of any or all of its and its related
62 organizations' officers, managers, directors, employees, and agents; and
63 in the case of a related organization that is a cooperative, members
64 who provide services or goods to that cooperative, and any of their
65 families, dependents, and beneficiaries. It may indemnify and purchase
66 and maintain insurance for and on behalf of a fiduciary of any of these
67 employee benefit and incentive plans, trusts, and provisions.

68 **11. A cooperative may provide, directly or indirectly, insurance**
69 **of any kind, including but not limited to disability insurance, health**
70 **insurance, casualty insurance, unemployment insurance, life insurance,**
71 **and other insurance to or for the benefit of any or all of its employees,**
72 **officers, directors, members, managers, or their respective directors,**
73 **officers, employees, and agents. The cooperative may own directly or**
74 **indirectly, insurance of any kind, including but not limited to disability**
75 **insurance, health insurance, casualty insurance, unemployment**
76 **insurance, life insurance, and other insurance on any or all of its**
77 **employees, officers, directors, members, managers, or their respective**
78 **directors, officers, employees, and agents.**

79 **12. (1) A cooperative may purchase, acquire, hold, or dispose of**
80 **the ownership interests of another business entity or form or otherwise**
81 **organize subsidiary or affiliated business entities, and assume all**
82 **rights, interests, privileges, responsibilities, and obligations arising out**
83 **of all such ownership interests.**

84 **(2) The cooperative may form special purpose business entities**
85 **to secure and hold assets of the cooperative.**

86 **(3) A cooperative may purchase, own, and hold ownership**
87 **interests, including stock and other equity interests, memberships,**
88 **interests in nonstock capital, and evidences of indebtedness of any**
89 **business entity.**

351.1039. 1. In anticipation of or during an emergency as
2 **provided in subsection 4 of this section, the board may:**

3 **(1) Modify lines of succession to accommodate for the incapacity**
4 **of any director, officer, employee, or agent; and**

5 **(2) Relocate the principal office, designate alternative principal**
6 **offices or regional offices, or authorize the officers to do so.**

7 **2. During an emergency as provided in subsection 4 of this**
8 **section, unless the emergency bylaws provide otherwise:**

9 **(1) Notice of a meeting of the board need be given only to those**
10 **directors to whom it is practicable to reach and may be given in any**
11 **practicable manner, including by publication, radio, email, or other**
12 **form of communication; and**

13 **(2) One or more officers of the cooperative present at a meeting**
14 **of the board may be deemed to be directors for the meeting, in order of**
15 **rank and within the same rank in order of seniority, as necessary to**

16 achieve a quorum.

17 3. Cooperative action taken in good faith during an emergency
18 under this section to further the ordinary business affairs of the
19 cooperative:

20 (1) Binds the cooperative; and

21 (2) Shall not be the basis for the imposition of liability on any
22 director, officer, employee, or agent of the cooperative on the grounds
23 that the action was not an authorized cooperative action.

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

351.1042. 1. A cooperative shall be governed by its board, which
2 shall take all action for and on behalf of the cooperative, except those
3 actions reserved or granted to a manager of the cooperative as set forth
4 under sections 351.1000 to 351.1228 or reserved for or granted to the
5 members under said sections, the articles, or bylaws.

6 2. Board action shall be by the affirmative vote of a majority of
7 the directors voting at a duly called meeting where a quorum of
8 directors is present, unless otherwise allowed under sections 351.1000
9 to 351.1228 or unless a greater majority is required by the articles or
10 bylaws. A director individually or collectively with other directors
11 shall not have authority to act for or on behalf of the cooperative
12 unless authorized by the board.

13 3. Except as otherwise set forth in the articles or the bylaws, a
14 director may advocate the interests of members or member groups to
15 the board, but the fiduciary duty of each director is to represent the
16 best interests of the cooperative and all members collectively.

17 4. Except as otherwise set forth in the articles or the bylaws, the
18 board shall have the power to enter into, on behalf of the cooperative,
19 an agreement with a third party whereby such third party may supply
20 management services to the cooperative at the board's instruction, and
21 upon the terms and conditions deemed satisfactory to the board.

351.1045. Except as otherwise set forth in the articles or bylaws,
2 the board shall not have less than five directors, except that a
3 cooperative with fifty or fewer members may have three or more
4 directors as prescribed in the articles or bylaws. The directors of any
5 cooperative organized under sections 351.1000 to 351.1228 may, by the

6 articles or by the bylaws, be divided into such number of classes as set
7 forth in the articles or bylaws. If the board shall be divided into
8 classes, then the term of office of those of the initial first class shall
9 expire at the first annual meeting of the members held after such
10 classification becomes effective; of the second class, one year
11 thereafter; of the third class, two years thereafter, and so on for each
12 initial class; and at each annual election held after such classification
13 becomes effective, directors shall be chosen for a full term, as the case
14 may be, to succeed those whose terms expire, which terms shall, unless
15 otherwise set forth in the articles or bylaws, be of a duration equal to
16 the number of classes.

351.1048. 1. The organizers shall elect the first board to serve in
2 accordance with subsection 2 of section 351.1009 until directors are
3 elected by members. Until election by members, the first board shall
4 appoint directors to fill any vacancies which may occur during such
5 initial period.

6 2. (1) Directors shall be elected for the term at the time and in
7 the manner provided in the articles, bylaws, or as otherwise set forth
8 in sections 351.1000 to 351.1228.

9 (2) Except as otherwise set forth in the articles or bylaws, the
10 directors need not be members, however, a majority of the directors
11 shall be elected exclusively by the members holding patron membership
12 interests.

13 (3) Each director of a cooperative not electing to be taxed as a
14 partnership under sections 351.1000 to 351.1228 shall have one vote on
15 each matter brought before the board. Unless otherwise set forth in the
16 articles or bylaws, the voting authority of the directors may be
17 allocated according to allocation units or equity classifications of the
18 cooperative provided:

19 (a) That each allocation unit or equity classification shall have
20 only one vote; and

21 (b) That at least one-half of the voting power on general matters
22 of the cooperative shall be allocated to the directors elected by
23 members holding patron membership interests.

24 (4) A director holds office for the term the director was elected
25 and until a successor is elected and has qualified, or until the earlier
26 death, resignation, removal, or disqualification of the director.

27 (5) The expiration of a director's term with or without election
28 of a qualified successor shall not make the prior or subsequent acts of
29 the director or the board void or voidable.

30 (6) Subject to any limitation in the articles or bylaws, the board
31 may set the compensation of directors.

32 (7) Directors may be divided into or designated and elected by
33 class or other distinction as provided in the articles or bylaws.

34 (8) A director may resign by giving written notice to the chair of
35 the board or the board. The resignation is effective without acceptance
36 when the notice is given to the chair of the board or the board unless
37 a later effective time is specified in the notice.

38 (9) Unless otherwise set forth in the articles or bylaws, a
39 director's position as such is personal to that director, and no director
40 shall be entitled to execute any of such director's duties, including
41 attending or voting at a directors' meeting by or through another
42 person, entity or by proxy.

43 3. Except for directors elected at a special members' meeting to
44 fill a vacancy, directors shall be elected at the regular members'
45 meeting for the terms of office prescribed in the bylaws, which may be
46 done by written consent in accordance with sections 351.1000 to
47 351.1228.

48 4. Unless otherwise set forth in the articles or bylaws, for a
49 cooperative delineated by districts or other units, members may
50 nominate and elect directors on a district or unit basis at a district
51 meeting.

52 5. The following shall apply to voting by mail or alternative
53 ballot:

54 (1) A member shall not vote for a director other than by being
55 present at a members' meeting or by mail ballot or alternative ballot as
56 authorized by the board;

57 (2) The ballot shall be in a form prescribed by the board; and

58 (3) If the ballot of the member is received by the cooperative on
59 or before the date of the regular members' meeting or as otherwise
60 prescribed for alternative ballots, the ballot shall be accepted and
61 counted as the vote of the absent member.

62 6. Unless otherwise provided by the bylaws, if a member is not
63 a natural person then the member may appoint or elect one or more

64 natural persons to be eligible for election as a director.

351.1051. 1. Unless otherwise provided in the articles or bylaws,
2 if a director position which is elected by patron members becomes
3 vacant or a new director position is created for a director that was or
4 is to be elected by patron members, the board, in consultation with the
5 directors elected by patron members, shall appoint a new director to
6 fill the director's position until the next regular or special members'
7 meeting at which a successor is elected. If there are no directors
8 elected by patron members on the board at the time of the vacancy, a
9 special members' meeting shall be called to fill the patron member
10 director vacancy.

11 2. Unless otherwise provided in the articles or bylaws, if the
12 vacating director was not elected by the patron members or a new
13 director position is created, but which position is not subject to
14 subsection 1 of this section, then the board shall appoint a director to
15 fill the vacant position by majority vote of the remaining or then
16 serving directors even though less than a quorum. At the next regular
17 or special members' meeting, the members shall elect a director to
18 replace the interim appointed director and fill the unexpired term of
19 the vacant director's position.

351.1054. 1. The provisions of this section apply unless modified
2 by the articles or bylaws.

3 2. Any director of the cooperative may be removed by the action
4 of the majority of the entire board if the director to be removed shall,
5 at the time of removal, fail to meet the qualifications stated in the
6 articles or bylaws for election as a director or shall be in breach of any
7 agreement between such director and the cooperative, which includes,
8 for board members which are also patrons, a breach of the cooperative
9 agreement by such patron board member. Any director of the
10 cooperative may be removed, with or without cause, by the unanimous
11 vote of the remaining directors on the board. Notice of the proposed
12 removal shall be given to all directors prior to any action thereon.

13 3. Subject to subsection 4 of this section, any one or all of the
14 directors may be removed at any time, with or without cause, by the
15 affirmative vote of the holders of a majority of the voting power of
16 membership interests entitled to vote at an election of directors,
17 provided that if a director has been elected solely by the patron

18 members, by members based on districts or units, or the holders of a
19 class or series of membership interests as stated in the articles or
20 bylaws, then that director may be removed only by the affirmative vote
21 of the holders of a majority of the voting power of the patron members
22 for a director elected by the patron members, all membership interests
23 in such district or unit if such director was originally elected by
24 districts or units, or of all membership interests of that class or series
25 entitled to vote at the election of that director.

26 4. Where the directors of a cooperative are divided into classes
27 in accordance with section 351.1045, the members of a cooperative may
28 remove a director for cause by the vote of a majority of all members
29 eligible to vote on the election of such director.

30 5. Unless otherwise provided in the bylaws, new directors may
31 be elected at a meeting at which directors are removed.

351.1057. 1. Meetings of the board may be held from time to time
2 as provided in the articles or bylaws at any place within or without this
3 state as the board may select or by any means described in subsection
4 2 of this section. If the board fails to select a place for a meeting, the
5 meeting shall be held at the principal executive office of the
6 cooperative, unless the articles or bylaws provide otherwise.

7 2. A conference among directors by any means of communication
8 through which the directors may simultaneously hear each other
9 during the conference constitutes a meeting of the board, if the same
10 notice is given of the conference as would be required by subsection 3
11 of this section for a meeting, and if the number of directors
12 participating in the conference would be sufficient to constitute a
13 quorum at a meeting. Participation in a meeting by electronic means
14 of communication constitutes presence in person at the meeting.

15 3. Unless the articles or bylaws provide for a different time
16 period, a director may call a meeting of the board by giving at least ten
17 days' prior written notice or, in the case of organizational meetings at
18 least three days' prior written notice, to all directors of the date, time,
19 and place of the meeting. Notice to the board members of any meeting
20 may be given in such forms as set forth in section 351.1216. The notice
21 need not state the purpose of the meeting unless sections 351.1000 to
22 351.1228, the articles, or the bylaws require it.

23 4. If the day or date, time, and place of a meeting of the board

24 have been provided in the articles or bylaws, or announced at a
25 previous meeting of the board, no further notice is required to be given
26 to the members of the board. Notice of an adjourned meeting need not
27 be given other than by announcement at the meeting at which
28 adjournment occurs.

29 5. A director may waive notice of a meeting of the board. A
30 waiver of notice by a director entitled to receive notice is effective
31 whether given before, at, or after the meeting, and whether given in
32 writing, orally, or by attendance. Attendance by a director at a meeting
33 is a waiver of notice of that meeting, except where the director objects
34 at the beginning of the meeting to the transaction of business because
35 the meeting is not lawfully called or convened and such director does
36 not participate in the meeting after the objection is made.

37 6. If the articles or bylaws so provide, a director may give
38 advance written consent or opposition to a proposal to be acted on at
39 a meeting of the board. If the director is not present at the meeting,
40 consent or opposition to a proposal shall not constitute presence for
41 purposes of determining the existence of a quorum, but consent or
42 opposition shall be counted as the vote of a director present at the
43 meeting in favor of or against the proposal and shall be entered in the
44 minutes or other record of action at the meeting, if the proposal acted
45 on at the meeting is substantially the same or has substantially the
46 same effect as the proposal to which the director has consented or
47 objected.

