

AMENDMENTS TO LB 368

Introduced by Erdman, 47

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Sections 1 to 134 of this act shall be known
4 and may be cited as the Nebraska Limited Cooperative Association
5 Act.

6 Sec. 2. The Legislature shall have the power to amend or
7 repeal all or part of the Nebraska Limited Cooperative Association
8 Act at any time and all domestic and foreign limited cooperative
9 associations subject to the act shall be governed by the amendment
10 or repeal.

11 Sec. 3. For purposes of the Nebraska Limited Cooperative
12 Association Act, unless the context otherwise requires:

13 (1) Articles of organization includes initial, amended,
14 and restated articles of organization. In the case of a foreign
15 limited cooperative association, the term includes all records
16 that:

17 (a) Have a function similar to articles of organization;
18 and

19 (b) Are required to be filed in the office of the
20 Secretary of State or other official having custody of articles of
21 organization in this state or the country under whose law it is
22 organized;

23 (2) Bylaws includes initial, amended, and restated

1 bylaws;

2 (3) Contribution means a benefit that a person provides
3 to a limited cooperative association in order to become a member or
4 in the person's capacity as a member;

5 (4) Debtor in bankruptcy means a person that is the
6 subject of:

7 (a) An order for relief under 11 U.S.C. 101 et seq., as
8 the sections existed on the operative date of this act; or

9 (b) An order comparable to an order described in
10 subdivision (4) (a) of this section under federal, state, or foreign
11 law governing insolvency;

12 (5) Designated office means the office designated under
13 section 13 of this act;

14 (6) Distribution means a transfer of money or other
15 property from a limited cooperative association to a member in the
16 member's capacity as a member or to a transferee because of a right
17 owned by the transferee;

18 (7) Domestic entity means an entity organized under the
19 laws of this state;

20 (8) Entity means an association, a business trust,
21 a company, a corporation, a limited cooperative association,
22 a general partnership, a limited liability company, a limited
23 liability partnership, or a limited partnership, domestic or
24 foreign;

25 (9) Financial rights means the right to participate in
26 allocation and distribution under sections 80 and 81 of this
27 act but does not include rights or obligations under a marketing

1 contract governed by sections 49 to 52 of this act;

2 (10) Foreign limited cooperative association means a
3 foreign entity organized under a law similar to the Nebraska
4 Limited Cooperative Association Act in another jurisdiction;

5 (11) Foreign entity means an entity that is not a
6 domestic entity;

7 (12) Governance rights means the right to participate in
8 governance of the limited cooperative association under section 28
9 of this act;

10 (13) Investor member means a person admitted as a member
11 that is not required to conduct patronage business with the limited
12 cooperative association in order to receive financial rights;

13 (14) Limited cooperative association means an association
14 organized under the Nebraska Limited Cooperative Association Act;

15 (15) Member means a person that is a patron member or
16 investor member in a limited cooperative association. The term does
17 not include a person that has dissociated as a member;

18 (16) Members' interest means the interest of a patron
19 member or investor member;

20 (17) Members' meeting means an annual or a special
21 members' meeting;

22 (18) Patron means a person or entity that conducts
23 economic activity with a limited cooperative association which
24 entitles the person to receive financial rights based upon
25 patronage;

26 (19) Patronage means business transactions between a
27 limited cooperative association and a person which entitles the

1 person to receive financial rights based on the value or quantity
2 of business done between the person and the limited cooperative
3 association;

4 (20) Patron member means a person admitted as a patron
5 member pursuant to the articles of organization or bylaws and
6 who is permitted or required by the articles of organization or
7 bylaws to conduct patronage business with the limited cooperative
8 association in order to receive financial rights;

9 (21) Person means an individual; entity; trust;
10 governmental subdivision, agency, or instrumentality; or any other
11 legal or commercial entity;

12 (22) Principal office means the office, whether or
13 not in this state, where the principal executive office of a
14 limited cooperative association or a foreign limited cooperative
15 association is located;

16 (23) Record, used as a noun, means information that is
17 inscribed on a tangible medium or that is stored in an electronic
18 or other medium and is retrievable in perceivable form;

19 (24) Required information means the information a limited
20 cooperative association is required to maintain under section 10 of
21 this act;

22 (25) Sign means, with the present intent to authenticate
23 a record:

24 (a) To execute or adopt a tangible symbol; or

25 (b) To attach or logically associate an electronic
26 symbol, sound, or process to or with a record;

27 (26) State means a state of the United States, the

1 District of Columbia, Puerto Rico, the United States Virgin
2 Islands, or any territory or insular possession subject to the
3 jurisdiction of the United States;

4 (27) Transfer includes an assignment, conveyance, deed,
5 bill of sale, lease, mortgage, security interest, encumbrance,
6 gift, and transfer by operation of law; and

7 (28) Voting member means a member that, under the
8 articles of organization or bylaws, has a right to vote on
9 matters subject to vote by members.

10 Sec. 4. (1) A limited cooperative association is an
11 entity distinct from its members.

12 (2) A limited cooperative association may be organized
13 under the Nebraska Limited Cooperative Association Act for any
14 lawful purpose, regardless of whether or not for profit, except for
15 the purpose of being a financial institution which is subject to
16 supervision by the Department of Banking and Finance under section
17 8-102 or which would be subject to supervision by the department if
18 chartered by the State of Nebraska or the business of an insurer as
19 described in section 44-102.

20 (3) A limited cooperative association has a perpetual
21 duration, unless otherwise set forth in its articles of
22 organization or bylaws.

23 Sec. 5. (1) Except as otherwise provided in the
24 Nebraska Limited Cooperative Association Act, a limited cooperative
25 association has the power to do all things necessary or convenient
26 to carry on its activities, including the power to sue, be sued,
27 and defend in its own name and to maintain an action against a

1 member for harm caused to the limited cooperative association by a
2 violation of the articles of organization or bylaws of the limited
3 cooperative association or violation of a duty to the limited
4 cooperative association.

5 (2) (a) Except as otherwise provided in subdivision (b) of
6 this subsection, a limited cooperative association shall not issue
7 bonds, debentures, or other evidence of indebtedness to a member
8 unless, prior to issuance, the association provides the member
9 with a written disclosure statement that includes a conspicuous
10 notice that the money is not insured or guaranteed by an agency
11 or instrumentality of the United States Government and that the
12 investment may lose value.

13 (b) A limited cooperative association need not provide
14 the written disclosure statement described in subdivision (a) of
15 this subsection to any member that is described in subdivision (8)
16 of section 8-1111.

17 (c) Any extension of credit by a limited cooperative
18 association to a member in connection with the sale of the
19 association's goods or services shall not:

20 (i) Exceed nine months from the date of such sale; or

21 (ii) Be secured by real property, except that an
22 extension of credit in default at the end of the original term may
23 be extended or renewed for successive periods not exceeding nine
24 months in length and may be secured by real property at the end of
25 the original term or any extension or renewal thereof.

26 (d) No new money may be advanced by an association in
27 connection with the extension or renewal of an extension of credit

1 granted under subdivision (2)(c) of this section.

2 Sec. 6. (1) The name of a limited cooperative association
3 must contain the words "limited cooperative association" or their
4 abbreviation.

5 (2) The name of a limited cooperative association shall
6 not be the same as or deceptively similar to:

7 (a) The name of any entity organized or authorized to
8 transact business in this state;

9 (b) A name reserved or registered under section 7 or 8 of
10 this act; and

11 (c) A fictitious name approved for a foreign limited
12 cooperative association authorized to transact business in this
13 state.

14 Sec. 7. (1) A person may reserve the exclusive use of the
15 name of a limited cooperative association, including a fictitious
16 name for a foreign limited cooperative association whose name is
17 unavailable, by delivering an application to the Secretary of State
18 for filing. The application shall set forth the name and address
19 of the applicant and the name proposed to be reserved. If the
20 Secretary of State finds that the name applied for is available,
21 it shall be reserved for the applicant's exclusive use for a
22 nonrenewable one-hundred-twenty-day period.

23 (2) The owner of a name reserved for a limited
24 cooperative association may transfer the reservation to another
25 person by delivering to the Secretary of State a signed notice of
26 the transfer which states the name and address of the transferee.

27 Sec. 8. (1) A foreign limited cooperative association

1 may register its name pursuant to section 7 of this act if the
2 name is not the same as or deceptively similar to names that are
3 unavailable under section 6 of this act.

4 (2) A foreign limited cooperative association may
5 register its name, or its name with any addition required by
6 section 106 of this act, by delivering to the Secretary of State
7 for filing an application:

8 (a) Setting forth its name, or its name with any addition
9 required by section 106 of this act, the state or country of
10 organization and date of its organization, and a brief description
11 of the nature of the affairs in which it is engaged; and

12 (b) Accompanied by a certificate of existence or
13 authorization from the state or country of organization.

14 (3) A foreign limited cooperative association whose
15 registration is effective may qualify as a foreign limited
16 cooperative association under its name or consent in a record to
17 the use of its name by a limited cooperative association later
18 organized under the Nebraska Limited Cooperative Association Act
19 or by a foreign limited cooperative association later authorized
20 to transact business in this state. The registration of the name
21 terminates when the limited cooperative association is organized or
22 the foreign limited cooperative association qualifies or consents
23 to the qualification of another foreign limited cooperative
24 association under the registered name.