351.1060. A majority, or a larger or smaller portion or number as
2 provided in the articles or bylaws which in no event shall be less than
3 one-third, of the directors currently holding office is a quorum for the
4 transaction of business at a meeting of the board. In the absence of a
5 quorum, a majority of the directors present may adjourn a meeting
6 from time to time until a quorum is present. If a quorum is present
7 when a duly called or held meeting is convened, the directors present
8 may continue to transact business until adjournment even though the
9 withdrawal of a number of directors originally present leaves less than
10 the proportion of number otherwise required for a quorum.

351.1063. The board shall take action by the affirmative vote of
2 the majority of directors present at a duly held meeting at which a
3 quorum is present, unless otherwise provided in sections 351.1000 to

4 351.1228, the articles, or bylaws.

351.1066. 1. If the articles or bylaws so provide, any action, other
2 than an action requiring member approval, may be taken by written
3 action signed by the number of directors which would be required to
4 take the same action at a meeting of the board under section 351.1063.
5 If the articles or bylaws do not otherwise provide, then an action
6 required or permitted to be taken at a meeting of the board may be
7 taken by written action if signed by at least a majority of all of the
8 directors.

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

12 3. When written action is permitted to be taken by less than all
13 directors, all directors shall be notified within a reasonable amount of
14 time of its text and effective date. Failure to provide the notice shall
15 not invalidate the written action. A director who does not sign or
16 consent to the written action has no liability for the action or actions
17 taken by the written action.

351.1069. 1. Unless otherwise set forth in the articles or bylaws:
2 (1) Committees may be established under a resolution approved
3 by the affirmative vote of a majority of the board. All committees so
4 formed are subject at all times to the direction and control of the
5 board, and may only act with respect to such issues and to the extent
6 authorized by the board. The board may create a litigation committee
7 consisting of one or more independent directors or other independent
8 persons to consider legal rights or remedies of the cooperative, and
9 whether such rights or remedies should be pursued. The committee
10 shall not be subject to the direction or control of the board. Unless
11 otherwise set forth in the articles or bylaws, committee members need
12 not be directors of the cooperative;

13 (2) The procedures for meetings of the board apply to committees
14 and members of committees to the same extent as sections 351.1057 to
15 351.1066 apply to the board and individual directors;

16 (3) Minutes, if any, of committee meetings, other than the
17 litigation committee shall be made available upon request to members
18 of the committee, and to any director who requests such minutes, but
19 only to the extent that such director's request relates to his or her

20 position as a director and the director's intended use of the committee
21 minutes is to further the cooperative's purposes.

22 2. The establishment of, delegation of authority to, and action by
23 a committee shall not alone constitute compliance by a director with
24 the standard of conduct set forth in section 351.1072.

25 3. Committee members are considered to be directors for
26 purposes of sections 351.1072, 351.1075, and 351.1081, except that
27 independent members of a committee which are not directors or
28 employees of the cooperative are not subject to subsection 4 of section
29 351.1072.

351.1072. 1. A director shall discharge the duties of the position
2 of director in good faith, in a manner the director reasonably believes
3 to be in the best interests of the cooperative, and with the care that an
4 ordinary, prudent person in a like position would exercise under
5 similar circumstances. A person who so performs such person's duties
6 is not liable by reason of being or having been a director of the
7 cooperative.

8 2. (1) A director is entitled to rely on information, opinions,
9 reports, or statements, including financial statements and other
10 financial data, relating to cooperative matters in each case prepared or
11 presented by one or more of the following:

12 (a) One or more officers or employees of the cooperative who the
13 director reasonably believes to be reliable and competent in the
14 matters presented;

15 (b) Counsel, public accountants, or other persons as to matters
16 that the director reasonably believes are within the person's
17 professional or expert competence; or

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

22 (2) A director is not relieved of liability for acts based on such
23 director's reliance on information under subdivision (1) of this
24 subsection where such director has knowledge that makes such
25 reliance unwarranted.

26 3. A director who is present at a meeting of the board when an
27 action is approved by the directors in accordance with section 351.1063

28 is presumed to have assented to the action approved, unless the
29 director:

30 (1) Objects at the beginning of the meeting to the transaction of
31 business because the meeting is not lawfully called or convened and
32 does not participate in the meeting after the objection, in which case
33 the director is not considered to be present at the meeting for any
34 purpose of sections 351.1000 to 351.1228;

35 (2) Votes against the action at the meeting; or

36 (3) Is prohibited by a conflict of interest from voting on the
37 action.

38 4. A director's first duty of loyalty is to the cooperative. A
39 director is under a duty to share all of such director's knowledge and
40 opportunities that arise with respect to or are related to the business
41 of the cooperative first to the cooperative, and if the cooperative shall
42 choose not to act on such information or opportunity, then, unless
43 otherwise directed by the cooperative, such director may exploit such
44 information or opportunity for such director's own gain.

351.1075. 1. (1) A contract or other transaction between a
2 cooperative and one or more of its directors, or a cooperative and a
3 business entity where one or more of the cooperative's directors is a
4 director, manager, officer, or legal representative of such business
5 entity or where a director has a material financial interest, is not void
6 or voidable because the director or directors or the other business
7 entity is a party thereto or because the director or directors are
8 present at the meeting of the members or the board or a committee at
9 which the contract or transaction is authorized, approved, or ratified,
10 if:

11 (a) The contract or transaction was, and the person asserting the
12 validity of the contract or transaction sustains the burden of
13 establishing that the contract or transaction was, fair and reasonable
14 as to the cooperative at the time it was authorized, approved, or
15 ratified and:

16 a. The material facts as to the contract or transaction and as to
17 the director's or directors' interest are disclosed or known to the
18 members; or

19 b. The material facts as to the contract or transaction and as to
20 the director's or directors' interest are fully disclosed or known to the

21 board or a committee, and the board or committee authorizes,
22 approves, or ratifies the contract or transaction in good faith by a
23 majority of the board or committee, as the case may be, but the
24 interested director or directors are not counted in determining the
25 presence of a quorum and shall not vote; or

26 (b) The contract or transaction is a distribution, contract, or
27 transaction that is made available on the same terms to all members or
28 patron members as part of the cooperative's business; or

29 (c) The contract or transaction is for services provided to the
30 cooperative which services were deemed necessary by the board, or a
31 committee, or the chief executive officer, or the president and the
32 contract to provide such services is no less favorable to the cooperative
33 than such an agreement would be with a person who is not a member
34 of the board negotiated at arm's length at a cost not more than the
35 reasonable fair market value for the same services charged by other
36 providers.

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

46 (3) If a committee is appointed to authorize, ratify, or approve
47 a contract or transaction under this section, the members of the
48 committee shall not have a conflict of interest with respect to such
49 contract or transaction and shall be charged with representing the best
50 interests of the cooperative.

51 2. For purposes of this section, a director has a material
52 financial interest in each contract or transaction in which the director
53 or the spouse, parents, children and spouses of children, brothers and
54 sisters and spouses of brothers and sisters, and the brothers and sisters
55 of the spouse of the director or any combination of them have a
56 material financial interest. For purposes of this section, a contract or
57 other transaction between a cooperative and the spouse, parents,

58 children and spouses of children, brothers and sisters and spouses of
59 brothers and sisters, and the brothers and sisters of the spouse of a
60 director or any combination of them, is considered to be a transaction
61 between the cooperative and the director.

351.1078. 1. A director's personal liability to the cooperative or
2 members for monetary damages for breach of fiduciary duty as a
3 director may be eliminated or limited in the articles or bylaws except
4 as provided in subsection 2 of this section.

5 2. The articles or bylaws shall not eliminate or limit the liability
6 of a director:

7 (1) For a breach of the director's duty of loyalty to the
8 cooperative or its members;

9 (2) For acts or omissions that are not in good faith and involve
10 intentional misconduct by the director;

11 (3) For illegal distributions;

12 (4) For a transaction from which the director derived an
13 improper personal benefit; or

14 (5) For an act or omission occurring before the date when the
15 provision in the articles or bylaws eliminating or limiting liability
16 becomes effective.

351.1081. 1. The definitions in this subsection apply to this
2 section.

3 2. (1) "Cooperative" includes a domestic or foreign cooperative
4 that was the predecessor of the cooperative referred to in this section
5 in a merger or other transaction in which the predecessor's existence
6 ceased upon consummation of the transaction.

7 (2) "Official capacity" means:

8 (a) With respect to a director, the position of director in a
9 cooperative;

10 (b) With respect to a person other than a director, the elective
11 or appointive office or position held by the person, member of a
12 committee of the board, the employment relationship undertaken by an
13 employee of the cooperative, or the scope of the services provided by
14 members who provide services to the cooperative; and

15 (c) With respect to a director, chief executive officer, member, or
16 employee of the cooperative who, while a member, director, chief
17 executive officer, or employee of the cooperative, is or was serving at

18 the request of the cooperative or whose duties in that position involve
19 or involved service as a director, manager, officer, member, partner,
20 trustee, employee, or agent of another organization or employee benefit
21 plan, the position of that person as a director, manager, officer,
22 member, partner, trustee, employee, or agent, as the case may be, of the
23 other organization or employee benefit plan.

24 (3) "Proceeding" means a threatened, pending, or completed civil,
25 criminal, administrative, arbitration, or investigative proceeding,
26 including a proceeding by or in the right of the cooperative.

27 3. (1) Subject to the provisions of subsection 5 of this section, a
28 cooperative may indemnify a person made or threatened to be made a
29 party to a proceeding by reason of the former or present official
30 capacity of the person against judgments, penalties, fines, including,
31 without limitation, excise taxes assessed against the person with
32 respect to an employee benefit plan, settlements, and reasonable
33 expenses, including attorney fees and disbursements incurred by the
34 person in connection with the proceeding, if, with respect to the acts
35 or omissions of the person complained of in the proceeding, the person:

36 (a) Has not been indemnified, or if indemnified, then not fully
37 indemnified by another organization or employee benefit plan for the
38 same judgments, penalties, fines, including, without limitation, excise
39 taxes assessed against the person with respect to an employee benefit
40 plan, settlements, and reasonable expenses, including attorney fees and
41 disbursements incurred by the person in connection with the
42 proceeding with respect to the same acts or omissions;

43 (b) Acted in good faith;

44 (c) Received no improper personal benefit and the person has
45 not committed an act for which liability cannot be eliminated or limited
46 under subsection 2 of section 351.1078;

47 (d) In the case of a criminal proceeding, had no reasonable cause
48 to believe the conduct was unlawful; and

49 a. In the case of acts or omissions occurring in the official
50 capacity described in paragraphs (a) and (b) of subdivision (2) of
51 subsection 1 of this section, reasonably believed that the conduct was
52 in the best interests of the cooperative, or in the case of acts or
53 omissions occurring in the official capacity described in paragraph (c)
54 of subdivision (2) of subsection 1 of this section, reasonably believed

55 that the conduct was not opposed to the best interests of the
56 cooperative. If the person's acts or omissions complained of in the
57 proceeding relate to conduct as a director, officer, trustee, employee,
58 or agent of an employee benefit plan, the conduct is not considered to
59 be opposed to the best interests of the cooperative if the person
60 reasonably believed that the conduct was in the best interests of the
61 participants or beneficiaries of the employee benefit plan; or

62 b. Was not at the time of the acts or omissions complained of in
63 the proceeding, a director, chief executive officer, or person possessing,
64 directly or indirectly, the power to direct or cause the direction of the
65 management or policies of the cooperative.

66 (2) The termination of a proceeding by judgment, order,
67 settlement, conviction, or upon a plea of nolo contendere or its
68 equivalent does not, of itself, establish that the person did not meet the
69 criteria set forth in this section.

70 4. Subject to the provisions of subsection 5 of this section, if a
71 person is made or threatened to be made a party to a proceeding, such
72 person shall be entitled, upon written request to the board, to payment
73 or reimbursement by the cooperative of reasonable expenses, including
74 attorney fees and disbursements incurred by the person in advance of
75 the final disposition of the proceeding, provided that:

76 (1) Upon receipt by the cooperative of a written affirmation by
77 the person of a good faith belief that the criteria for indemnification
78 set forth in subsection 3 of this section has been satisfied, such person
79 makes a written undertaking, in a form acceptable to the cooperative,
80 to repay all amounts paid or reimbursed by the cooperative, if it is
81 ultimately determined that the criteria for indemnification have not
82 been satisfied, which written undertaking is an unlimited general
83 obligation of the person making it, but need not be secured and may be
84 accepted without reference to financial ability to make payment; and

85 (2) Those making the determination determine that the facts
86 then known would not preclude indemnification under subsection 3 of
87 this section.

88 5. The articles or bylaws may prohibit indemnification or
89 advances of expenses otherwise required by this section or may impose
90 conditions on indemnification or advances of expenses in addition to
91 the conditions contained in subsections 3 and 4 of this section,

92 including, without limitation, monetary limits on indemnification or
93 advances of expenses if the conditions apply equally to all persons or
94 to all persons within a given class. A prohibition or limit on
95 indemnification or advances of expenses shall not apply to or affect the
96 right of a person to indemnification or advances of expenses with
97 respect to any acts or omissions of the person occurring before the
98 effective date of a provision in the articles or the date of adoption of a
99 provision in the bylaws establishing the prohibition or limit on
100 indemnification or advances of expenses.

101 6. This section shall not require or limit the ability of a
102 cooperative to reimburse expenses, including attorney fees and
103 disbursements, incurred by a person in connection with an appearance
104 as a witness in a proceeding at a time when the person has not been
105 made or threatened to be made a party to a proceeding.

106 7. Unless otherwise set forth in the articles or bylaws, all
107 determinations whether indemnification of a person is required
108 because the criteria set forth in subsection 4 of this section has been
109 satisfied and whether a person is entitled to payment or reimbursement
110 of expenses in advance of the final disposition of a proceeding as
111 provided in subsection 3 of this section shall be made:

112 (1) By a majority of the board at a meeting where a quorum is
113 present, provided that the directors who are, at the time, parties to the
114 proceeding are not counted for determining either a majority or the
115 presence of a quorum;

116 (2) If a quorum of the board under subdivision (1) of this
117 subsection cannot be obtained, then by a majority of a committee of the
118 board consisting solely of two or more directors who are not, at the
119 time, parties to the proceeding, but who are duly designated to make
120 such a determination by a majority of the board, which majority
121 includes directors who are, at the time, parties to the proceeding;

122 (3) If a determination is not made under subdivisions (1) or (2)
123 of this subsection, then by legal counsel selected either by a majority
124 of the board in the manner set forth in subdivision (1) of this
125 subsection, provided a quorum can be obtained, or by a committee by
126 vote in the manner set forth in subdivision (2) of this subsection,
127 provided a committee can be established by a majority of the board,
128 including directors who are parties to the proceeding; or

129 **(4) If a determination is not made under subdivisions (1) to (3)**
130 **of this subsection inclusive, then by the affirmative vote of the**
131 **members, but the membership interests held by parties to the**
132 **proceeding shall not be counted in determining the presence of a**
133 **quorum, and are not considered to be present and entitled to vote on**
134 **the determination.**

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

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

351.1084. 1. Unless otherwise set forth in the articles or bylaws:

2 **(1) The board may elect a chair and one or more vice chairs of**
3 **the board to hold and lead meetings of the board; and**

4 **(2) The board shall elect or appoint a president and secretary to**
5 **serve as officers of the cooperative;**

6 **(3) The officers, other than the chief executive officer, president**
7 **and secretary shall not have the authority to bind the cooperative**
8 **except as authorized by the board.**

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

11 **3. The offices of president and secretary may be combined, and**
12 **the same person may serve in both capacities.**

13 **4. The board may employ a chief executive officer to manage the**
14 **day-to-day affairs and business of the cooperative, and if a chief**
15 **executive officer is employed, the chief executive officer shall have the**
16 **authority to implement the functions, duties, and obligations of the**
17 **cooperative except as restricted by the board or as delegated to a**
18 **manager. The chief executive officer shall not exercise authority**
19 **reserved to the board, a manager, the members, the articles, or the**
20 **bylaws. Nothing contained herein shall limit the cooperative's right to**
21 **have co-chief executive officers.**

351.1087. 1. A cooperative shall have one or more members.

2 2. (1) A cooperative may, but is not obligated to, group members
3 and patron members in districts, units, or on another basis if and as
4 authorized in its articles or bylaws.

5 (2) The board may, but is not obligated to, implement the use of
6 districts or units, including setting the time and place and prescribing
7 the rules of conduct for holding meetings by districts or units to elect
8 delegates to members' meetings.

9 3. A membership interest is personal property. A member has no
10 interest in specific property of the cooperative. All property of the
11 cooperative is property of the cooperative itself.

12 4. The authorized amounts and divisions of patron membership
13 interests and, if authorized, nonpatron membership interests, to be
14 issued by the cooperative may be increased, decreased, established, or
15 altered, in accordance with the bylaws, articles, and sections 351.1000
16 to 351.1228.

17 5. Authorized membership interests may be issued on terms and
18 conditions prescribed in the articles, bylaws, or if not authorized in the
19 articles or bylaws, as determined by the board. A membership interest
20 may not be issued until the subscription price of the membership
21 interest has been paid in money or property provided that the value of
22 any property to be contributed shall be approved and agreed to by the
23 board.

24 6. Unless otherwise set forth in the articles or bylaws, the patron
25 membership interests collectively shall have not less than fifty percent
26 of the cooperative's financial rights.

27 7. Except as otherwise set forth in the articles or bylaws, all the
28 patron membership interests of a cooperative shall:

29 (1) Be of one class, without series, unless the articles or bylaws
30 establish or authorize the board to establish more than one class or one
31 or more series within classes;

32 (2) Be ordinary patron membership interests, be entitled to vote
33 as provided in sections 351.1000 to 351.1228, and have equal rights and
34 preferences in all matters not otherwise provided for by the board and
35 to the extent that the articles or bylaws have fixed the relative rights
36 and preferences of different classes and series; and

37 (3) Share profits and losses and be entitled to distributions as

38 provided in sections 351.1000 to 351.1228.

39 8. The cooperative may solicit and issue nonpatron membership
40 interests on terms and conditions determined by the board, and as
41 otherwise set forth in the articles or bylaws.

42 9. Except as otherwise set forth in the bylaws, a member is not,
43 merely on account of that status, personally liable for the acts, debts,
44 liabilities, or obligations of a cooperative, and as such, a member's
45 membership interest is nonassessable. A member is liable to the
46 cooperative for any unpaid subscription for the membership interest,
47 unpaid membership fees, or a debt for which the member has
48 separately contracted with the cooperative, provided that no third
49 party shall be a beneficiary of this obligation or be entitled to enforce
50 this obligation.

351.1090. 1. Without limiting the authority granted in this
2 section, and unless otherwise stated in the articles or bylaws, a
3 cooperative may divide the membership interests into different classes
4 or series, which may:

5 (1) Be subject to the right of the cooperative to redeem any of
6 such membership interests at a price fixed by the articles, bylaws, or
7 by resolution of the board;

8 (2) Entitle the members to cumulative, partially cumulative, or
9 noncumulative distributions;

10 (3) Have preference over any class or series of membership
11 interests for the payment of distributions of any or all kinds;

12 (4) Be convertible into membership interests of any other class
13 or any series of the same or another class; or

14 (5) Have full, partial, or no voting rights, except as otherwise
15 provided in sections 351.1000 to 351.1228.

16 2. The cooperative, through its articles or bylaws, may create
17 different classes or series of membership interests and may fix the
18 relative rights and preferences of such classes or series, or subject to
19 any restrictions in the articles or bylaws, the board may establish
20 different classes or series of membership interests by a duly adopted
21 resolution which sets forth the designation of such classes or series,
22 and fixes the relative rights and preferences of such classes or
23 series. Any of the rights and preferences of a class or series of
24 membership interests established in the articles, bylaws, or by

25 resolution of the board:

26 (1) May be made dependent upon facts ascertainable outside the
27 articles or bylaws or outside the resolution or resolutions establishing
28 the class or series, if the manner in which the facts operate upon the
29 rights and preferences of the class or series is clearly and expressly set
30 forth in the articles or bylaws or in the resolution or resolutions
31 establishing the class or series; and

32 (2) May include by reference some or all of the terms of any
33 agreements, contracts, or other arrangements entered into by the
34 cooperative in connection with the establishment of the class or series
35 if the cooperative retains at its principal executive office, a copy of the
36 agreements, contracts, or other arrangements or the portions thereof
37 which are included by reference.

351.1093. 1. The membership interests of a cooperative shall be
2 either certificated or uncertificated as set forth in the articles or
3 bylaws or as determined by the board. Each holder of a certificated
4 membership interest or interests are entitled to a certificate of
5 membership interest to be issued by the cooperative in accordance with
6 this section.

7 2. Certificates of membership shall be signed by at least one
8 officer of the cooperative as authorized in the articles, bylaws, or by
9 resolution of the board or, in the absence of such an authorization, by
10 the chief executive officer, president, secretary, or chairman of the
11 board.

12 3. If a person signs a certificate while such person is an
13 authorized signatory under subsection 2 of this section, the certificate
14 may be issued by the cooperative, even if such person has ceased to
15 have that capacity before the certificate is actually issued, with the
16 same effect as if the person had that capacity at the date of its issue.

17 4. If issued, a certificate representing a membership interest or
18 interests of a cooperative shall contain on its face:

19 (1) The name of the cooperative;

20 (2) A statement that the cooperative is organized under the laws
21 of this state and sections 351.1000 to 351.1228;

22 (3) The name of the person to whom the certificate is issued;

23 (4) The number and class of membership interests, and the
24 designation of the series, if any, that the certificate represents;

25 **(5) A statement that the membership interests in the cooperative**
26 **are subject to the articles and bylaws of the cooperative; and**

27 **(6) Restrictions on transfer, if any, including approval of the**
28 **board, first rights of purchase by the cooperative, and other**
29 **restrictions on transfer, which may be stated by reference to the back**
30 **of the certificate where such restrictions may be listed or to another**
31 **document.**

32 **5. A certificate signed as provided in subsection 2 of this section**
33 **is prima facie evidence of the ownership of the membership interests**
34 **referred to in the certificate.**

35 **6. Unless uncertificated membership interests are prohibited by**
36 **the articles or bylaws, a resolution approved by the board may provide**
37 **that some or all of any or all classes and series of its membership**
38 **interests will be uncertificated membership interests. The resolution**
39 **shall not apply to membership interests represented by a certificate**
40 **until the certificate is surrendered to the cooperative. Within a**
41 **reasonable time after the issuance or transfer of uncertificated**
42 **membership interests to a member, the cooperative shall send such**
43 **member the information required by this section to be stated on**
44 **certificates. Except as otherwise expressly provided by the articles,**
45 **bylaws, or sections 351.1000 to 351.1228, the rights and obligations of**
46 **the holders of certificated and uncertificated membership interests of**
47 **the same class and series shall be identical.**

351.1096. 1. A new certificate of membership interest may be
2 **issued under section 351.1093 in the place of one that is alleged to have**
3 **been lost, stolen, or destroyed, upon the filing of an affidavit of lost,**
4 **stolen, or destroyed certificate by the member with the secretary of the**
5 **cooperative.**

6 **2. The issuance of a new certificate under this section shall not**
7 **constitute an overissue of the membership interests it represents, and**
8 **upon any such issue, the replaced certificate shall without further**
9 **action become null and void.**

351.1099. 1. The regular members' meeting shall be held annually
2 **at a time determined by the board, unless otherwise provided for in the**
3 **bylaws.**

4 **2. The regular members' meeting shall be held at the principal**
5 **place of business of the cooperative or at another location as**

6 determined by the bylaws or the board.

7 3. The officers shall submit reports to the members at the regular
8 members' meeting covering the business of the cooperative for the
9 previous fiscal year, including the financial condition of the
10 cooperative as of the close of the previous fiscal year.

11 4. Unless otherwise set forth in sections 351.1000 to 351.1228, the
12 articles, or the bylaws, all directors shall be elected at the regular
13 members' meeting for the terms of office prescribed in the bylaws,
14 except for directors elected at district or unit meetings.

15 5. (1) The cooperative shall give notice of regular members'
16 meetings in accordance with section 351.1216 at least two weeks before
17 the date of the meeting or mailed at least fifteen days before the date
18 of the meeting.

19 (2) The notice shall contain a summary of any amendments to, or
20 restatements of, any bylaw or bylaws adopted by the board since the
21 last annual members' meeting.

22 6. A member may waive notice of a members' meeting. A waiver
23 of notice by a member entitled to receive notice is effective whether
24 given before, at, or after the meeting, and whether given in writing,
25 orally, or by attendance. Attendance by a member at a members'
26 meeting is a waiver of notice of that meeting, except where the member
27 objects at the beginning of the meeting to the transaction of business
28 because the meeting is not lawfully called or convened, or objects
29 before a vote on an item of business because the item may not lawfully
30 be considered at that meeting and does not participate in the
31 consideration of the item at that meeting.

 351.1102. 1. Except as otherwise set forth in the bylaws, special
2 members' meetings may be called by:

3 (1) One or more of the members of the board; or

4 (2) The written petition, submitted to the chairman of the board,
5 of at least twenty percent of the patron members or, if authorized,
6 twenty percent of the nonpatron members, twenty percent of all
7 members, or members representing twenty percent of the membership
8 interests collectively.

9 2. The cooperative shall give notice of a special members'
10 meeting in accordance with section 351.1216 and shall state the time,
11 place, and purpose of the special members' meeting. A special

12 members' meeting notice shall be issued within ten days after the date
13 of the presentation of a members' petition and the special members'
14 meeting shall be held within thirty days after the date of the
15 presentation of the members' petition.

16 3. A member may waive notice of a special members' meeting. A
17 waiver of notice by a member entitled to notice is effective whether
18 given before, at, or after the meeting, and whether given in writing,
19 orally, or by attendance. Attendance by a member at a meeting is a
20 waiver of notice of that meeting, except where the member objects at
21 the beginning of the meeting to the transaction of business because the
22 meeting is not lawfully called or convened, or objects before a vote on
23 an item of business because the item may not lawfully be considered at
24 that meeting and does not participate in the consideration of the item
25 at that meeting.

351.1105. 1. Unless otherwise set forth in the articles or bylaws,
2 the quorum for a members' meeting to transact business shall be ten
3 percent of the total number of members of the cooperative. The total
4 number of members required for a quorum may be more, but in no case
5 less, than ten percent, as set forth in the articles or bylaws.