25 Sec. 9. The use of the terms "cooperative or nonstock
26 cooperative" or an abbreviation of the terms under the Nebraska
27 Limited Cooperative Association Act is not a violation of the

1 provisions restricting the use of the terms under the Nonstock
2 Cooperative Marketing Act or sections 21-1301 to 21-1339, however,
3 use of the term "cooperative" by a limited cooperative association
4 shall not be construed under any other law to qualify a limited
5 cooperative association as a cooperative organized under the
6 Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339.

7 Sec. 10. A limited cooperative association shall maintain
8 in a record at its principal office the following information:

9 (1) A current list showing the full name and last-known
10 street address, mailing address, and term of office of each
11 director and officer;

12 (2) A copy of the initial articles of organization and
13 all amendments to and restatement of the articles, together with
14 signed copies of any powers of attorney under which any articles,
15 amendments, or restatement has been signed;

16 (3) A copy of the initial bylaws and all amendments to or
17 restatement of the bylaws;

18 (4) A copy of any filed articles of merger;

19 (5) A copy of any audited financial statements;

20 (6) A copy of the minutes of meetings of members and
21 records of all actions taken by members without a meeting for the
22 three most recent years;

23 (7) A current list showing the full name and last-known
24 street and mailing addresses, separately identifying the patron
25 members, in alphabetical order, and the investor members, in
26 alphabetical order;

27 (8) A copy of the minutes of directors' meetings and

1 records of all actions taken by directors without a meeting for the
2 three most recent years;

3 (9) A record stating:

4 (a) The amount of cash contributed and agreed to be
5 contributed by each member;

6 (b) A description and statement of the agreed value of
7 other benefits contributed and agreed to be contributed by each
8 member;

9 (c) The times at which, or events on the happening of
10 which, any additional contributions agreed to be made by each
11 member are to be made; and

12 (d) For a person that is both a patron member and an
13 investor member, a specification of the interest the person owns in
14 each capacity; and

15 (10) A copy of all communications in a record to members
16 as a group or to any class of members as a group for the three most
17 recent years.

18 Sec. 11. A member may lend money to and transact other
19 business with the limited cooperative association and has the
20 same rights and obligations with respect to the loan or other
21 transaction as a person that is not a member subject to the
22 articles of organization or bylaws or a specific contract relating
23 to the transaction.

24 Sec. 12. A person may be both a patron member and an
25 investor member. A person that is both a patron member and an
26 investor member has the rights, powers, duties, and obligations
27 provided by the Nebraska Limited Cooperative Association Act and

1 the articles of organization or bylaws in each of those capacities.
2 When the person acts as a patron member, the person is subject to
3 the obligations, duties, and restrictions under the act and the
4 articles of organization or bylaws governing patron members. When
5 the person acts as an investor member, the person is subject to
6 the obligations, duties, and restrictions under the act and the
7 articles of organization or bylaws governing investor members.

8 Sec. 13. (1) A limited cooperative association and
9 a foreign limited cooperative association shall designate and
10 continuously maintain in this state:

11 (a) An office, which need not be a place of its activity
12 in this state; and

13 (b) An agent for service of process.

14 (2) An agent for service of process of a limited
15 cooperative association or foreign limited cooperative association
16 shall be an individual who is a resident of this state or other
17 person authorized to do business in this state.

18 Sec. 14. (1) In order to change its registered office,
19 its agent for service of process, or the address of its agent for
20 service of process, a limited cooperative association or a foreign
21 limited cooperative association shall deliver to the Secretary of
22 State for filing a statement of change containing:

23 (a) The name of the limited cooperative association or
24 foreign limited cooperative association;

25 (b) The street and mailing addresses of its current
26 registered office;

27 (c) If the current registered office is to be changed,

1 the street and mailing addresses of the new registered office;

2 (d) The name and street and mailing addresses of its
3 current agent for service of process; and

4 (e) If the current agent for service of process or an
5 address of the agent is to be changed, the new information.

6 (2) A statement of change is effective when filed with
7 the Secretary of State.

8 Sec. 15. (1) To resign as an agent for service of
9 process of a limited cooperative association or a foreign limited
10 cooperative association, the agent shall deliver to the Secretary
11 of State for filing a statement of resignation containing the
12 name of the limited cooperative association or foreign limited
13 cooperative association.

14 (2) After receiving a statement of resignation, the
15 Secretary of State shall file it and mail a copy to the principal
16 office of the limited cooperative association or foreign limited
17 cooperative association and another copy to the principal office
18 if the address of the principal office appears in the records of
19 the Secretary of State and is different from the address of the
20 registered office.

21 (3) An agency for service of process terminates thirty
22 days after the Secretary of State files the statement of
23 resignation.

24 Sec. 16. (1) An agent for service of process appointed by
25 a limited cooperative association or a foreign limited cooperative
26 association is an agent of the limited cooperative association or
27 foreign limited cooperative association for service of any process,

1 notice, or demand required or permitted by law to be served upon
2 the limited cooperative association or foreign limited cooperative
3 association.

4 (2) (a) If a limited cooperative association or a foreign
5 limited cooperative association has no agent for service of process
6 or the agent cannot with reasonable diligence be served the
7 limited cooperative association may be served by registered or
8 certified mail, return receipt requested, addressed to the limited
9 cooperative association at its principal office. Service shall be
10 perfected under this subsection at the earliest of:

11 (i) The date the limited cooperative association receives
12 the mail;

13 (ii) The date shown on the return receipt, if signed on
14 behalf of the limited cooperative association; or

15 (iii) Five days after its deposit in the United States
16 mail as evidenced by the postmark, if mailed postage prepaid and
17 correctly addressed.

18 (b) This subsection shall not limit or affect the right
19 to serve any process, notice, or demand required or permitted by
20 law to be served upon a limited cooperative association in any
21 other manner now or hereafter permitted by law.

22 Sec. 17. Records delivered to the Secretary of State for
23 filing pursuant to the Nebraska Limited Cooperative Association Act
24 shall be signed in the following manner:

25 (1) The initial articles of organization shall be signed
26 by at least one organizer;

27 (2) A notice of cancellation under section 108 of this

1 act shall be signed by each organizer that signed the initial
2 articles of organization;

3 (3) Except as otherwise provided in this subsection,
4 a record signed on behalf of an existing limited cooperative
5 association shall be signed by an officer or authorized
6 representative; and

7 (4) A record filed on behalf of a dissolved limited
8 cooperative association by a person winding up the activities under
9 section 89 of this act or a person appointed under such section to
10 wind up those activities.

11 Sec. 18. (1) If a person required by the Nebraska Limited
12 Cooperative Association Act to sign or deliver a record to the
13 Secretary of State for filing does not do so, any other aggrieved
14 person may petition the district court of Lancaster County to
15 order:

16 (a) The person to sign the record and the person to
17 deliver the record to the Secretary of State for filing; or

18 (b) The Secretary of State to file the record unsigned.

19 (2) If an aggrieved person under subsection (1) of this
20 section is not the limited cooperative association or foreign
21 limited cooperative association to which the record pertains, the
22 aggrieved person shall make the limited cooperative association or
23 foreign limited cooperative association a party to the action. An
24 aggrieved person under subsection (1) of this section may seek any
25 or all of the remedies provided in such subsection in the same
26 action.

27 (3) A record filed unsigned pursuant to this section is

1 effective without being signed.

2 Sec. 19. (1) A record authorized to be delivered to
3 the Secretary of State for filing under the Nebraska Limited
4 Cooperative Association Act shall be captioned to describe the
5 record's purpose and be delivered to the Secretary of State in a
6 medium authorized by the Secretary of State. Unless the Secretary
7 of State determines that a record does not comply with the filing
8 requirements of the act and if all filing fees have been paid the
9 Secretary of State shall file the record and send a copy of the
10 filed record and a receipt for the fees to the person on whose
11 behalf the record was filed.

12 (2) Upon request and payment of a fee, the Secretary of
13 State shall send to the requester a certified copy of the requested
14 record.

15 (3) Except as otherwise provided in the act, a record
16 delivered to the Secretary of State for filing under the act may
17 specify an effective time and a delayed effective date. Except as
18 otherwise provided in the act, a record filed by the Secretary of
19 State is effective:

20 (a) If the record does not specify an effective time and
21 does not specify a delayed effective date, on the date and at the
22 time the record is filed as evidenced by the Secretary of State's
23 endorsement of the date and time on the record;

24 (b) If the record specifies an effective time but not a
25 delayed effective date, on the date the record is filed at the time
26 specified in the record;

27 (c) If the record specifies a delayed effective date but

1 not an effective time, at 12:01 a.m. on the earlier of:

2 (i) The specified date; or

3 (ii) The ninetieth day after the record is filed; or

4 (d) If the record specifies an effective time and a
5 delayed effective date, at the specified time on the earlier of:

6 (i) The specified date; or

7 (ii) Ninety days after the record is filed.