6 2. In determining whether a quorum is present with respect to
7 a particular question submitted to a vote of the members for which
8 voting by mail or alternative ballot has previously been authorized,
9 members present in person or represented by mail vote or the
10 alternative ballot method shall be counted. The presence of a quorum
11 shall be verified by the chairman of the board or the secretary of the
12 cooperative and shall be reported in the minutes of the meeting.

13 3. An action by the members shall not be valid or legal in the
14 absence of a quorum at the meeting at which the action was taken.

351.1108. 1. To the extent authorized in the articles or the
2 bylaws or as determined by the board, a regular or special members'
3 meeting may be held by any combination of means of remote
4 communication through which the members may participate in the
5 meeting if notice of the meeting was given in accordance with the
6 bylaws and sections 351.1000 to 351.1228 and if the membership
7 interests held by the members so participating in the meeting would be
8 sufficient to constitute a quorum at a meeting. Participation by a
9 member by means of remote communication constitutes presence at the

10 meeting in person or by proxy if all the other requirements of sections
11 351.1000 to 351.1228 for the meeting are met.

12 2. In any members' meeting held where one or more members
13 participates in such meeting by means of remote communication under
14 subsection 1 of this section:

15 (1) The cooperative shall implement reasonable measures to
16 verify that each person deemed present and entitled to vote at the
17 meeting by means of remote communication is a member; and

18 (2) The cooperative shall implement reasonable measures to
19 provide each member participating by means of remote communication
20 with a reasonable opportunity to participate in the meeting, including
21 an opportunity to:

22 (a) Read or hear the proceedings of the meeting substantially
23 concurrently with those proceedings;

24 (b) If allowed by the procedures governing the meeting, have the
25 member's remarks heard or read by other participants in the meeting
26 substantially concurrently with the making of those remarks; and

27 (c) If otherwise entitled, vote on matters submitted to the
28 members.

29 3. Waiver of notice by a member of a meeting by means of
30 authenticated electronic communication may be given in the manner
31 provided for the regular or special members' meeting. Participation in
32 a meeting by means of remote communication described in subsection
33 1 of this section is a waiver of notice of that meeting, except where the
34 member objects at the beginning of the meeting to the transaction of
35 business because the meeting is not lawfully called or convened, or
36 objects before a vote on an item of business because the item may not
37 lawfully be considered at the meeting and does not participate in the
38 consideration of the item at that meeting.

351.1111. 1. Unless otherwise required by sections 351.1000 to
2 351.1228, the articles, or bylaws, the members shall take action by the
3 affirmative vote of the members of a majority of the voting power of the
4 membership interests present and entitled to vote on that item of
5 business at a duly called members' meeting where a quorum is present.

6 2. Unless otherwise required in the articles or bylaws, in any
7 case where a class or series of membership interests is entitled to vote
8 on a particular matter of the cooperative as a class or series by sections

9 351.1000 to 351.1228, the articles, bylaws, or by the terms of such
10 membership interests, then such matter shall also receive, in addition
11 to the affirmative vote required in subsection 1 of this section, the
12 affirmative vote of a majority of the voting power of the membership
13 interests of such class or series at a duly called meeting where a
14 quorum of such class or series is present.

15 3. (1) The articles or bylaws may provide for a greater quorum
16 or voting requirement for members or voting groups than is provided
17 for by sections 351.1000 to 351.1228.

18 (2) An amendment to the articles or bylaws that adds, changes,
19 or deletes a greater quorum or voting requirement shall meet the same
20 quorum requirement and be adopted by the same vote and voting
21 groups required to take action under the quorum and voting
22 requirements then in effect.

351.1114. 1. If the articles or bylaws so provide, any action may
2 be taken by written action signed, or consented to by authenticated
3 electronic communication, by the members who own voting power
4 equal to the voting power required to take the same action at a
5 members' meeting at which a quorum of members were present. If the
6 articles or bylaws do not so provide, an action required or permitted
7 to be taken at a members' meeting may be taken by written action
8 signed, or consented to by authenticated electronic communication by
9 all of the members.

10 2. The written action shall be effective when signed or consented
11 to by authenticated electronic communication by the required number
12 of members unless a different effective time is provided in the written
13 action.

14 3. When written action is permitted to be taken by less than all
15 members, all members shall be notified within a reasonable time of its
16 text and effective date. Unless otherwise provided in the bylaws, a
17 member who does not sign or consent to the written action has no
18 liability for the action or actions taken by the written action.

351.1117. 1. A patron member of a cooperative is entitled to one
2 vote on an issue to be voted upon by patron members, except that if
3 authorized in the articles or bylaws, a patron member may be entitled
4 to additional votes based on patronage criteria as described in section
5 351.1120. On any matter of the cooperative, an affirmative vote of all

6 patron members entitled to vote on such matter, unless a greater or
7 lesser amount is required by sections 351.1000 to 351.1228, the bylaws,
8 or the articles, shall be binding on all patron members. A nonpatron
9 member has the voting rights in accordance with his or her nonpatron
10 membership interest as granted in the articles or bylaws, subject to the
11 provisions of sections 351.1000 to 351.1228.

12 2. Unless otherwise set forth in the articles or bylaws, a
13 member's vote at a members' meeting shall be in person, by mail, if a
14 mail vote is authorized by the board, by alternative ballot if authorized
15 by the board, or by proxy as set forth in subsection 3 of this section.

16 3. Unless otherwise set forth in the articles or bylaws:

17 (1) All proxies shall be in writing and executed by the member
18 issuing such proxy, or such member's attorney in fact. Such proxy shall
19 be filed with the chairman of the board before or at the time of a
20 meeting in order to be effective at that meeting. No proxy shall be
21 valid after eleven months from the date of its execution unless
22 otherwise provided in the proxy. No appointment is irrevocable unless
23 the appointment is coupled with an interest in the membership
24 interests of the cooperative;

25 (2) A copy, facsimile, or other reproduction of the original
26 written proxy may be substituted or used in lieu of the original written
27 proxy for any purpose for which the original written proxy could be
28 used, if the copy, facsimile, or other reproduction is a complete and
29 legible reproduction of the entire original written proxy;

30 (3) An appointment of a proxy for membership interests owned
31 jointly by two or more members is valid if signed by any one of those
32 members, unless the cooperative receives from any one of those
33 members written notice either denying the authority of that person to
34 appoint a proxy or appointing a different proxy, in which case the
35 proxy will be deemed invalid. If the cooperative shall receive
36 conflicting proxies signed by the different owners of the membership
37 interests, then all proxies submitted for such membership interests will
38 be deemed invalid;

39 (4) An appointment may be terminated at will unless the
40 appointment is coupled with an interest, in which case it shall not be
41 terminated except in accordance with the terms of an agreement, if
42 any, between the parties to the appointment. Termination may be made

43 by filing written notice of the termination of the appointment with the
44 cooperative or by filing a new written appointment of a proxy with the
45 cooperative. Termination in either manner revokes all prior proxy
46 appointments and is effective when filed with the cooperative.

47 4. (1) A cooperative may provide in the articles or bylaws that
48 units, districts, or other type of classification authorized under sections
49 351.1000 to 351.1228 of members are entitled to be represented at
50 members' meetings by delegates chosen by the members of such unit,
51 district, or other classification. The delegates may vote on matters at
52 the members' meeting in the same manner as a member. The delegates
53 may only exercise the voting rights on a basis and with the number of
54 votes as prescribed in the articles or bylaws.

55 (2) If the approval of a certain portion of the members is
56 required for adoption of amendments, a dissolution, a merger, a
57 consolidation, or a sale of assets, the votes of delegates shall be counted
58 as votes by the members represented by the delegate.

59 5. The board may fix a record date not more than sixty days, or
60 a shorter time period as provided in the articles or bylaws, before the
61 date of a members' meeting as the date for the determination of the
62 owners of membership interests entitled to notice of and entitled to
63 vote at a meeting. When a record date is so fixed, only members on that
64 date are entitled to notice of and permitted to vote at that members'
65 meeting.

66 6. The articles or bylaws may give or prescribe the manner of
67 giving a creditor, security holder, or other nonmember, other than a
68 vote by proxy under subsection 3 of this section or as otherwise
69 allowed under section 351.1123, governance rights in the cooperative.
70 If not otherwise provided in the articles or bylaws or by sections
71 351.1000 to 351.1228, creditors, security holders, or other nonmembers
72 shall not have any governance rights in the cooperative.

73 7. Membership interests owned by two or more persons may be
74 voted by any one of such persons unless the cooperative receives
75 written notice from any one of such persons denying the authority of
76 the other person or persons to vote those membership interests, in
77 which case any vote of such membership interests shall be deemed
78 invalid. Jointly owned membership interests shall have one vote,
79 regardless of the number of owners, unless otherwise provided under

80 subsection 1 of this section, the articles, or the bylaws. If the
81 cooperative receives conflicting votes for the same membership
82 interests, then all votes cast by such membership interests will be
83 deemed invalid.

84 8. Except as provided in subsection 7 of this section, an owner
85 of a nonpatron membership interest or a patron membership interest
86 with more than one vote may vote any portion of the membership
87 interest in any way the member chooses, provided that such member is
88 entitled to vote on the particular matter at issue. If a member votes
89 without designating the proportion voted in a particular way, the
90 member is considered to have voted all of the membership interest in
91 that way.

92 9. Any ballot, vote, authorization, or consent submitted by
93 electronic communication under sections 351.1000 to 351.1228 may be
94 revoked by the member submitting a written revocation including
95 another ballot, vote, authorization, or consent so long as the revocation
96 is received by a director or an officer of the cooperative which has
97 been designated, under the bylaws or by resolution of the board, to
98 receive such revocation at or before the meeting or before an action
99 without a meeting is effective. A ballot, vote, authorization, or consent
100 submitted by a member who attends a members' meeting shall
101 automatically and without further action revoke such member's
102 previous electronic ballot, vote, authorization, or consent, if any.

351.1120. 1. A cooperative, by its articles or bylaws, may
2 authorize patron members to have an additional vote for:

3 (1) A stipulated amount of business transacted between the
4 patron member and cooperative;

5 (2) Where the patron member is another cooperative, a stipulated
6 number of patron members of such member;

7 (3) A certain stipulated amount of equity allocated to or held by
8 a patron member in the cooperative;

9 (4) A combination of methods in subdivisions (1) to (3) of this
10 subsection.

11 2. A cooperative that is organized into units or districts of
12 patron members may, by the articles or bylaws, authorize the delegates
13 elected by its patron members to have an additional vote for:

14 (1) A stipulated amount of business transacted between the

15 **patron members in the units or districts and the cooperative;**

16 **(2) A certain stipulated amount of equity allocated to or held by**
17 **the patron members of the units or districts of the cooperative; or**

18 **(3) A combination of methods in subdivisions (1) and (2) of this**
19 **subsection.**

351.1123. Unless otherwise set forth in the articles or bylaws:

2 **(1) Membership interests of a cooperative owned by another**
3 **business entity as of the record date may be voted by the chair, chief**
4 **executive officer, or an officer of that organization authorized to vote**
5 **the membership interest by such business entity;**

6 **(2) Subject to section 351.1126, membership interests held in the**
7 **name of a member, but under the control of another person as such**
8 **member's personal representative, administrator, executor, guardian,**
9 **conservator, or similar position may be voted by such person, either in**
10 **person or by proxy, in the place of the member upon the filing of notice**
11 **to the cooperative;**

12 **(3) Subject to section 351.1126, membership interests in the name**
13 **of a trustee in bankruptcy or a receiver as of the record date are not**
14 **eligible to vote and may not be voted by such trustee or receiver;**

15 **(4) The grant of a security interest in a membership interest does**
16 **not entitle the holders of the security interest to vote.**

351.1126. A cooperative that holds ownership interests of another
2 **business entity may, by direction of the board, elect or appoint a**
3 **person to represent the cooperative at a meeting of the business**
4 **entity. The representative shall have authority to represent the**
5 **cooperative and may cast the cooperative's vote at the business entity's**
6 **meeting.**

351.1129. 1. A cooperative may, by resolution of the board and
2 **without first obtaining member approval, upon those terms and**
3 **conditions and for those considerations, which may be money,**
4 **securities, or other instruments for the payment of money or other**
5 **property, as the board considers expedient:**

6 **(1) Sell, lease, transfer, or otherwise dispose of its property and**
7 **assets in the usual and regular course of its business;**

8 **(2) Sell, lease, transfer, or otherwise dispose of a portion but not**
9 **all or substantially all of its property and assets not in the usual and**
10 **regular course of its business;**

11 **(3) Sell, lease, transfer, or otherwise dispose of all or**
12 **substantially all of its property and assets not in the usual and regular**
13 **course of its business if:**

14 **(a) The cooperative has given written notice to the members of**
15 **the impending or potential disposition prior to the disposition; and**

16 **(b) The board has determined that failure to proceed with the**
17 **disposition would be adverse to the interests of the members and the**
18 **cooperative;**

19 **(4) Grant a security interest in all or substantially all of its**
20 **property and assets whether or not in the usual and regular course of**
21 **its business;**

22 **(5) Transfer any or all of its property to a business entity, all the**
23 **ownership interests of which are owned by the cooperative; or**

24 **(6) For purposes of debt financing, transfer any or all of its**
25 **property to a special purpose entity owned or controlled by the**
26 **cooperative for an asset securitization.**

27 **2. Except as otherwise provided in the bylaws or in subdivision**
28 **(3) of subsection 1 of this section, the board may sell, lease, transfer, or**
29 **otherwise dispose of all or substantially all of the cooperative's**
30 **property and assets, including its good will, not in the usual and**
31 **regular course of its business, upon those terms and conditions and for**
32 **those considerations which may be money, securities, or other**
33 **instruments for the payment of money or other property when such**
34 **action is approved by the members at a regular or special members'**
35 **meeting in accordance with section 351.1111. Written notice of the**
36 **meeting shall be given to the members and shall state that a purpose**
37 **of the meeting is to consider the sale, lease, transfer, or other**
38 **disposition of all or substantially all of the property and assets of the**
39 **cooperative.**

40 **3. The transferee shall be liable for the debts, obligations, and**
41 **liabilities of the transferor only to the extent provided in the contract**
42 **or agreement between the transferee and the transferor or to the extent**
43 **provided by law.**

351.1132. 1. A restriction on the transfer of membership interests
2 **of a cooperative may be imposed in the articles, bylaws, by a resolution**
3 **adopted by the members, or by an agreement among or other written**
4 **action by a number of members or holders of other membership**

5 interests or among them and the cooperative. A restriction is not
6 binding with respect to membership interests issued prior to the
7 adoption of the restriction, unless the holders of those membership
8 interests are parties to the agreement or voted in favor of the
9 restriction.