8 Sec. 20. (1) A limited cooperative association or foreign
9 limited cooperative association may deliver to the Secretary of
10 State for filing a statement of correction to correct a record
11 previously delivered by the limited cooperative association or
12 foreign limited cooperative association to the Secretary of State
13 and filed by the Secretary of State, if at the time of filing the
14 record contained false or erroneous information or was defectively
15 signed.

16 (2) A statement of correction shall not state a delayed
17 effective date and shall:

18 (a) Describe the record to be corrected, including its
19 filing date, or contain an attached copy of the record as filed;

20 (b) Specify the incorrect information and the reason it
21 is incorrect or the manner in which the signing was defective; and

22 (c) Correct the incorrect information or defective
23 signature.

24 (3) When filed by the Secretary of State, a statement of
25 correction is effective retroactively as of the effective date of
26 the record the statement corrects, but the statement is effective
27 when filed as to persons relying on the uncorrected record and

1 adversely affected by the correction prior to its correction.

2 Sec. 21. If a record delivered to the Secretary of State
3 for filing under the Nebraska Limited Cooperative Association Act
4 and filed by the Secretary of State contains false information, a
5 person that suffers loss by reliance on the information may recover
6 damages for the loss from a person that signed the record or caused
7 another to sign it on the person's behalf and knew the information
8 to be false at the time the record was signed.

9 Sec. 22. (1) The Secretary of State, upon application
10 and payment of the required fee, shall furnish a certificate of
11 existence for a limited cooperative association if the records
12 filed in the office of the Secretary of State show that the
13 Secretary of State has filed articles of organization, the limited
14 cooperative association is in good standing, and there has not been
15 filed articles of dissolution.

16 (2) The Secretary of State, upon application and payment
17 of the required fee, shall furnish a certificate of authorization
18 for a foreign limited cooperative association if the records filed
19 in the office of the Secretary of State show that the Secretary
20 of State has filed a certificate of authority, has not revoked
21 the certificate of authority, and has not filed a notice of
22 cancellation pursuant to section 108 of this act.

23 (3) Subject to any qualification stated in the
24 certificate, a certificate of good standing or authorization issued
25 by the Secretary of State may be relied upon as conclusive evidence
26 that the limited cooperative association or foreign limited
27 cooperative association is in good standing or is authorized to

1 transact business in this state.

2 Sec. 23. (1) A limited cooperative association or a
3 foreign limited cooperative association authorized to transact
4 business in this state shall deliver to the Secretary of State for
5 filing a biennial report that states:

6 (a) The name of the limited cooperative association or
7 foreign limited cooperative association;

8 (b) The street and mailing addresses of the limited
9 cooperative association's or foreign limited cooperative
10 association's designated office and the name and street and mailing
11 addresses of its agent for service of process in this state;

12 (c) In the case of a limited cooperative association, the
13 street and mailing addresses of its principal office if different
14 from its designated office; and

15 (d) In the case of a foreign limited cooperative
16 association, the state or other jurisdiction under whose law
17 the foreign limited cooperative association is formed and any
18 alternative name adopted under section 106 of this act.

19 (2) Information in the biennial report must be current as
20 of the date the biennial report is delivered to the Secretary of
21 State.

22 (3) Commencing on January 1, 2009, a biennial report
23 shall be filed between January 1 and April 1 of each odd-numbered
24 year following the year in which a limited cooperative association
25 files articles of organization or a foreign limited cooperative
26 association becomes authorized to transact business in this state.
27 A correction or amendment to a biennial report may be filed at any

1 time.

2 (4) If a biennial report does not contain the information
3 required in subsection (1) of this section, the Secretary of
4 State shall promptly notify the reporting limited cooperative
5 association or foreign limited cooperative association and return
6 the report for correction. If the report is corrected to contain
7 the information required in subsection (1) of this section and
8 delivered to the Secretary of State within thirty days after the
9 effective date of the notice, it is timely delivered.

10 (5) If a filed biennial report contains an address of a
11 designated office or the name or address of an agent for service of
12 process which differs from the information shown in the records of
13 the Secretary of State immediately before the filing, the differing
14 information in the biennial report is considered a statement of
15 change under section 14 of this act.

16 (6) If a limited cooperative association fails to file
17 a biennial report under this section, the Secretary of State may
18 proceed under section 94 of this act to administratively dissolve
19 the limited cooperative association.

20 (7) If a foreign limited cooperative association fails to
21 file a biennial report under this section, the Secretary of State
22 may proceed under section 107 of this act to revoke the certificate
23 of authority of the foreign limited cooperative association.

24 Sec. 24. The filing fees for records filed under this
25 section with the Secretary of State are governed by section 33-101.

26 Sec. 25. A limited cooperative association may be
27 organized by one or more organizers who need not be members.

1 Sec. 26. (1) To form a limited cooperative association,
2 articles of organization shall be delivered to the Secretary of
3 State for filing. The articles shall state:

4 (a) The name of the limited cooperative association;

5 (b) The purposes for which the limited cooperative
6 association was formed;

7 (c) The street and mailing addresses of the initial
8 registered office and the name, street, and mailing addresses of
9 the registered agent for service of process;

10 (d) The name and the street and mailing addresses of each
11 organizer;

12 (e) The term for which the limited cooperative
13 association is to exist, if other than perpetual;

14 (f) The number and terms of directors or the method in
15 which the number and terms shall be determined; and

16 (g) Any additional information required by the Secretary
17 of State.

18 (2) Articles of organization may contain any other
19 matters deemed relevant by the organizer or organizers.

20 (3) Unless the articles of organization state a delayed
21 effective date, a limited cooperative association is formed when
22 the Secretary of State receives for filing the articles of
23 organization. If the articles state a delayed effective date,
24 a limited cooperative association is not formed if, before the
25 articles take effect, one or more organizers sign and deliver to
26 the Secretary of State for filing a notice of cancellation.

27 Sec. 27. After the effective date of the articles of

1 organization:

2 (1) If initial directors are named in the articles of
3 organization, the initial directors shall hold an organizational
4 meeting to appoint officers, adopt initial bylaws, and carry on any
5 other business brought before the meeting; and

6 (2) If initial directors are not named in the articles of
7 organization, the organizers shall designate the initial directors
8 and call a meeting of them to adopt initial bylaws or carry on any
9 other business necessary and proper to complete the organization of
10 the limited cooperative association.

11 Sec. 28. (1) The bylaws shall be in a record and, if not
12 stated in the articles of organization, include:

13 (a) A statement of the capital structure of the limited
14 cooperative association, including a statement of the classes
15 and relative rights, preferences, and restrictions granted to or
16 imposed upon each group, class, or other type of member interest,
17 the rights to share in profits or distributions of the limited
18 cooperative association, and the method to admit members;

19 (b) A statement designating the voting and governance
20 rights, including which members have voting power and any
21 limitations or restrictions on the voting power under sections 39
22 and 42 of this act;

23 (c) A statement that member interests held by a member
24 are transferable only with the approval of the board of directors
25 or as otherwise provided in the articles of organization or bylaws;
26 and

27 (d) If investor members are authorized, a statement

1 concerning how profits and losses are apportioned and how
2 distributions are made as between patron members and investor
3 members.

4 (2) The bylaws of the limited cooperative association may
5 contain any provision for managing and regulating the affairs of
6 the limited cooperative association which is not inconsistent with
7 the articles of organization.

8 Sec. 29. In order to commence business a limited
9 cooperative association shall have two or more patron members
10 except a limited cooperative association may have only one member
11 if the member is an entity organized under the Nebraska Limited
12 Cooperative Association Act.

13 Sec. 30. A person becomes a member:

14 (1) As provided in the articles of organization and
15 bylaws;

16 (2) As the result of merger or consolidation under
17 section 122 or 128 of this act; or

18 (3) With the consent of all the members.

19 Sec. 31. A member does not have the right or power as a
20 member to act for or bind the limited cooperative association.

21 Sec. 32. Unless otherwise provided by the articles of
22 organization, an obligation of a limited cooperative association,
23 whether arising in contract, tort, or otherwise, is not the
24 obligation of a member. A member is not personally liable, by way
25 of contribution or otherwise, for an obligation of the limited
26 cooperative association solely by reason of being a member.

27 Sec. 33. (1) On ten days' demand, made in a record

1 received by the limited cooperative association, a member may
2 inspect and copy required information under subdivisions (1)
3 through (7) of section 10 of this act during regular business
4 hours in the limited cooperative association's principal office. A
5 demand to inspect and copy records shall be in good faith and for
6 a proper purpose. A member may demand the same information under
7 subdivisions (1) through (7) of section 10 of this act no more than
8 once during a twelve-month period.

9 (2) On demand, made in a record received by the limited
10 cooperative association, a member may obtain from the limited
11 cooperative association and inspect and copy required information
12 if the demand is just and reasonable. A demand to inspect and copy
13 records is just and reasonable if:

14 (a) The member seeks the information for a proper purpose
15 reasonably related to the member's interest as a member;

16 (b) The demand includes a description, with reasonable
17 particularity, of the information sought and the purpose for
18 seeking the information; and

19 (c) The information sought is directly connected to the
20 member's purpose.