10 2. The articles or bylaws may, but shall not be required to,
11 provide that the cooperative or the patron members, individually or
12 collectively, have the first right of purchasing the membership interests
13 of any membership interests, or class thereof, offered for sale upon the
14 terms and conditions as set forth in the articles or bylaws. A
15 repurchase of the membership interests by the cooperative shall render
16 such membership interests null and void.

17 3. Except as provided in subsection 4 of this section or as
18 otherwise provided in the articles or bylaws, a member's financial
19 rights are transferable in whole or in part. Such an assignment does
20 not dissolve the cooperative and does not entitle or empower the
21 assignee to become a member, to exercise any governance rights, to
22 receive any notices from the cooperative, or to cause dissolution of the
23 cooperative.

24 4. A restriction on the assignment of financial rights may be
25 imposed in the articles or bylaws, by a resolution adopted by the board,
26 by a resolution adopted by the members, by an agreement among or
27 other written action by the members, or by an agreement among or
28 other written action by the members and the cooperative. A restriction
29 is not binding with respect to financial rights reflected in the required
30 records before the adoption of the restriction, unless the owners of
31 those financial rights are parties to the agreement or voted in favor of
32 the restriction. Once a restriction is imposed under this subsection,
33 such restriction cannot be amended or removed by the members unless
34 by an affirmative two-thirds majority vote of the members at an annual
35 or special members' meeting.

36 5. On application to a court of competent jurisdiction by any
37 judgment creditor of a member, the court may charge a member's or an
38 assignee's financial rights with payment of the unsatisfied amount of
39 the judgment with interest. To the extent so charged, the judgment
40 creditor has only the rights of an assignee of a member's financial
41 rights under this section. Sections 351.1000 to 351.1228 shall not

42 **deprive any member or assignee of financial rights of the benefit of any**
43 **exemption laws applicable to the membership interest. This section**
44 **shall be the sole and exclusive remedy of a judgment creditor with**
45 **respect to the judgment debtor's membership interest.**

46 **6. Subject to section 351.1123 and except as otherwise set forth**
47 **in the bylaws, if a member who is an individual dies or a court of**
48 **competent jurisdiction adjudges the member to be incompetent to**
49 **manage the member's person or property, or an order for relief under**
50 **the bankruptcy code is entered with respect to the member, the**
51 **member's executor, administrator, guardian, conservator, trustee, or**
52 **other legal representative may exercise all of the member's rights for**
53 **the purpose of settling the estate or administering the member's**
54 **property. Subject to section 351.1123, if a member is a business entity,**
55 **trust, or other entity and is dissolved, terminated, or placed by a court**
56 **in receivership or bankruptcy, the powers of that member may be**
57 **exercised by its legal representative or successor. The cooperative**
58 **shall have the first right to repurchase the membership interest of such**
59 **deceased, incompetent, or bankrupt member from such member's**
60 **executor, administrator, guardian, conservator, trustee, or other legal**
61 **representative, upon such terms and as set forth in the bylaws, and**
62 **shall have the first right to repurchase the membership interest of such**
63 **dissolved, terminated, or bankrupt business entity, trust, or other**
64 **business entity.**

351.1135. 1. Subject to any restrictions in sections 351.1000 to
2 **351.1228, the articles, or bylaws regarding patron and nonpatron**
3 **membership interests, and only when authorized by the board, a**
4 **cooperative may accept contributions which may be patron or**
5 **nonpatron membership contributions under this section, make**
6 **contribution agreements under section 351.1138, and make contribution**
7 **rights agreements under section 351.1141.**

8 **2. Except as otherwise set forth in the bylaws, a person may**
9 **make a contribution to a cooperative:**

10 **(1) By paying money or transferring the ownership of an interest**
11 **in property to the cooperative or rendering services to or for the**
12 **benefit of the cooperative; or**

13 **(2) Through a written obligation signed by the person to pay**
14 **money or transfer ownership of an interest in property to the**

15 cooperative or to perform services to or for the benefit of the
16 cooperative.

17 3. No purported contribution shall be treated or considered as
18 a contribution, unless:

19 (1) The board accepts the contribution on behalf of the
20 cooperative and in that acceptance describes the contribution,
21 including terms of future performance, if any, and agrees to and states
22 the value being accorded to the contribution; and

23 (2) The fact of contribution and the contribution's accorded
24 value are both reflected in the required records of the cooperative.

25 4. The determination of the board as to the amount or fair value
26 or the fairness to the cooperative of the contribution accepted or to be
27 accepted by the cooperative or the terms of payment or performance,
28 including under a contribution agreement under section 351.1138, and
29 a contribution rights agreement under section 351.1141, are presumed
30 to be proper if they are made in good faith and on the basis of
31 accounting methods, or a fair valuation or other method, reasonable in
32 the circumstances.

351.1138. 1. A contribution agreement, whether made before or
2 after the formation of the cooperative, is not enforceable against the
3 would-be contributor unless it is in writing and signed by the would-be
4 contributor.

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

10 3. A contribution agreement, whether made before or after the
11 formation of a cooperative, shall be paid or performed in full at the
12 time or times, or in the installments, if any, specified in the
13 contribution agreement. In the absence of a provision in the
14 contribution agreement specifying the time at which the contribution
15 is to be paid or performed, the contribution shall be paid or performed
16 at the time or times determined by the board.

17 4. (1) Unless otherwise provided in the contribution agreement,
18 in the event of default in the payment or performance of an installment
19 or call when due, the cooperative may proceed to collect the amount

20 due in the same manner as a debt due the cooperative. If a would-be
21 contributor does not make a required contribution of property or
22 services, the cooperative shall require the would-be contributor to
23 contribute cash equal to that portion of the value, as determined in
24 section 351.1135, of the contribution that has not been made.

25 (2) If the amount due under a contribution agreement remains
26 unpaid for a period of twenty days after written notice of demand for
27 payment has been given to the delinquent would-be contributor, the
28 cooperative may:

29 (a) Terminate the contribution agreement and automatically
30 revoke and cancel any membership interest issued to the would-be
31 contributor under the contribution agreement, and retain any portion
32 of the contribution previously paid by the would-be contributor; or

33 (b) Pursue any other remedy available to the cooperative at law
34 or equity.

35 5. Unless otherwise provided in the articles or bylaws, a
36 would-be contributor's rights under a contribution agreement may not
37 be assigned, in whole or in part, to another person unless such
38 assignment is approved by a majority of the board or unanimously by
39 the members, either of which may be by written consent, and upon such
40 terms as set forth in the bylaws.

351.1141. 1. Subject to any restrictions in the articles or bylaws,
2 a cooperative may enter into contribution rights agreements under the
3 terms, provisions, and conditions fixed by the board.

4 2. Any contribution rights agreement shall be in writing and the
5 writing shall state in full, summarize, or include by reference all of the
6 agreement's terms, provisions, and conditions of the rights to make
7 contributions.

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

351.1144. 1. Unless otherwise set forth in the articles or bylaws,
2 the board shall prescribe the allocation of profits and losses between
3 patron membership interests collectively and any other membership
4 interests, which profits and losses may be allocated between patron

5 membership interests collectively and other membership interests on
6 the basis of the value of patronage by the patron membership interests
7 collectively and other membership interests, or as otherwise
8 determined by the board. Unless otherwise stated in the articles or
9 bylaws, the allocation of profits to the patron membership interests
10 collectively shall not be less than fifty percent of the total profits in
11 any fiscal year. In no event shall the allocation of profits to the patron
12 membership interests collectively be less than fifteen percent of the
13 total profits in any fiscal year.

14 2. Unless otherwise set forth in the bylaws, the board shall
15 prescribe the distribution of cash or other assets of the cooperative
16 among the membership interests of the cooperative. If not otherwise
17 provided in the bylaws, distribution shall be made to the patron
18 membership interests collectively and other members on the basis of
19 the number of membership interests issued to such member in relation
20 to the total amount of membership interests then issued and
21 outstanding. Unless otherwise set forth in the articles or bylaws, the
22 distributions to patron membership interests collectively shall not be
23 less than fifty percent of the total distributions in any fiscal year. In
24 no event shall the distributions to patron membership interests
25 collectively be less than fifteen percent of the total distributions in any
26 year.

351.1147. 1. A cooperative may set aside a portion of net income
2 allocated to the patron membership interests as the board determines
3 advisable to create or maintain a capital reserve.

4 2. Except as otherwise set forth in the bylaws, in addition to a
5 capital reserve, the board may, for patron membership interests:

6 (1) Set aside an amount, to be determined by the board, of the
7 annual net income of the cooperative for promoting and encouraging
8 the cooperative;

9 (2) Set aside and retain that portion of the annual net income as
10 determined by the board to be necessary to meet the upcoming and
11 ongoing capital needs of the cooperative; and

12 (3) Establish and accumulate reserves for advancement of the
13 cooperative's business purposes.

14 3. Net income allocated to patron members in excess of dividends
15 on equity and additions to reserves shall be distributed to patron

16 members on the basis of patronage. A cooperative may, but is not
17 obligated to, establish pooling arrangements, allocation units, or both,
18 as determined by the board, whether the units are functional,
19 divisional, departmental, geographic, or otherwise and may account for
20 and distribute net income to patrons on the basis of such allocation
21 units or pooling arrangements. A cooperative, as determined by the
22 board, may offset the net loss of an allocation unit, pooling
23 arrangement, or both, against the net income of other allocation units
24 or pooling arrangements, and may set off any amounts owed to the
25 cooperative by a member from amounts otherwise distributable to a
26 member.

27 4. Unless otherwise set forth in the bylaws, distribution of net
28 income shall be made at least annually. The board shall present to the
29 members at their annual meeting a report covering the operations of
30 the cooperative during the preceding fiscal year.

31 5. A cooperative may distribute net income to patron members
32 in cash, capital credits, allocated patronage equities, revolving fund
33 certificates, scrip or its own or other securities as determined by the
34 board.

35 6. The cooperative, through its bylaws or through a separate
36 agreement by and between the member and the cooperative, may
37 obligate the member to accept the method of taxation of the member's
38 distribution as determined by the board, regardless of the form of such
39 distribution.

40 7. The cooperative may provide in the bylaws that nonmember
41 patrons are allowed to participate in the distribution of net income
42 payable to patron members on equal or unequal terms with patron
43 members.

44 8. Except as otherwise set forth in the bylaws, if a nonmember
45 patron with patronage credits is not qualified or eligible for
46 membership, a refund due may be credited to the nonpatron's
47 individual account. The board may issue a certificate of interest to
48 reflect the credited amount.

351.1150. 1. A cooperative may, in lieu of paying or delivering to
2 the state the unclaimed property specified in its report of unclaimed
3 property filed under section 447.539:

4 (1) Distribute the unclaimed property to a business entity or

5 organization that is exempt from taxation; or

6 (2) Retain the unclaimed property as operational reserve funds.

7 2. The right of an owner to unclaimed property held by a
8 cooperative is extinguished when the property is disbursed by the
9 cooperative to a tax exempt organization or retained by the cooperative
10 as set forth in subsection 1 of this section if:

11 (1) A reasonable effort to distribute the property to the member
12 has been made by the cooperative; and

13 (2) (a) Notice that the payment is available has been mailed to
14 the last known address of the person shown by the records to be
15 entitled to the property; or

16 (b) If the member's address is unknown, notice is published in an
17 official publication of the cooperative; and

18 (3) The cooperative has received no response from the member
19 within the two-year period following the date such notice was mailed
20 or published as the case may be.