21 (3) Within ten days after receiving a demand pursuant
22 to subdivision (2)(b) of this section, the limited cooperative
23 association shall inform, in a record, the member that made the
24 demand:

25 (a) Of what information the limited cooperative
26 association will provide in response to the demand;

27 (b) Of the reasonable time and place that the limited

1 cooperative association will provide the information; and

2 (c) That the limited cooperative association will decline
3 to provide any demanded information and the limited cooperative
4 association's reasons for declining.

5 (4) A person dissociated as a member pursuant to section
6 82 of this act may inspect and copy required information during
7 regular business hours in the limited cooperative association's
8 principal office if:

9 (a) The information pertains to the period during which
10 the person was a member;

11 (b) The person seeks the information in good faith; and

12 (c) The person complies with this section.

13 (5) The limited cooperative association shall respond to
14 a demand made pursuant to subsection (4) of this section in the
15 same manner as otherwise provided in this section.

16 (6) The limited cooperative association may impose
17 reasonable restrictions, including nondisclosure restrictions,
18 on the use of information obtained under this section. In a
19 dispute concerning the reasonableness of a restriction, the limited
20 cooperative association has the burden of proving reasonableness.

21 (7) A limited cooperative association may charge a person
22 that makes a demand under this section reasonable costs of copying,
23 limited to the costs of labor and material.

24 (8) A member or person dissociated as a member may
25 exercise the rights under this section through an attorney or other
26 agent. A restriction imposed under this section or by the articles
27 of organization or bylaws on a member or person dissociated as

1 a member applies both to the attorney or other agent and to the
2 member or person dissociated as a member.

3 (9) The rights stated in this section do not extend
4 to a person as transferee but may be exercised by the legal
5 representative of an individual under legal disability who is a
6 member or person dissociated as a member.

7 Sec. 34. (1) The members of the limited cooperative
8 association shall meet annually as provided in the articles of
9 organization or bylaws or at the direction of the board of
10 directors not inconsistent with the articles of organization or
11 bylaws.

12 (2) Annual members' meetings may be held in or out of
13 this state at the place stated in the articles of organization or
14 bylaws or by the board of directors in accordance with the articles
15 of organization or bylaws.

16 (3) The board of directors shall report or cause to be
17 reported at the annual members' meeting the business and financial
18 condition as of the close of the most recent fiscal year.

19 (4) Unless otherwise provided by the articles of
20 organization or bylaws, the board of directors shall designate the
21 presiding officer of the annual members' meeting.

22 Sec. 35. (1) Special members' meetings shall be called:

23 (a) As provided in the articles of organization or
24 bylaws;

25 (b) By a majority vote of the board of directors;

26 (c) By demand in a record signed by members holding at
27 least ten percent of the votes of any class or group entitled to

1 cast on the matter that is the purpose of the meetings; or

2 (d) By demand in a record signed by members holding at
3 least ten percent of all votes entitled to be cast on the matter
4 that is the purpose of the meeting.

5 (2) Any voting member may withdraw its demand under this
6 section before the receipt by the limited cooperative association
7 of demands sufficient to require a special members' meeting.

8 (3) A special members' meeting may be held in or out of
9 this state at the place stated in the articles of organization or
10 bylaws or by the board of directors in accordance with the articles
11 of organization or bylaws.

12 (4) Only affairs within the purpose or purposes stated
13 pursuant to subsection (2) of section 65 of this act may be
14 conducted at a special members' meeting.

15 (5) Unless otherwise provided by the articles of
16 organization or bylaws, the presiding officer of the meeting shall
17 be designated by the board of directors.

18 Sec. 36. (1) The limited cooperative association shall
19 notify each member of the time, date, and place of any annual or
20 special members' meeting not less than ten nor more than fifty days
21 before the meeting.

22 (2) Unless the articles of organization or bylaws
23 otherwise provide, notice of an annual members' meeting need not
24 include a description of the purpose or purposes of the meeting.

25 (3) Notice of a special members' meeting shall include a
26 description of the purpose or purposes of the meeting as contained
27 in the demand under section 35 of this act or as voted upon by the

1 board of directors under such section.

2 Sec. 37. (1) A member may waive notice of any meeting of
3 the members either before, during, or after the meeting.

4 (2) A member's participation in a meeting is waiver of
5 notice of that meeting unless the member objects to the meeting
6 at the beginning of the meeting or promptly upon arrival at the
7 meeting and does not thereafter vote for or assent to action taken
8 at the meeting.

9 Sec. 38. Unless the articles of organization or bylaws
10 provide otherwise, ten percent, but not less than five nor more
11 than fifty of the members, need to be present at an annual or
12 special members' meeting to constitute a quorum.

13 Sec. 39. (1) Each patron member has one vote but the
14 articles of organization or bylaws may provide additional voting
15 power to members on the basis of patronage under section 41 of this
16 act and may provide for voting by district, group, or class under
17 section 26 of this act.

18 (2) If a limited cooperative association has both patron
19 and investor members:

20 (a) The aggregate voting power of all patron members
21 shall not be less than fifty-one percent of the entire voting power
22 entitled to vote but the articles of organization or bylaws may
23 reduce the collective voting power of patron members to not less
24 than fifteen percent of the entire voting power entitled to vote;
25 and

26 (b) The entire aggregate voting power of patron members
27 shall be voted as determined by the majority vote of patron members

1 voting at the members' meeting.

2 Sec. 40. (1) Unless otherwise provided by the articles of
3 organization or bylaws, any action that may be taken by the members
4 may be taken without a meeting if each member entitled to vote on
5 such action consents to the action in a record.

6 (2) Consent may be withdrawn by a member in a record
7 at any time before the limited cooperative association receives a
8 consent from each member entitled to vote.

9 (3) The consent record of any action may specify the
10 effective date or time of the action.

11 Sec. 41. The articles of organization or bylaws may
12 provide additional voting power be allocated for each patron member
13 for:

14 (1) Actual, estimated, or potential patronage or any
15 combination thereof;

16 (2) Equity allocated or held by a patron member in the
17 limited cooperative association; or

18 (3) Any combination of subdivisions (1) and (2) of this
19 section.

20 Sec. 42. If the articles of organization or bylaws
21 provide for investor members, each investor member has one vote
22 except as otherwise provided by the articles of organization or
23 bylaws.

24 Sec. 43. (1) Proxy voting by members is prohibited.

25 (2) Delegate voting based upon geographical district,
26 group, or class is not voting by proxy under this section.

27 (3) The articles of organization or bylaws may provide

1 for member voting by secret ballot delivered by mail or other
2 means.

3 (4) The articles of organization or bylaws may provide
4 for members to attend meetings or conduct member meetings through
5 the use of any means of communication, if all members attending the
6 meeting can simultaneously communicate with each other during the
7 meeting.

8 Sec. 44. (1) The articles of organization or bylaws may
9 provide:

10 (a) For the formation of districts and the conduct of
11 member meetings by districts and that elections of directors may be
12 held at district meetings; or

13 (b) That districts may elect district delegates to
14 represent and vote for the district in annual and special meetings
15 of members.

16 (2) A delegate selected under subdivision (1)(b) of this
17 section has one vote subject to subsection (3) of this section.

18 (3) The articles of organization or bylaws may provide
19 additional voting power be allocated to each district, group, or
20 class or delegate for the aggregate of the number of patron members
21 in each district, group, or class as provided under section 42 of
22 this act.

23 Sec. 45. A member's interest:

24 (1) Consists of: (a) Governance rights under allocation
25 and distributions; (b) financial rights; and (c) the right or
26 obligation, if any, to do business with the limited cooperative
27 association;

1 (2) Is personal property; and

2 (3) May be in certificated or uncertificated form.

3 Sec. 46. (1) Subject to subsection (2) of this section,
4 member interests shall be patron member interests.

5 (2) The articles of organization or bylaws may establish
6 investor member interests.

7 Sec. 47. (1) Unless otherwise provided in the articles
8 of organization or bylaws and subject to subsection (2) of this
9 section, member interests are not transferable. The terms of the
10 restriction on transferability shall be set forth in the limited
11 cooperative association articles of organization or bylaws, the
12 member records of the limited cooperative association, and shall
13 be conspicuously noted on any certificates evidencing a member's
14 interest.

15 (2) A member may transfer its financial rights in the
16 limited cooperative association unless the transfer is restricted
17 or prohibited by the articles of organization or bylaws.

18 (3) The transferee of a member's financial rights has,
19 to the extent transferred, the right to share in the allocation of
20 surplus, profits, or losses and to receive the distributions to the
21 member transferring the interest.

22 (4) The transferee does not become a member upon transfer
23 of a member's financial rights unless it is admitted as a member by
24 the limited cooperative association.

25 (5) A limited cooperative association need not give
26 effect to a transfer under this section until the limited
27 cooperative association has notice of the transfer.

1 (6) A transfer of a member's financial rights in
2 violation of a restriction or prohibition on transfer contained
3 in the articles of organization or bylaws is void.

4 Sec. 48. (1) An investor member or transferee may grant
5 a security interest in financial rights in a limited cooperative
6 association, but not in the governance rights in such association.

7 (2) A patron member shall not grant a security interest
8 in financial rights or governance rights in a limited cooperative
9 association.