351.1153. 1. As used in this section and sections 351.1156 and
2 351.1159, the following words shall mean:

3 (1) "Consolidated entity", that entity, or those entities, which are
4 being consolidated into the new entity as described in the plan of
5 consolidation;

6 (2) "Merging entity", that entity, or those entities, which are
7 merging into the surviving entity as described in the plan of merger;

8 (3) "New entity", that entity created due to a consolidation of
9 entities as described in the plan of consolidation;

10 (4) "Ownership interest", shares, membership interests which
11 shall include patron and nonpatron membership interests in the case
12 of a cooperative, or other instances of ownership, whether certificated
13 or uncertificated, in a business entity;

14 (5) "Surviving entity", that entity into which all other merging
15 entities shall merge as described in the plan of merger.

16 2. (1) Unless otherwise prohibited by Missouri statute or the
17 statutes of a foreign jurisdiction, cooperatives organized under the
18 laws of this state may merge or consolidate with each other, one or
19 more domestic business entity, one or more foreign business entity, or
20 any combination thereof, by complying with:

21 (a) The provisions of this section;

22 **(b) The provisions of the law of the state of domicile of the**
23 **surviving or new entity; and**

24 **(c) The provisions of the law of the state of domicile of all**
25 **merging entities.**

26 **(2) Mergers or consolidations involving domestic business**
27 **entities shall be subject to the revised statutes of Missouri governing**
28 **such domestic business entity.**

29 **(3) This subsection shall not authorize a foreign business entity**
30 **to act in any way in violation of the law governing the foreign business**
31 **entity.**

32 **3. To initiate a merger or consolidation under subsection 2 of**
33 **this section, a written plan of merger or consolidation shall be**
34 **prepared by the board or by a committee selected by the board to**
35 **prepare a plan. The plan shall state:**

36 **(1) The names and states of domicile of the cooperatives,**
37 **domestic business entities, or foreign business entities in a**
38 **consolidation, or the names and state of domicile of each merging**
39 **entity;**

40 **(2) The name and state of domicile of the surviving or new**
41 **entity;**

42 **(3) The manner and basis of converting ownership interests of**
43 **the constituent domestic cooperatives in a consolidation, or the**
44 **merging entities in a merger into membership or ownership interests**
45 **in the surviving or new entity;**

46 **(4) The terms of the merger or consolidation;**

47 **(5) Provided the surviving entity shall be a cooperative subject**
48 **to sections 351.1000 to 351.1228, the election by the cooperative of**
49 **either a corporate or partnership tax structure under federal income**
50 **tax law;**

51 **(6) The proposed effect of the consolidation or merger on the**
52 **ownership interests of the members which shall include patron and**
53 **nonpatron members in the case of a cooperative, shareholders, or**
54 **owners of the new or surviving entity, as the case may be; and**

55 **(7) For a consolidation, the plan shall contain the articles of the**
56 **entity or organizational documents to be filed with the state in which**
57 **the new entity is organized, including any filings in Missouri.**

58 **4. The board shall mail or otherwise transmit or deliver notice**

59 of the merger or consolidation to each member in the same manner as
60 notice of a regular or special members' meeting is given. The notice
61 shall contain the full text of the plan, and the time and place of the
62 meeting at which the plan will be considered.

63 5. (1) A plan of merger or consolidation shall be adopted by a
64 cooperative as provided in this subsection.

65 (2) A plan of merger or consolidation shall be adopted if:

66 (a) A quorum of the members eligible to vote is registered as
67 being present or represented by mail vote or alternative ballot at the
68 members' meeting; and

69 (b) The plan is approved by the patron members, or if otherwise
70 provided in the articles or bylaws, is approved by a majority of the
71 votes cast in each class of votes cast, or for a cooperative with articles
72 or bylaws requiring more than a majority of the votes cast or other
73 conditions for approval, the plan is approved by a proportion of the
74 votes cast or a number of total members as required by the articles or
75 bylaws and the conditions for approval in the articles or bylaws have
76 been satisfied.

77 (3) After the plan has been adopted, articles of merger or articles
78 of consolidation stating that the plan was adopted according to this
79 subsection shall be signed by an authorized representative of each of
80 the merging or consolidated entities, and an authorized representative
81 of the new or surviving entity. A copy of the plan shall be attached to
82 such articles of merger or consolidation.

83 (4) The articles of merger or consolidation shall be filed in the
84 office of the secretary of state.

85 (5) For a merger, the articles of the surviving cooperative subject
86 to sections 351.1000 to 351.1228 are deemed amended to the extent
87 provided in the articles of merger.

88 (6) Unless a later date is provided in the plan, the merger or
89 consolidation is effective when the articles of merger or consolidation
90 are filed in the office of the secretary of state or the appropriate office
91 of another jurisdiction.

92 (7) In the case of a merger, the secretary of state shall issue a
93 certificate of merger following the filing of the articles of merger by the
94 secretary of state.

95 (8) In the case of a consolidation, the secretary of state shall

96 issue a certificate of organization following the filing of the articles of
97 consolidation by the secretary of state.

98 6. (1) After the effective date:

99 (a) In the case of a merger, the merging entity or entities and the
100 surviving entity shall become a single entity, and the separate
101 existence of each merging entity that is a party to the plan of merger
102 shall cease;

103 (b) In the case of a consolidation, the new entity shall be formed
104 and the separate existence of each consolidated domestic or foreign
105 business entity that is a party to the plan of consolidation shall cease.

106 (2) The surviving or new entity possesses all of the rights and
107 property of each of the merging or consolidated entities and is
108 responsible for all their obligations. The title to property of the
109 merging or consolidated entity or entities is vested in the surviving or
110 new entity without reversion or impairment of the title caused by the
111 merger or consolidation.

112 (3) If it shall be the case that a domestic or foreign business
113 entity not organized as a cooperative association but operating on a
114 cooperative basis under the provisions of subchapter T of the Internal
115 Revenue Code of 1986, as amended, shall merge into a cooperative
116 under sections 351.1000 to 351.1228, then the bylaws and other
117 cooperative agreements related to such entity shall be allowed to
118 govern without further amendment and the surviving entity may
119 continue to operate in the same manner as the merging entity so long
120 as such operations, bylaws, or other cooperative agreements do not
121 directly violate sections 351.1000 to 351.1228.

351.1156. 1. A parent cooperative owning at least ninety percent
2 of the outstanding ownership interests in a subsidiary business entity,
3 whether directly or indirectly through related organizations, may
4 merge the subsidiary business entity into itself or into any other
5 subsidiary of which at least ninety percent of the outstanding
6 ownership interests is owned by the parent cooperative, whether
7 directly or indirectly through related organizations, without a vote of
8 the members of itself or any subsidiary business entity or may merge
9 itself, or itself and one or more of the subsidiary business entities, into
10 one of the subsidiary business entities under this section. A resolution
11 approved by the affirmative vote of a majority of the directors of the

12 **parent cooperative present shall set forth a plan of merger that**
13 **contains:**

14 **(1) The name and states of domicile of the subsidiary business**
15 **entity or entities, the name of the parent, and the name of the surviving**
16 **entity;**

17 **(2) The manner and basis of converting the ownership interests**
18 **of the subsidiary business entity or business entities or parent into**
19 **ownership interests of the parent, subsidiary, or other business entity**
20 **or, in the whole or in part, into money or other property;**

21 **(3) If the parent is a merging entity, a provision for the pro rata**
22 **issuance of ownership interests of the surviving entity to the holders**
23 **of membership interests of the parent on surrender of any certificates**
24 **for shares of the parent;**

25 **(4) If the surviving entity is a subsidiary, a statement of any**
26 **amendments to the articles of incorporation, organization or**
27 **association, as the case may be, of the surviving entity that will be part**
28 **of the merger;**

29 **(5) If the parent is the surviving entity, it may change its**
30 **cooperative name, without a vote of its members, by the inclusion of a**
31 **provision to that effect in the resolution of merger setting forth the**
32 **plan of merger that is approved by the affirmative vote of a majority of**
33 **the directors of the parent. Upon the effective date of the merger, the**
34 **name of the parent shall be changed; and**

35 **(6) If the parent is a merging entity, the resolution is not**
36 **effective unless it is also approved by the affirmative vote of the**
37 **holders of two-thirds of the voting power of all membership interests**
38 **of the parent entitled to vote at a regular or special members' meeting**
39 **if the parent is a cooperative, or in accordance with the laws under**
40 **which it is organized if the parent is another domestic business entity**
41 **or a foreign business entity or cooperative.**

42 **2. Notice of the action, including a copy of the plan of merger,**
43 **shall be given to each member, other than the parent and any**
44 **subsidiary of each subsidiary that is a constituent cooperative in the**
45 **merger before, or within ten days after, the effective date of the**
46 **merger.**

47 **3. Articles of merger shall be prepared that contain:**

48 **(1) The name and states of domicile of each merging entity and**

49 the name and states of domicile of the surviving entity;

50 (2) The plan of merger; and

51 (3) A statement that the plan of merger has been approved by the
52 parent under this section.

53 4. The articles of merger shall be signed on behalf of the parent
54 and filed with the secretary of state.

55 5. The secretary of state shall issue a certificate of merger to the
56 surviving entity or its legal representative.

351.1159. 1. After a plan of merger has been approved by the
2 members entitled to vote on the approval of the plan and before the
3 effective date of the plan, the plan may be abandoned by the same vote
4 that approved the plan.

5 2. A plan of merger may be abandoned before the effective date
6 of the plan by a resolution of the board of any surviving entity or
7 merging entity, subject to the contract rights of any other person under
8 the plan. If a plan of merger is with a foreign business entity, the plan
9 of merger may be abandoned before the effective date of the plan by a
10 resolution of the foreign business entity adopted according to the laws
11 of the state under which the foreign business entity is organized,
12 subject to the contract rights of any other person under the plan. If the
13 plan of merger is with a domestic business entity, the plan of merger
14 may be abandoned by the domestic business entity in accordance with
15 the provisions of the revised statutes of Missouri, subject to the
16 contractual rights of any other person under the plan.

17 3. If articles of merger have been filed with the secretary of
18 state, but have not yet become effective, the constituent organizations,
19 or any one of them, shall file with the secretary of state articles of
20 abandonment that contain:

21 (1) The names of the constituent organizations;

22 (2) The provisions of this section under which the plan is
23 abandoned and the text of the resolution abandoning the plan.

351.1162. A cooperative may be dissolved by the affirmative vote
2 of two-thirds of the members or by order of the court.

351.1165. Before a cooperative begins dissolution, a notice of
2 intent to dissolve shall be filed with the secretary of state. The notice
3 shall contain:

4 (1) The name of the cooperative;

5 **(2) The date and place of the members' meeting at which the**
6 **resolution was approved; and**

7 **(3) A statement that the requisite vote of the members approved**
8 **the proposed dissolution.**

351.1168. 1. After the notice of intent to dissolve has been filed
2 **with the secretary of state, the board, or the officers acting under the**
3 **direction of the board shall proceed as soon as possible:**

4 **(1) To collect or make provision for the collection of all debts**
5 **due or owing to the cooperative, including unpaid subscriptions for**
6 **shares; and**

7 **(2) To pay or make provision for the payment of all debts,**
8 **obligations, and liabilities of the cooperative according to their**
9 **priorities.**

10 **2. After the notice of intent to dissolve has been filed with the**
11 **secretary of state, the board may sell, lease, transfer, or otherwise**
12 **dispose of all or substantially all of the property and assets of the**
13 **dissolving cooperative without a vote of the members.**

14 **3. Tangible and intangible property, including money, remaining**
15 **after the discharge of the debts, obligations, and liabilities of the**
16 **cooperative shall be distributed to the members and former members**
17 **as provided in the articles or bylaws, which may be on the basis of such**
18 **member's patronage with the cooperative, unless otherwise provided**
19 **by law. If previously authorized by the members, the tangible and**
20 **intangible property of the cooperative may be liquidated and disposed**
21 **of at the discretion of the board.**

351.1171. 1. Dissolution proceedings may be revoked before the
2 **articles of dissolution are filed with the secretary of state.**

3 **2. The board may call a members' meeting to consider the**
4 **advisability of revoking the dissolution proceedings. The question of**
5 **the proposed revocation shall be submitted to the members at the**
6 **members' meeting called to consider the revocation. The dissolution**
7 **proceedings are revoked if the proposed revocation is approved at the**
8 **members' meeting by a majority of the members of the cooperative or**
9 **for a cooperative with articles or bylaws requiring a greater number of**
10 **members, the number of members required by the articles or bylaws.**

11 **3. Revocation of dissolution proceedings is effective when a**
12 **notice of revocation is filed with the secretary of state. After the notice**

13 is filed, the cooperative may resume business.

351.1174. The claim of a creditor or claimant against a dissolving
2 cooperative is barred if the claim has not been enforced by initiating
3 legal, administrative, or arbitration proceedings concerning the claim
4 by two years after the date the notice of intent to dissolve is filed with
5 the secretary of state.

351.1177. 1. Articles of dissolution of a cooperative shall be filed
2 with the secretary of state after payment of the claims of all known
3 creditors and claimants has been made or provided for and the
4 remaining property has been distributed by the board. The articles of
5 dissolution shall state:

6 (1) That all debts, obligations, and liabilities of the cooperative
7 have been paid or discharged or adequate provisions have been made
8 for them or time periods allowing claims have run and other claims are
9 not outstanding;

10 (2) That the remaining property, assets, and claims of the
11 cooperative have been distributed among the members or under a
12 liquidation authorized by the members; and

13 (3) That legal, administrative, or arbitration proceedings by or
14 against the cooperative are not pending or adequate provision has been
15 made for the satisfaction of a judgment, order, or decree that may be
16 entered against the cooperative in a pending proceeding.

17 2. The cooperative is dissolved when the articles of dissolution
18 have been filed with the secretary of state.

19 3. The secretary of state shall issue to the dissolved cooperative
20 or its legal representative, a certificate of dissolution that contains:

21 (1) The name of the dissolved cooperative;

22 (2) The date the articles of dissolution were filed with the
23 secretary of state; and

24 (3) A statement that the cooperative is dissolved.

351.1180. After a notice of intent to dissolve has been filed with
2 the secretary of state and before a certificate of dissolution has been
3 issued, the cooperative or, for good cause shown, a member or creditor
4 may apply to a court within the county where the registered address is
5 located to have the dissolution conducted or continued under the
6 supervision of the court.

351.1183. 1. A court may grant equitable relief that it deems just

2 and reasonable in the circumstances or may dissolve a cooperative and
3 liquidate its assets and business:

4 (1) In a supervised voluntary dissolution that is applied for by
5 the cooperative;

6 (2) In an action by a majority of the members when it is
7 established that:

8 (a) The directors or the persons having the authority otherwise
9 vested in the board are deadlocked in the management of the
10 cooperative's affairs and the members are unable to break the
11 deadlock;

12 (b) The board or those in control of the cooperative have
13 breached their fiduciary duties to the members;

14 (c) The members are so divided in voting power that, for a
15 period that includes the time when two consecutive regular members'
16 meetings were held, they have failed to elect successors to directors
17 whose terms have expired or would have expired upon the election and
18 qualification of their successors;

19 (d) The cooperative assets are being misapplied or wasted; or

20 (e) The period of duration as provided in the articles has expired
21 and has not been extended as provided in sections 351.1000 to 351.1228;
22 and

23 (3) In an action by a creditor when:

24 (a) The cooperative has admitted in writing that the claim of the
25 creditor against the cooperative is due and owing and it is established
26 that the cooperative is unable to pay its debts in the ordinary course
27 of business; or

28 (b) In an action by the attorney general to dissolve the
29 cooperative in accordance with sections 351.1000 to 351.1228 when it is
30 established that a decree of dissolution is appropriate.

31 2. In determining whether to order equitable relief or
32 dissolution, the court shall take into consideration the financial
33 condition of the cooperative but shall not refuse to order equitable
34 relief or dissolution solely on the grounds that the cooperative has
35 accumulated operating net income or current operating net income.

36 3. In deciding whether to order dissolution of the cooperative,
37 the court shall consider whether lesser relief suggested by one or more
38 parties, such as a form of equitable relief or a partial liquidation,

39 would be adequate to permanently relieve the circumstances
40 established under subdivision (2) of subsection 1 of this section. Lesser
41 relief may be ordered if it would be appropriate under the facts and
42 circumstances of the case.

43 4. If the court finds that a party to a proceeding brought under
44 this section has acted arbitrarily, or otherwise not in good faith, the
45 court may in its discretion award reasonable expenses including
46 attorney fees and disbursements to any of the other parties.

47 5. Proceedings under this section shall be brought in a court
48 within the county where the registered address of the cooperative is
49 located.

50 6. It is not necessary to make members parties to the action or
51 proceeding unless relief is sought against them personally.

351.1186. 1. In dissolution proceedings before a hearing can be
2 completed, the court may:

3 (1) Issue injunctions;

4 (2) Appoint receivers with all powers and duties that the court
5 directs;

6 (3) Take actions required to preserve the cooperative's assets
7 wherever located; and

8 (4) Carry on the business of the cooperative.

9 2. After a hearing is completed, upon notice to parties to the
10 proceedings and to other parties in interest designated by the court,
11 the court may appoint a receiver to collect the cooperative's assets
12 including amounts owing to the cooperative by subscribers on account
13 of an unpaid portion of the consideration for the issuance of shares. A
14 receiver has authority, subject to the order of the court, to continue the
15 business of the cooperative and to sell, lease, transfer, or otherwise
16 dispose of the property and assets of the cooperative either at public
17 or private sale.

18 3. The assets of the cooperative or the proceeds resulting from
19 a sale, lease, transfer, or other disposition shall be applied in the
20 following order of priority:

21 (1) The costs and expense of the proceedings, including attorney
22 fees and disbursements;

23 (2) Debts, taxes, and assessments due the United States, this
24 state, and other states in that order;

25 **(3) Claims duly proved and allowed to employees under the**
26 **provisions of the workers' compensation act except that claims under**
27 **this clause may not be allowed if the cooperative carried workers'**
28 **compensation insurance, as provided by law, at the time the injury was**
29 **sustained;**

30 **(4) Claims, including the value of all compensation paid in a**
31 **medium other than money, proved and allowed to employees for**
32 **services performed within three months preceding the appointment of**
33 **the receiver, if any; and**

34 **(5) Other claims proved and allowed.**

35 **4. After payment of the expenses of receivership and claims of**
36 **creditors are proved, the remaining assets, if any, may be distributed**
37 **to the members or distributed under an approved liquidation plan.**

351.1189. 1. A receiver shall be a natural person or a domestic
2 **business entity or a foreign business entity authorized to transact**
3 **business in this state. A receiver shall give a bond as directed by the**
4 **court with the sureties required by the court.**

5 **2. A receiver may sue and defend in all courts as receiver of the**
6 **cooperative. The court appointing the receiver has exclusive**
7 **jurisdiction over the cooperative and its property.**

351.1192. 1. A cooperative may be dissolved involuntarily by a
2 **decree of a court in this state in an action filed by the attorney general**
3 **if it is established that:**

4 **(1) The articles and certificate of organization were procured**
5 **through fraud;**

6 **(2) The cooperative was organized for a purpose not permitted**
7 **by sections 351.1000 to 351.1228 or prohibited by state law;**

8 **(3) The cooperative has flagrantly violated a provision of**
9 **sections 351.1000 to 351.1228, has violated a provision of sections**
10 **351.1000 to 351.1228 more than once, or has violated more than one**
11 **provision of sections 351.1000 to 351.1228; or**

12 **(4) The cooperative has acted, or failed to act, in a manner that**
13 **constitutes surrender or abandonment of the cooperative's privileges,**
14 **or enterprise.**

15 **2. An action may not be commenced under subsection 1 of this**
16 **section until forty-five days after notice to the cooperative by the**
17 **attorney general of the reason for the filing of the action. If the reason**

18 for filing the action is an act that the cooperative has committed, or
19 failed to commit, and the act or omission may be corrected by an
20 amendment of the articles or bylaws or by performance of or abstention
21 from the act, the attorney general shall give the cooperative thirty
22 additional days to make the correction before filing the action. If the
23 cooperative makes the correction within such thirty-day period, the
24 attorney general shall not file the action.

351.1195. 1. In proceedings to dissolve a cooperative, the court
2 may require all creditors and claimants of the cooperative to file their
3 claims under oath with the court administrator or with the receiver in
4 a form prescribed by the court.

5 2. If the court requires the filing of claims, the court shall:

6 (1) Set a date, by order, at least one hundred twenty days after
7 the date the order is filed as the last day for the filing of claims; and

8 (2) Prescribe the notice of the fixed date that shall be given to
9 creditors and claimants.

10 3. Before the fixed date, the court may extend the time for filing
11 claims. Creditors and claimants failing to file claims on or before the
12 fixed date may be barred, by order of court, from claiming an interest
13 in or receiving payment out of the property or assets of the
14 cooperative.

351.1198. The involuntary or supervised voluntary dissolution of
2 a cooperative may be discontinued at any time during the dissolution
3 proceedings if it is established that cause for dissolution does not
4 exist. The court shall dismiss the proceedings and direct the receiver,
5 if any, to redeliver to the cooperative its remaining property and
6 assets.

351.1201. 1. In an involuntary or supervised voluntary
2 dissolution, after the costs and expenses of the proceedings and all
3 debts, obligations, and liabilities of the cooperative have been paid or
4 discharged and the remaining property and assets have been
5 distributed to its members or if its property and assets are not
6 sufficient to satisfy and discharge the costs, expenses, debts,
7 obligations, and liabilities, when all the property and assets have been
8 applied so far as they will go to their payment according to their
9 priorities, the court shall enter an order dissolving the cooperative.

10 2. When the order dissolving the cooperative has been entered,

11 the cooperative shall be dissolved.

351.1204. After the court enters an order dissolving a
2 cooperative, the court administrator shall cause a certified copy of the
3 dissolution order to be filed with the secretary of state. The secretary
4 of state shall not charge a fee for filing the dissolution order.

351.1207. 1. A person who is or becomes a creditor or claimant
2 before, during, or following the conclusion of dissolution proceedings
3 who does not file a claim or pursue a remedy in a legal, administrative,
4 or arbitration proceeding during the pendency of the dissolution
5 proceeding or has not initiated a legal, administrative, or arbitration
6 proceeding before the commencement of the dissolution proceedings,
7 all those claiming through or under the creditor or claimant are
8 forever barred from suing on that claim or otherwise realizing upon or
9 enforcing it, except as provided in this section.

10 2. Debts, obligations, and liabilities incurred during dissolution
11 proceedings shall be paid or provided for by the cooperative before the
12 distribution of assets to a member. A person to whom this kind of debt,
13 obligation, or liability is owed but is not paid may pursue any remedy
14 against the offenders, directors, or members of the cooperative before
15 the expiration of the applicable statute of limitations. This subsection
16 shall not apply to dissolution under the supervision or order of a court.

351.1210. After a cooperative has been dissolved, any of its
2 former officers, directors, or members may assert or defend, in the
3 name of the cooperative, a claim by or against the cooperative.

351.1213. 1. (1) Subject to the constitution of this state, the laws
2 of the jurisdiction under which a foreign cooperative is organized
3 govern its organization and internal affairs and the liability of its
4 members. A foreign cooperative shall not be denied a certificate of
5 authority to transact business in this state by reason of any difference
6 between those laws and the laws of this state.

7 (2) A foreign cooperative holding a valid certificate of authority
8 in this state has no greater rights or privileges than a domestic
9 cooperative. The certificate of authority does not authorize the foreign
10 cooperative to exercise any of its powers or purposes that a domestic
11 cooperative is forbidden by law to exercise in this state.

12 (3) A foreign cooperative may apply for a certificate of authority
13 under any name that would be available to a cooperative, whether or

14 not the name is the name under which it is authorized in its
15 jurisdiction of organization.

16 (4) Nothing contained herein shall be interpreted to require a
17 foreign business entity which is not formed as a cooperative association
18 under the laws of any foreign jurisdiction but is otherwise operating on
19 a cooperative basis to comply with the provisions of sections 351.1000
20 to 351.1228, including but not limited to obtaining a certificate of
21 authority as set forth in subsection 2 of this section. Such an entity
22 shall, however, remain obligated to comply with the revised statutes of
23 Missouri, as applicable to such entity.

24 2. (1) Before transacting business in this state, a foreign
25 cooperative shall obtain a certificate of authority from the secretary of
26 state. An applicant for the certificate shall submit to the secretary of
27 state an application for registration as a foreign cooperative, signed by
28 an authorized person and setting forth:

29 (a) The name of the foreign cooperative and, if different, the
30 name under which it proposes to register and transact business in this
31 state;

32 (b) The jurisdiction of its organization or formation, and the date
33 of such organization or formation;

34 (c) The name and business address, which may not be a post
35 office box, of the proposed registered agent in this state, which agent
36 shall be an individual resident of this state, a domestic business entity,
37 or a foreign cooperative having a place of business in, and authorized
38 to do business in, this state;

39 (d) The address of the registered office required to be
40 maintained in the jurisdiction of its organization by the laws of that
41 jurisdiction or, if not so required, of the principal place of business of
42 the foreign cooperative;

43 (e) The date the foreign cooperative expires in the jurisdiction
44 of its organization; and

45 (f) A statement that the secretary of state is appointed as the
46 agent of the foreign cooperative for service of process if the foreign
47 cooperative fails to maintain a registered agent in this state or if the
48 agent cannot be found or served with the exercise of reasonable
49 diligence.