10 (3) The granting of a security interest in financial
11 rights is not considered a transfer for purposes of section 47
12 of this act. Upon foreclosure of a security interest in financial
13 rights a person obtaining the financial rights shall only obtain
14 financial rights subject to the security interest and shall not
15 obtain any governance rights or other rights with respect to the
16 limited cooperative association.

17 (4) The limitation of this section to financial rights
18 shall not apply in the case of a member interest that is not
19 subject to a restriction or prohibition on transfer under the
20 articles of organization or bylaws.

21 Sec. 49. Unless otherwise provided by the articles of
22 organization or bylaws, a limited cooperative association may
23 contract with another party, who need not be a patron member,
24 requiring the other party to:

25 (1) Sell or deliver for sale or marketing on the person's
26 behalf a specified portion of the other party's agricultural
27 product or specified commodity exclusively to or through the

1 limited cooperative association or any facilities furnished by
2 the limited cooperative association or authorize the limited
3 cooperative association to act for the party in any manner with
4 respect to the product; and

5 (2) Buy or procure from or through the limited
6 cooperative association or any facilities furnished by the limited
7 cooperative association all or a specified part of the goods or
8 services to be bought or procured by the party or authorize the
9 limited cooperative association to act for the party in any manner
10 in the procurement of goods or the performance of services.

11 Sec. 50. (1) The contract may provide for sale of
12 the product or commodity to the limited cooperative association,
13 and, if so, the sale transfers title absolutely to the limited
14 cooperative association except for security interests properly
15 perfected under other law, upon delivery, or at any other specific
16 time expressly provided by the contract.

17 (2) The contract may authorize the limited cooperative
18 association to grant a security interest in the product or
19 commodity delivered and may provide that the limited cooperative
20 association may sell the product or commodity delivered and pay or
21 distribute the sales price on a pooled or other basis to the other
22 party after deducting the following:

23 (a) Selling, processing, overhead, and other costs and
24 expenses; and

25 (b) Reserves for the purposes set forth in subdivision
26 (3)(b) of section 80 of this act.

27 Sec. 51. A single term of a contract shall not exceed ten

1 years, but may be renewable for additional periods not exceeding
2 five years each, subject to the right of either party not to renew
3 by giving record notice during a period of the current term as
4 specified in the contract.

5 Sec. 52. (1) The contract or articles of organization
6 or bylaws may establish a specific sum of money as liquidated
7 damages to be paid by a patron member to the limited cooperative
8 association. The damages may be a percentage of the value of
9 a specific amount per unit of the products, goods, or services
10 involved by the breach or a fixed sum of money.

11 (2) If there is a breach or threatened breach of a
12 contract, the limited cooperative association is entitled to an
13 injunction to prevent the breach and continuing breach and to
14 a judgment of specific performance. Pending adjudication of the
15 action, and upon filing sufficient bond, the limited cooperative
16 association is entitled to a temporary restraining order and a
17 preliminary injunction.

18 (3) Nothing in this section shall restrict a limited
19 cooperative association from seeking any other remedy at law or
20 equity in the enforcement of a marketing contract.

21 Sec. 53. (1) A limited cooperative association shall have
22 a board of directors consisting of three or more directors as set
23 forth in the articles of organization or bylaws unless the number
24 of members is less than three. If there are fewer than three
25 members, the number of directors shall not be less than the number
26 of members in the limited cooperative association.

27 (2) The affairs of the limited cooperative association

1 shall be managed by, or under the direction of, the board of
2 directors.

3 (3) A director does not have agency authority on behalf
4 of the limited cooperative association solely by being a director.

5 Sec. 54. An obligation of a limited cooperative
6 association, whether arising in contract, tort, or otherwise, is
7 not the obligation of a director. A director is not personally
8 liable, directly or indirectly, by way of contribution or
9 otherwise, for an obligation of the limited cooperative association
10 solely by reason of being a director.

11 Sec. 55. (1) A director shall be an individual or
12 individual representative of a member that is not an individual.

13 (2) The articles of organization or bylaws may provide
14 for qualification of directors subject to this section.

15 (3) Except as otherwise provided in the articles of
16 organization or bylaws and subject to subsections (4) and (5)
17 of this section, each director shall be a member of the limited
18 cooperative association or a designee of a member that is not an
19 individual.

20 (4) Unless otherwise provided in the articles of
21 organization or bylaws, a director shall be an officer or employee
22 of the limited cooperative association.

23 (5) If the limited cooperative association is permitted
24 to have nonmember directors by its articles of organization or
25 bylaws, the number of nonmember directors shall not exceed:

26 (a) One director, if there are two, three, or four
27 directors; and

1 (b) One-fifth of the total number of directors, if there
2 are five or more directors.

3 Sec. 56. (1) At least fifty percent of the board of
4 directors of a limited cooperative association shall be elected
5 exclusively by patron members.

6 (2) The articles of organization may provide for the
7 election of all or a specified number of directors by the holders
8 of one or more groups of classes of members' interests.

9 (3) The articles of organization or bylaws may provide
10 for the nomination or election of directors by geographic district
11 directly or by district delegates.

12 (4) Cumulative voting is prohibited unless otherwise
13 provided in the articles of organization or bylaws.

14 (5) Except as otherwise provided by the articles of
15 organization, bylaws, or section 61 of this act, member directors
16 shall be elected at an annual members' meeting.

17 (6) Nonmember directors shall be elected in the same
18 manner as member directors unless the articles of organization or
19 bylaws provide for a different method of selection.

20 Sec. 57. (1) A director's term expires at the annual
21 members' meeting following the director's election unless otherwise
22 provided in the articles of organization or bylaws. The term of a
23 director shall not exceed three years.

24 (2) Unless otherwise provided in the articles of
25 organization or bylaws, a director may be reelected for subsequent
26 terms.

27 (3) A director continues to serve as director until a

1 successor director is elected and qualified or until the director
2 is removed, resigns, or dies.

3 Sec. 58. (1) A director may resign at any time by giving
4 notice in a record to the limited cooperative association.

5 (2) A resignation is effective when notice is received
6 by the limited cooperative association unless the notice states a
7 later effective date.

8 Sec. 59. The members may remove a director only for cause
9 unless the articles of organization or bylaws provide for removal
10 without cause.

11 Sec. 60. (1) The board of directors may suspend a
12 director, if, considering the director's course of conduct and
13 the inadequacy of other available remedies, immediate suspension
14 is necessary for the best interests of the limited cooperative
15 association and the director is engaged in:

16 (a) Fraudulent conduct with respect to the limited
17 cooperative association or its members;

18 (b) Gross abuse of the position of the director; or

19 (c) Intentional infliction of harm on the limited
20 cooperative association.

21 (2) After suspension, a director may be removed pursuant
22 to section 59 of this act.

23 Sec. 61. (1) Unless the articles of organization or
24 bylaws otherwise provide, a vacancy on the board of directors shall
25 be filled:

26 (a) By majority vote of the remaining directors until the
27 next annual members' meeting or special members' meeting held for

1 that purpose; and

2 (b) For the unexpired term by members at the next annual
3 members' meeting or special members' meeting called for that
4 purpose.

5 (2) If the vacating director was elected by a group or
6 class of members or by group, class, or district:

7 (a) The appointed director shall be of that group, class,
8 or district; and

9 (b) The election of the director for the unexpired term
10 shall be conducted in the same manner as would the election for
11 that position without a vacancy.

12 Sec. 62. Unless the articles of organization or bylaws
13 otherwise provide, the board of directors may fix the remuneration
14 of directors and nondirector committee members.

15 Sec. 63. (1) The board of directors shall meet at least
16 annually and may hold meetings in or outside this state.

17 (2) Unless otherwise provided in the articles of
18 organization or bylaws, the board of directors may permit directors
19 to attend board meetings or conduct board meetings through the
20 use of any means of communication, if all directors attending the
21 meeting can communicate with each other during the meeting.

22 Sec. 64. (1) Unless prohibited by the articles of
23 organization or bylaws, any action that may be taken by the
24 board of directors may be taken without a meeting if each director
25 consents to action in a record.

26 (2) Consent under subsection (1) of this section may be
27 withdrawn by a director in a record at any time before the limited

1 cooperative association receives a record of consent from each
2 director.

3 (3) The record of consent for any action may specify the
4 effective date or time of the action.

5 Sec. 65. (1) Unless otherwise provided by the articles of
6 organization or bylaws, the board of directors may establish a time
7 and place for regular board meetings and notice of the time, place,
8 or purpose of those meetings is not required.

9 (2) Unless otherwise provided by the articles of
10 organization or bylaws, special meetings of the board of directors
11 shall be preceded by at least three days' notice of the time, date,
12 and place of the meeting. The notice shall contain a statement of
13 the purpose of the special meeting and the meeting shall be limited
14 to the matters contained in the statement.

15 Sec. 66. (1) Unless otherwise provided in the articles of
16 organization or bylaws, a director may waive any required notice of
17 a meeting of the board of directors in a record before, during, or
18 after the meeting.

19 (2) Unless otherwise provided in the articles of
20 organization or bylaws, a director's participation in a meeting is
21 waiver of notice of that meeting, unless the director objects to
22 the meeting at the beginning of the meeting or promptly upon the
23 director's arrival at the meeting and does not thereafter vote for
24 or assent to action taken at the meeting.

25 Sec. 67. (1) Unless otherwise provided in the articles of
26 organization or bylaws, a majority of the fixed number of directors
27 on the board of directors constitutes a quorum for the management

1 of the affairs of the limited cooperative association.

2 (2) If a quorum is in attendance at the beginning of
3 the meeting, any action taken by the board of directors present
4 is valid even if the withdrawal of directors originally present
5 results in the number of directors being less than the number
6 required for a quorum.

7 Sec. 68. Each director has one vote for purposes of
8 decisions made by the board of directors.

9 Sec. 69. (1) Unless otherwise provided by the articles
10 of organization or bylaws, a board of directors may create one or
11 more committees and appoint one or more individuals to serve on a
12 committee.

13 (2) Unless otherwise provided by the articles of
14 organization or bylaws, an individual appointed to serve on
15 a committee need not be a director or member of the limited
16 cooperative association. An individual serving on a committee has
17 the same rights, duties, and obligations as a director serving on
18 a committee.

19 (3) Unless otherwise provided by the articles of
20 organization or bylaws, each committee may exercise the powers as
21 delegated by the board of directors except that no committee may:

22 (a) Approve allocations or distributions except according
23 to a formula or method prescribed by the board of directors;

24 (b) Approve or propose to members action requiring
25 approval of members; or

26 (c) Fill vacancies on the board of directors or any of
27 its committees.

1 Sec. 70. (1) A director shall discharge his or her duties
2 as a director, including his or her duties as a member of a
3 committee:

4 (a) In good faith;

5 (b) With the care an ordinarily prudent person in a like
6 position would exercise under similar circumstances; and

7 (c) In a manner he or she reasonably believes to be in
8 the best interests of the corporation.

9 (2) In discharging his or her duties, a director
10 shall be entitled to rely on information, opinions, reports,
11 or statements, including financial statements and other financial
12 data, if prepared or presented by:

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

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

19 (c) A committee of the board of directors of which he
20 or she is not a member, if the director reasonably believes the
21 committee merits confidence.

22 (3) A director shall not be considered to be acting in
23 good faith if he or she has knowledge concerning the matter in
24 question that makes reliance otherwise permitted by subsection (2)
25 of this section unwarranted.

26 (4) A director shall not be liable for any action taken
27 as a director or any failure to take any action if he or she

1 performed the duties of his or her office in compliance with this
2 section.

3 Sec. 71. Except as otherwise provided in section 70
4 of this act, the Business Corporation Act governs conflicts of
5 interests between a director or member of a committee of the board
6 of directors and the limited cooperative association.

7 Sec. 72. A director may obtain, inspect, and copy
8 all information regarding the state of activities and financial
9 condition of the limited cooperative association and other
10 information regarding the activities of the limited cooperative
11 association reasonably related to the performance of the director's
12 duties as director but not for any other purpose or in any manner
13 that would violate any duty to the limited cooperative association.

14 Sec. 73. Unless otherwise provided in the articles of
15 organization or bylaws, a director, in determining the best
16 interests of the limited cooperative association, may consider
17 the interests of employees, customers, and suppliers of the limited
18 cooperative association and of the communities in which the limited
19 cooperative association operates and the long-term and short-term
20 interests of the limited cooperative association and its members.

21 Sec. 74. (1) A limited cooperative association has the
22 offices provided in its articles of organization or bylaws or
23 established by the board of directors consistent with the articles
24 of organization or bylaws.

25 (2) The articles of organization or bylaws or the board
26 of directors shall designate one of the officers for preparing all
27 records required by section 10 of this act for the authentication

1 of records.

2 (3) Officers have the authority and perform the duties
3 as the articles of organization or bylaws prescribe or as the
4 board of directors determines is consistent with the articles of
5 organization or bylaws.

6 (4) The election or appointment of an officer does not of
7 itself create a contract with the officer.

8 (5) Unless otherwise provided in the articles of
9 organization or bylaws an individual may simultaneously hold more
10 than one office in the limited cooperative association.

11 Sec. 75. (1) The board of directors may remove an officer
12 at any time with or without cause.

13 (2) An officer may resign at any time in a record giving
14 notice to the limited cooperative association. The resignation is
15 effective when the notice is given unless the notice specifies a
16 later time.

17 Sec. 76. Indemnification of any individual who has
18 incurred liability, is a party, or is threatened to be made a
19 party because of the performance of duties to, or activity on
20 behalf of, the limited cooperative association is governed by the
21 Business Corporation Act.

22 Sec. 77. The articles of organization or bylaws may
23 establish the amount, manner, or method of determining any member
24 contribution requirements for members or may authorize the board of
25 directors to establish the manner and terms of any contributions
26 for members.

27 Sec. 78. (1) Unless otherwise provided in the articles of

1 organization or bylaws, the contributions of a member may consist
2 of tangible or intangible property or other benefit to the limited
3 cooperative association, including money, services performed or to
4 be performed, promissory notes, other agreements to contribute cash
5 or property, and contracts to be performed.

6 (2) The receipt and acceptance of contributions and
7 the valuation of contributions shall be reflected in the limited
8 cooperative association's required records pursuant to section 10
9 of this act.

10 (3) Unless otherwise provided in the articles of
11 organization or bylaws, the board of directors shall value the
12 contributions received or to be received. The determination by
13 the board of directors on valuation is conclusive for purposes of
14 determining whether the member's contribution obligation has been
15 fully paid.

16 Sec. 79. (1) A contribution agreement entered into before
17 formation of the limited cooperative association is irrevocable for
18 six months unless:

19 (a) Otherwise provided by the agreement; or

20 (b) All parties to the agreement consent to the
21 revocation.

22 (2) Upon default by a party to a contribution agreement
23 entered into before formation, the limited cooperative association,
24 once formed, may:

25 (a) Collect the amount owed as any other debt; or

26 (b) Unless otherwise provided in the agreement, rescind
27 the agreement if the debt remains unpaid more than twenty days

1 after the limited cooperative association demands payment from the
2 party in a record.

3 Sec. 80. (1) Subject to subsection (2) of this section,
4 the articles of organization or bylaws shall provide for the
5 allocation of net proceeds, savings, margins, profits, and losses
6 between classes or groups of members.

7 (2) Unless the articles of organization or bylaws
8 otherwise provide, patron members shall be allocated at least fifty
9 percent of the net proceeds, savings, margins, profits, and losses
10 in any fiscal year. The articles of organization or bylaws shall
11 not reduce the percentage allocated to patron members to less than
12 fifteen percent of the net proceeds.

13 (3) Unless otherwise provided in the articles of
14 organization or bylaws, in order to determine the amount of net
15 proceeds, savings, margins, and profits, the board of directors may
16 set aside a portion of the revenue, whether or not allocated to
17 members, after accounting for other expenses, for purposes of:

18 (a) Creating or accumulating a capital reserve; and
19 (b) Creating or accumulating reserves for specific
20 purposes, including expansion and replacement of capital assets and
21 other necessary business purposes.

22 (4) Subject to subsection (5) of this section and
23 the articles of organization or bylaws, the board of directors
24 shall allocate the amount remaining after the allocations under
25 subsections (1) through (3) of this section:

26 (a) To patron members annually in accordance with the
27 ratio of each members' patronage during the period to total

1 patronage of all patron members during the period; and

2 (b) To investor members, if any, in accordance with the
3 ratio of each investor member's limited contribution to the total
4 initial contribution of all investor members.

5 (5) For purposes of allocation of net proceeds, savings,
6 margins, profits, and losses to patron members, the articles of
7 organization or bylaws may establish allocation units based on
8 function, division, district, department, allocation units, pooling
9 arrangements, members' contributions, or other methods.

10 Sec. 81. (1) Unless otherwise provided by the articles
11 of organization or bylaws and subject to subsection (2) of this
12 section, the board of directors may authorize, and the limited
13 cooperative association may make, distributions to members.

14 (2) Unless otherwise provided by the articles of
15 organization or bylaws, distributions to members may be made in
16 the form of cash, capital credits, allocated patronage equities,
17 revolving fund certificates, the limited cooperative association's
18 own securities or other securities, or in any other manner.

19 Sec. 82. (1) A member does not have a right to withdraw
20 as a member of a limited cooperative association but has the power
21 to withdraw.