50 (2) The application shall be accompanied by a filing fee of one

51 **hundred dollars.**

52 **(3) The application shall also be accompanied by a certificate of**
53 **good standing or certificate of existence issued by the secretary of state**
54 **of the foreign cooperative's state of domicile, which certificate shall be**
55 **dated within sixty days of the date of filing.**

56 **(4) If the secretary of state finds that an application for a**
57 **certificate of authority conforms to law and all fees have been paid, the**
58 **secretary of state shall:**

59 **(a) File the original application; and**

60 **(b) Return a copy of the original application to the person who**
61 **filed it with a certificate of authority issued by the secretary of state.**

62 **(5) A certificate of authority issued under this section is effective**
63 **from the date the application is filed with the secretary of state**
64 **accompanied by the payment of the requisite fees.**

65 **(6) If any statement in the application for a certificate of**
66 **authority by a foreign cooperative was false when made or any**
67 **arrangements or other facts described have changed, making the**
68 **application inaccurate in any respect, the foreign cooperative shall**
69 **promptly file with the secretary of state:**

70 **(a) In the case of a change in its name, a termination, or a**
71 **merger, a certificate to that effect authenticated by the proper officer**
72 **of the state or country under the laws of which the foreign cooperative**
73 **is organized; and**

74 **(b) A fee for the document, which is the same as the fee for filing**
75 **an amendment.**

76 **3. A foreign cooperative authorized to transact business in this**
77 **state shall:**

78 **(1) Appoint and continuously maintain a registered agent in the**
79 **same manner as provided in section 351.1027; or**

80 **(2) File a report upon any change in the name or business**
81 **address of its registered agent in the same manner as provided in**
82 **section 351.1027.**

83 **4. (1) A foreign cooperative authorized to transact business in**
84 **this state may cancel its registration by filing articles of cancellation**
85 **with the secretary of state, which articles of cancellation shall set forth:**

86 **(a) The name of the foreign cooperative and the state or country**
87 **under the laws of which it is organized;**

88 **(b) That the foreign cooperative is not transacting business in**
89 **this state;**

90 **(c) That the foreign cooperative surrenders its authority to**
91 **transact business in this state;**

92 **(d) That the foreign cooperative revokes the authority of its**
93 **registered agent in this state to accept service of process and consents**
94 **to that service of process in any action, suit, or proceeding based upon**
95 **any cause of action arising in this state out of the transaction of the**
96 **foreign cooperative in this state;**

97 **(e) A post office address to which a person may mail a copy of**
98 **any process against the foreign cooperative; and**

99 **(f) That the authority of the secretary of state to accept service**
100 **of process in this state for any cause of action arising out of the**
101 **transactions of the foreign cooperative in this state remains in full**
102 **force and effect.**

103 **(2) The filing with the secretary of state of a certificate of**
104 **termination or a certificate of merger if the foreign cooperative is not**
105 **the surviving organization from the proper officer of the state or**
106 **country under the laws of which the foreign cooperative is organized**
107 **constitutes a valid application of withdrawal and the authority of the**
108 **foreign cooperative to transact business in this state shall cease upon**
109 **the filing of the certificate.**

110 **(3) The certificate of authority of a foreign cooperative to**
111 **transact business in this state may be revoked by the secretary of state**
112 **upon the occurrence of any of the following events:**

113 **(a) The foreign cooperative has failed to appoint and maintain**
114 **a registered agent as required by sections 351.1000 to 351.1228, file a**
115 **report upon any change in the name or business address of the**
116 **registered agent, or file in the office of the secretary of state any**
117 **amendment to its application for a certificate of authority as specified**
118 **in subdivision (6) of subsection 2 of this section; or**

119 **(b) A misrepresentation has been made of any material matter**
120 **in any application, report, affidavit, or other document submitted by**
121 **the foreign cooperative under sections 351.1000 to 351.1228.**

122 **(4) No certificate of authority of a foreign cooperative shall be**
123 **revoked by the secretary of state unless:**

124 **(a) The secretary of state has given the foreign cooperative not**

125 less than sixty days' notice by mail addressed to its registered office in
126 this state or, if the foreign cooperative fails to appoint and maintain a
127 registered agent in this state, addressed to the office address in the
128 jurisdiction of organization; and

129 (b) During the sixty-day period, the foreign cooperative has
130 failed to file the report of change regarding the registered agent, to file
131 any amendment, or to correct the misrepresentation.

132 (5) Sixty days after the mailing of the notice without the foreign
133 cooperative taking the action set forth in paragraph (b) of subdivision
134 (4) of this subsection, the authority of the foreign cooperative to
135 transact business in this state shall cease. The secretary of state shall
136 issue a certificate of revocation and shall mail the certificate to the
137 address of the registered agent in this state or if there is none, then to
138 the principal place of business or the registered office required to be
139 maintained in the jurisdiction of organization of the foreign
140 cooperative.

141 5. (1) A foreign cooperative transacting business in this state
142 shall not maintain any action, suit, or proceeding in any court of this
143 state until it possesses a certificate of authority.

144 (2) The failure of a foreign cooperative to obtain a certificate of
145 authority does not impair the validity of any contract or act of the
146 foreign cooperative or prevent the foreign cooperative from defending
147 any action, suit, or proceeding in any court of this state.

148 (3) A foreign cooperative, by transacting business in this state
149 without a certificate of authority, appoints the secretary of state as its
150 agent upon whom any notice, process, or demand may be served.

151 (4) A foreign cooperative that transacts business in this state
152 without a valid certificate of authority is liable to the state for the
153 years or parts of years during which it transacted business in this state
154 without the certificate in any amount equal to all fees that would have
155 been imposed by sections 351.1000 to 351.1228 upon the foreign
156 cooperative had it duly obtained the certificate, filed all reports
157 required by sections 351.1000 to 351.1228, and paid all penalties
158 imposed by sections 351.1000 to 351.1228. The attorney general shall
159 bring proceedings to recover all amounts due this state under the
160 provisions of this section.

161 (5) A foreign cooperative that transacts business in this state

162 without a valid certificate of authority shall be subject to a civil
163 penalty, payable to the state, not to exceed five thousand dollars. Each
164 director or in the absence of directors, each member or agent who
165 authorizes, directs, or participates in the transaction of business in this
166 state on behalf of a foreign cooperative that does not have a certificate
167 shall be subject to a civil penalty, payable to the state, not to exceed
168 one thousand dollars.

169 (6) The civil penalties set forth in subdivision (5) of this
170 subsection may be recovered in an action brought in this state by the
171 attorney general. Upon a finding by the court that a foreign
172 cooperative or any of its members, directors, or agents have transacted
173 business in this state in violation of sections 351.1000 to 351.1228, the
174 court shall issue, in addition to the imposition of a civil penalty, an
175 injunction restraining the further transaction of the business of the
176 foreign cooperative and the further exercise of the foreign
177 cooperative's rights and privileges in this state. The foreign
178 cooperative shall be enjoined from transacting business in this state
179 until all civil penalties plus any interest and court costs that the court
180 may assess have been paid and until the foreign cooperative has
181 otherwise complied with the provisions of sections 351.1000 to 351.1228.

182 (7) A member of a foreign cooperative shall not be liable for the
183 debts and obligations of the foreign cooperative solely by reason of
184 foreign cooperative's having transacted business in this state without
185 a valid certificate of authority.

186 6. (1) The following activities of a foreign cooperative, among
187 others, shall not constitute transacting business within the meaning of
188 this section:

189 (a) Maintaining or defending any action or suit or any
190 administrative arbitration proceeding, or settling any proceeding,
191 claim, or dispute;

192 (b) Holding meetings of its members or carrying on any other
193 activities concerning its internal affairs;

194 (c) Maintaining bank accounts;

195 (d) Having members that are residents of this state or such
196 members having retail locations in this state;

197 (e) Selling through independent contractors;

198 (f) Soliciting or obtaining orders, whether by mail or through

199 employees or agents or otherwise, if the orders require acceptance
200 outside this state before they become contracts;

201 (g) Creating or acquiring indebtedness, mortgages, and security
202 interests in real or personal property;

203 (h) Securing or collecting debts or enforcing mortgages and
204 security interests in property securing the debts;

205 (i) Selling or transferring title to property in this state to any
206 person; or

207 (j) Conducting an isolated transaction that is completed within
208 thirty days and that is not one in the course of repeated transactions
209 of a like manner.

210 (2) For purposes of this section, any foreign cooperative that
211 owns income-producing real or tangible personal property in this state,
212 other than property exempted under subdivision (1) of this subsection,
213 shall be considered to be transacting business in this state.

214 (3) The list of activities in subdivision (1) of this subsection shall
215 not be exhaustive. This subsection shall not apply in determining the
216 contracts or activities that may subject a foreign cooperative to service
217 of process or taxation in this state or to regulation under any other law
218 of this state.

219 7. The secretary of state, the attorney general, or both, may bring
220 an action to restrain a foreign cooperative from transacting business
221 in this state in violation of sections 351.1000 to 351.1228 or other laws
222 of this state.

223 8. Service of process on a foreign cooperative shall be as
224 provided under Missouri law.

351.1216. 1. Any notice to members given by the cooperative
2 under any provision of sections 351.1000 to 351.1228, the articles, or the
3 bylaws may be given in any of the following forms, and such notice is
4 deemed given:

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

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

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

- 12 **(a) The posting; and**
- 13 **(b) The giving of the separate notice;**
- 14 **(4) If by any other form of electronic communication by which**
15 **the member has consented to receive notice, when directed to the**
16 **member;**
- 17 **(5) If by United States mail, then when placed in the mail and**
18 **directed to the address shown as the last known address of the member**
19 **in the records of the cooperative; and**
- 20 **(6) If by overnight courier service, then when delivered to the**
21 **courier service and directed to the address shown as the last known**
22 **address of the member in the records of the cooperative.**
- 23 **2. For any notice which is required to be given to a director**
24 **under sections 351.1000 to 351.1228, such notice may be given in any**
25 **method as set forth in subsection 1 of this section upon such director**
26 **consenting to such director's receipt of notice in such manner.**
- 27 **3. For a member that is a business entity, notice mailed or**
28 **delivered by an alternative method under subsection 1 of this section**
29 **shall be to an officer of the entity.**
- 30 **4. An affidavit of the secretary, other authorized officer, or**
31 **authorized agent of the cooperative that the notice has been given by**
32 **a form of electronic communication is, in the absence of fraud, prima**
33 **facie evidence of the facts stated in the affidavit.**
- 34 **5. Consent by a member to notice given by electronic**
35 **communication may be given in writing or by authenticated electronic**
36 **communication. The cooperative shall be entitled to rely on any**
37 **consent so given until revoked by the member provided that no**
38 **revocation affects the validity of any notice given before receipt by the**
39 **cooperative of revocation of the consent.**
- 40 **6. Unless otherwise stated herein, all notices shall be deemed**
41 **effective when given.**
- 42 **7. Failure of a member to receive a special or regular members'**
43 **meeting notice shall not invalidate an action taken by the members at**
44 **a members' meeting.**

351.1219. A cooperative formed under and operating in
2 **compliance with sections 351.1000 to 351.1228 shall not be deemed or**
3 **construed to be a franchise under the laws of the state of Missouri.**

351.1222. 1. As used in this section, the following terms mean:

2 (1) "Electronic", relating to technology, having electrical, digital,
3 magnetic, wireless, optical, electromagnetic, or similar capabilities;

4 (2) "Electronic record", a record created, generated, sent,
5 communicated, received, or stored by electronic means;

6 (3) "Electronic signature", an electronic sound, symbol, or process
7 attached to or logically associated with a record and executed or
8 adopted by a person with the intent to sign the record;

9 (4) "Record", information that is inscribed on a tangible medium
10 or that is stored in an electronic or other medium and is retrievable in
11 perceivable form;

12 (5) "Signed", the signature of a person that has been written on
13 a document, and with respect to a document required by sections
14 351.1000 to 351.1228 to be filed with the secretary of state, a document
15 that has been signed by a person authorized to do so by sections
16 351.1000 to 351.1228, the articles, or bylaws, or by a resolution approved
17 by the board or the members. A signature on a document may be a
18 facsimile affixed, engraved, printed, placed, stamped with indelible ink,
19 transmitted by facsimile, or electronically, or in any other manner
20 reproduced on the document.

21 2. For purposes of sections 351.1000 to 351.1228:

22 (1) A record or signature shall not be denied legal effect or
23 enforceability solely because it is in electronic form;

24 (2) A contract shall not be denied legal effect or enforceability
25 solely because an electronic record was used in its formation;

26 (3) If a provision requires a record to be in writing, an electronic
27 record satisfies the requirement; and

28 (4) If a provision requires a signature, an electronic signature
29 satisfies the requirement.

351.1225. The state reserves the right to amend or repeal the
2 provisions of sections 351.1000 to 351.1228 by law. A cooperative
3 organized or governed by sections 351.1000 to 351.1228 is subject to this
4 reserved right.

351.1227. The secretary of state shall have further power and
2 authority as is reasonably necessary to enable the secretary of state to
3 administer this chapter efficiently and to perform the duties therein
4 imposed upon the secretary of state. Any rule or portion of a rule, as
5 that term is defined in section 536.010, that is created under the

6 authority delegated in this section shall become effective only if it
7 complies with and is subject to all of the provisions of chapter 536 and,
8 if applicable, section 536.028. This section and chapter 536 are
9 nonseverable and if any of the powers vested with the general assembly
10 under chapter 536 to review, to delay the effective date, or to
11 disapprove and annul a rule are subsequently held unconstitutional,
12 then the grant of rulemaking authority and any rule proposed or
13 adopted after August 28, 2011, shall be invalid and void.

351.1228. Unless otherwise provided, the filing fee for documents
2 filed under sections 351.1000 to 351.1228 shall be determined by the
3 secretary of state.

✓

Bill

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