22 (2) Unless otherwise provided by the articles of
23 organization or bylaws, a member is dissociated from a limited
24 cooperative association upon the occurrence of any of the following
25 events:

26 (a) The limited cooperative association's having notice
27 in a record of the person's express will to withdraw as a member or

1 to withdraw on a later date specified by the person;

2 (b) An event provided in the articles of organization or
3 bylaws as causing the person's dissociation as a member;

4 (c) The person's expulsion as a member pursuant to the
5 articles of organization or bylaws;

6 (d) The person's expulsion as a member by the board of
7 directors if:

8 (i) It is unlawful to carry on the limited cooperative
9 association's activities with the person as a member;

10 (ii) Subject to section 47 of this act, there has been
11 a transfer of all of the person's financial rights in the limited
12 cooperative association;

13 (iii) The person is a corporation or association whether
14 or not organized under the Nebraska Limited Cooperative Association
15 Act, and:

16 (A) The limited cooperative association notifies the
17 person that it will be expelled as a member because it has filed
18 a statement of intent to dissolve or articles of dissolution, it
19 has been administratively or judicially dissolved, its charter has
20 been revoked, or its right to conduct business has been suspended
21 by the jurisdiction of its organization; and

22 (B) Within ninety days after the person receives the
23 notification described in subdivision (2)(d)(iii)(A) of this
24 section, there is no revocation of the certificate of dissolution
25 or no reinstatement of its charter or its right to conduct
26 business; or

27 (iv) The person is a limited liability company,

1 association, whether or not organized under the act, or partnership
2 that has been dissolved and whose business is being wound up;

3 (e) In the case of a person who is an individual, the
4 person's death;

5 (f) In the case of a person that is a trust, distribution
6 of the trust's entire financial rights in the limited cooperative
7 association, but not merely by the substitution of a successor
8 trustee;

9 (g) In the case of a person that is an estate,
10 distribution of the estate's entire financial interest in the
11 limited cooperative association, but not merely by the substitution
12 of a successor personal representative;

13 (h) Termination of a member that is not an individual,
14 partnership, limited liability company, limited cooperative
15 association, whether or not organized under the act, corporation,
16 trust, or estate; or

17 (i) The limited cooperative association's participation
18 in a merger, if, under the plan of merger as approved under section
19 122 of this act, the person ceases to be a member.

20 Sec. 83. (1) Upon a person's dissociation as a member:

21 (a) A person dissociated pursuant to section 82 of this
22 act does not have further rights as a member; and

23 (b) Subject to sections 47 and 48 of this act, any
24 financial rights owned by the person in the person's capacity as a
25 member immediately before dissociation is owned by the person as a
26 transferee who is not admitted as a member after dissociation.

27 (2) A person's dissociation as a member does not of

1 itself discharge the person from any obligation to the limited
2 cooperative association which the person incurred while a member.

3 Sec. 84. Except as otherwise provided in sections 86 and
4 87 of this act, a limited cooperative association is dissolved and
5 its activities shall be wound up only upon the occurrence of any of
6 the following:

7 (1) The happening of an event or the coming of a time
8 specified in the articles of organization;

9 (2) The action of the organizers, board of directors, or
10 members under sections 86 and 87 of this act;

11 (3) The passage of ninety days after the dissociation of
12 a member, resulting in the limited cooperative association having
13 less than two members, unless before the end of the period the
14 limited cooperative association admits at least one member in
15 accordance with its articles of organization or bylaws; or

16 (4) The filing of a declaration by the Secretary of State
17 under section 94 of this act.

18 Sec. 85. A district court may dissolve a limited
19 cooperative association or order any action that under the
20 circumstances is appropriate and equitable:

21 (1) In a proceeding by the Attorney General, if it is
22 established that:

23 (a) The limited cooperative association obtained its
24 articles of organization through fraud; or

25 (b) The limited cooperative association has continued to
26 exceed or abuse the authority conferred upon it by law;

27 (2) In a proceeding by a member, if it is established

1 that:

2 (a) The directors are deadlocked in the management of
3 the limited cooperative association's affairs, the members are
4 unable to break the deadlock, and irreparable injury to the limited
5 cooperative association is occurring or is threatened because of
6 the deadlock;

7 (b) The directors or those in control of the limited
8 cooperative association have acted, are acting, or will act in a
9 manner that is illegal, oppressive, or fraudulent;

10 (c) The members are deadlocked in voting power and have
11 failed, for a period that includes at least two consecutive annual
12 members' meetings, to elect successors to directors whose terms
13 have expired; or

14 (d) The assets of the limited cooperative association are
15 being misapplied or wasted; or

16 (3) In a proceeding by the limited cooperative
17 association to have its voluntary dissolution continued under
18 judicial supervision.

19 Sec. 86. A majority of the organizers or initial
20 directors of a limited cooperative association that has not yet
21 begun activity or the conduct of its affairs may dissolve the
22 limited cooperative association.

23 Sec. 87. In order to voluntarily dissolve:

24 (1) A resolution to dissolve shall be approved by a
25 majority vote of the board of directors unless a greater vote is
26 required by the articles of organization or bylaws;

27 (2) The board of directors shall mail or otherwise

1 transmit or deliver a record to each member:

2 (a) The resolution required by subdivision (1) of this
3 section;

4 (b) A recommendation that the members vote in favor of
5 the resolution, unless the board determines because of conflict of
6 interest or other special circumstances it should not make such a
7 recommendation;

8 (c) If the board makes no recommendation, the basis of
9 that decision; and

10 (d) A notice of the meeting in the same manner as a
11 special members' meeting;

12 (3) Subject to section 39 of this act, the resolution
13 to dissolve shall be approved by at least a two-thirds vote of
14 patron members voting at the meeting and at least two-thirds vote
15 of investor members voting at the meeting; and

16 (4) Unless otherwise provided in the resolution, the
17 limited cooperative association is dissolved upon approval under
18 subdivision (3) of this section.

19 Sec. 88. (1) A limited cooperative association that has
20 dissolved or is about to dissolve shall deliver to the Secretary of
21 State for filing articles of dissolution that state:

22 (a) The name of the limited cooperative association;

23 (b) The date that the limited cooperative association
24 dissolved or when it will dissolve; and

25 (c) Any other information it deems relevant.

26 (2) A person has notice of a limited cooperative
27 association's dissolution the later of ninety days after the

1 filing of the statement or the effective date under subdivision
2 (1) (b) of this section.

3 Sec. 89. (1) A limited cooperative association continues
4 after dissolution only for purposes of winding up its activities.

5 (2) In winding up its activities, the limited cooperative
6 association:

7 (a) Shall discharge its liabilities, settle and close its
8 activities, and marshal and distribute its assets; and

9 (b) File articles of dissolution indicating it is winding
10 up, preserve the limited cooperative association or its property
11 as a going concern for a reasonable time, prosecute and defend
12 actions and proceedings, transfer limited cooperative association
13 property, settle disputes by mediation or arbitration, and perform
14 other necessary acts.

15 (3) On the application of the limited cooperative
16 association, any member, or a holder of financial rights the
17 district court may order judicial supervision of the winding up,
18 including the appointment of a person to wind up the dissolved
19 limited cooperative association's activities, if:

20 (a) After a reasonable time, the limited cooperative
21 association has not executed winding up under subdivision (2) of
22 this subsection; or

23 (b) The applicant establishes other good cause.

24 Sec. 90. (1) In winding up a limited cooperative
25 association's business, unless otherwise stated in the articles
26 of organization or bylaws, the assets of the limited cooperative
27 association shall be applied to discharge its obligations to

1 creditors, including members who are creditors. Any remaining
2 assets shall be applied to pay in money the net amount
3 distributable to members in accordance with their right to
4 distributions under subsection (2) of this section.

5 (2) Each member is entitled to a distribution from
6 the limited cooperative association of any remaining assets
7 in the proportion of the member's financial interests to the
8 total financial interests of members of the limited cooperative
9 association after all other obligations are satisfied.

10 Sec. 91. (1) A dissolved limited cooperative association
11 may dispose of the known claims against it by following the
12 procedure described in subsection (2) of this section.

13 (2) A dissolved limited cooperative association may
14 notify its known claimants of the dissolution in a record. The
15 notice shall:

16 (a) Specify the information required to be included in a
17 claim;

18 (b) Provide a mailing address to which the claim is to be
19 sent;

20 (c) State the deadline for receipt of the claim, which
21 may not be less than one hundred twenty days after the date the
22 notice is received by the claimant; and

23 (d) State that the claim will be barred if not received
24 by the deadline.

25 (3) A claim against a dissolved limited cooperative
26 association is barred if the requirements of subsection (2) of this
27 section are met and:

1 (a) The limited cooperative association has not been
2 notified in a record of the claim; or

3 (b) In the case of a claim that is timely received
4 but rejected by the dissolved limited cooperative association, the
5 claimant does not commence an action to enforce the claim against
6 the limited cooperative association within ninety days after the
7 receipt of the notice of the rejection, if the notice of rejection
8 states that the claim will be barred unless brought against the
9 limited cooperative association within ninety days after receipt of
10 the notice of rejection.

11 (4) This section does not apply to a claim based on an
12 event occurring after the date of dissolution or a liability that
13 is contingent on that date.

14 Sec. 92. (1) A dissolved limited cooperative association
15 shall publish notice of its dissolution and request persons having
16 claims against the limited cooperative association to present them
17 in accordance with the notice.

18 (2) The notice shall:

19 (a) Be published at least once in a newspaper of
20 general circulation in the county in which the dissolved limited
21 cooperative association's principal office is located or, if it has
22 none in this state, in the county in which the limited cooperative
23 association's designated office is or was last located;

24 (b) Describe the information required to be contained in
25 a claim and provide a mailing address to which the claim is to be
26 sent; and

27 (c) State that a claim against the limited cooperative

1 association is barred unless an action to enforce the claim is
2 commenced within three years after publication of the notice.

3 (3) If a dissolved limited cooperative association
4 publishes a notice in accordance with subsection (2) of this
5 section, the claim of each of the following claimants is barred,
6 unless the claimant commences an action to enforce the claim
7 against the dissolved limited cooperative association within three
8 years after the publication date of the notice:

9 (a) A claimant that did not receive notice in a record
10 under section 91 of this act;

11 (b) A claimant whose claim was timely sent to the
12 dissolved limited cooperative association but not acted on; and

13 (c) A claimant whose claim is contingent or based on an
14 event occurring after the effective date of dissolution.

15 (4) A claim not barred under this section may be
16 enforced:

17 (a) Against the dissolved limited cooperative
18 association, to the extent of its undistributed assets;
19 or

20 (b) If the assets have been distributed in liquidation,
21 against a member or transferee of financial rights to the extent
22 of that person's proportionate share of the claim or the limited
23 cooperative association's assets distributed to the member or
24 transferee in liquidation, whichever is less, but a person's total
25 liability for all claims under this subsection does not exceed the
26 total amount of assets distributed to the person as part of the
27 winding up of the dissolved limited cooperative association.

1 Sec. 93. (1) A dissolved limited cooperative association
2 that has published a notice under section 91 or 92 of this act
3 may file an application with the district court where the dissolved
4 limited cooperative association's principal office is located for a
5 determination of the amount and form of security to be provided for
6 payment of claims that are contingent or have not been made known
7 to the dissolved limited cooperative association or that are based
8 on an event occurring after the effective date of dissolution but
9 that, based on the facts known to the dissolved limited cooperative
10 association, are reasonably estimated to arise after the effective
11 date of dissolution.

12 (2) Notice of the proceeding shall be given by the
13 dissolved limited cooperative association to each known claimant
14 holding a contingent claim within ten days after the filing of the
15 application of the limited cooperative association.

16 (3) The court may appoint a receiver to represent all
17 claimants whose identities are unknown in any proceeding brought
18 under this section. The reasonable fees and expenses of such
19 receiver, including all reasonable expert witness fees, shall be
20 paid by the dissolved limited cooperative association.

21 (4) Provision by the dissolved limited cooperative
22 association for security in the amount and the form ordered by the
23 court under section 92 of this act shall satisfy the dissolved
24 limited cooperative association's obligations with respect to
25 claims that are contingent, have not been made known to the
26 dissolved limited cooperative association, or are based on an event
27 occurring after the effective date of dissolution, and such claims

1 may not be enforced against a member who received a distribution.

2 Sec. 94. (1) The Secretary of State may dissolve a
3 limited cooperative association administratively if the limited
4 cooperative association does not, within sixty days after the due
5 date:

6 (a) Pay any fee, tax, or penalty due to the Secretary
7 of State under the Nebraska Limited Cooperative Association Act or
8 other law;

9 (b) Deliver its biennial report to the Secretary of
10 State;

11 (c) Have a registered agent or registered office in this
12 state; or

13 (d) Notify the Secretary of State that its registered
14 agent or registered office has been changed, that its registered
15 agent has resigned, or that its registered office has been
16 discontinued.

17 (2) If the Secretary of State determines that a ground
18 exists for administratively dissolving a limited cooperative
19 association, the Secretary of State shall file a record of the
20 determination and serve the limited cooperative association with a
21 copy of the filed record.

22 (3) If, within sixty days after service of the copy, the
23 limited cooperative association does not correct each ground for
24 dissolution or demonstrate to the reasonable satisfaction of the
25 Secretary of State that each uncorrected ground determined by the
26 Secretary of State does not exist, the Secretary of State shall
27 administratively dissolve the limited cooperative association by

1 preparing, signing, and filing a declaration of dissolution that
2 states the grounds for dissolution. The Secretary of State shall
3 serve the limited cooperative association with a copy of the filed
4 declaration.

5 (4) A limited cooperative association administratively
6 dissolved continues its existence but may carry on only activities
7 necessary to wind up its activities and liquidate its assets under
8 sections 89 and 90 of this act and to notify claimants under
9 sections 91 and 92 of this act.

10 (5) The administrative dissolution of a limited
11 cooperative association does not terminate the authority of its
12 agent for service of process.

13 Sec. 95. (1) A limited cooperative association that has
14 been administratively dissolved may apply to the Secretary of
15 State for reinstatement. The application shall be delivered to the
16 Secretary of State for filing and state:

17 (a) The name of the limited cooperative association and
18 the effective date of its administrative dissolution;

19 (b) That the grounds for dissolution either did not exist
20 or have been eliminated; and

21 (c) That the limited cooperative association's name
22 satisfies the requirements of sections 6 to 8 of this act.

23 (2) If the Secretary of State determines that (a) the
24 application contains the information required by subsection (1)
25 of this section and that the information is correct and (b) the
26 limited cooperative association has paid to the Secretary of State
27 all delinquent occupation taxes and has forwarded to the Secretary

1 of State a properly executed and signed biennial report for the
2 current year, the Secretary of State shall:

3 (a) Prepare a declaration of reinstatement that states
4 this determination;

5 (b) Sign and file the original of the declaration of
6 reinstatement; and

7 (c) Serve the limited cooperative association with a
8 copy.

9 (3) When reinstatement becomes effective it relates back
10 to and takes effect as of the effective date of the administrative
11 dissolution and the limited cooperative association may resume or
12 continue its activities as if the administrative dissolution had
13 never occurred.

14 Sec. 96. (1) If the Secretary of State denies a limited
15 cooperative association's application for reinstatement following
16 administrative dissolution, the Secretary of State shall prepare,
17 sign, and file a notice that explains the reason or reasons for
18 denial and serve the limited cooperative association with a copy of
19 the notice.

20 (2) Within thirty days after service of the notice of
21 denial, the limited cooperative association may appeal the denial
22 of restatement by petitioning the district court to set aside the
23 dissolution. The petition shall be served on the Secretary of State
24 and contain a copy of the Secretary of State's declaration of
25 dissolution, the limited cooperative association's application for
26 reinstatement, and the Secretary of State's notice of denial.

27 (3) The court may summarily order the Secretary of State

1 to reinstate the dissolved limited cooperative association or may
2 take other action the court considers appropriate.

3 Sec. 97. (1) Subject to subsection (2) of this section, a
4 member may maintain a direct action against the limited cooperative
5 association, an officer, or a director to enforce the rights and
6 otherwise protect the interests of the member, including rights and
7 interests under the articles of organization or bylaws.

8 (2) A member maintaining a direct action under this
9 section is required to plead and prove an actual or threatened
10 injury that is not solely the result of an injury suffered or
11 threatened to be suffered by the limited cooperative association.

12 Sec. 98. A member may maintain a derivative action to
13 enforce a right of a limited cooperative association if the member
14 adequately represents the interests of the limited cooperative
15 association and if:

16 (1) The member first makes a demand on the limited
17 cooperative association, requesting that it bring an action to
18 enforce the right, and the limited cooperative association does not
19 bring the action within a reasonable time; and

20 (2) Ninety days have expired after the date the demand
21 was made unless the member has earlier been notified that the
22 demand has been rejected by the limited cooperative association or
23 unless irreparable injury to the limited cooperative association
24 would result by waiting for the expiration of the time.

25 Sec. 99. A derivative action may be maintained only by a
26 person that is a member at the time the action is commenced and:

27 (1) That was a member when the conduct giving rise to the

1 action occurred; or

2 (2) Whose status as a member devolved upon the person by
3 operation of law from a person that was a member at the time of the
4 conduct.

5 Sec. 100. In a derivative action, the complaint shall
6 state with particularity:

7 (1) The date and content of the plaintiff's demand and
8 the limited cooperative association's response to the demand; and

9 (2) If ninety days have not expired under subdivision (2)
10 of section 98 of this act, that irreparable injury to the limited
11 cooperative association would result by waiting for the expiration
12 of the time.

13 Sec. 101. (1) Except as otherwise provided in subsection
14 (2) of this section:

15 (a) Any proceeds or other benefits of a derivative
16 action, whether by judgment, compromise, or settlement, belong
17 to the limited cooperative association and not to the derivative
18 plaintiff; and

19 (b) If the derivative plaintiff receives any proceeds,
20 the derivative plaintiff shall immediately remit them to the
21 limited cooperative association.

22 (2) If a derivative action is successful, in whole or
23 in part, the court may award the plaintiff reasonable expenses,
24 including reasonable attorney's fees, from the recovery of the
25 limited cooperative association.

26 Sec. 102. (1) The laws of the state or other jurisdiction
27 under which a foreign limited cooperative association is organized

1 govern relations among the members of the foreign limited
2 cooperative association and between the members and the foreign
3 limited cooperative association.

4 (2) A foreign limited cooperative association shall not
5 be denied a certificate of authority by reason of any difference
6 between the laws of the jurisdiction under which the foreign
7 limited cooperative association is organized and the laws of this
8 state.

9 (3) A certificate of authority does not authorize a
10 foreign limited cooperative association to engage in any activity
11 or exercise any power that a limited cooperative association cannot
12 engage in or exercise in this state.

13 Sec. 103. (1) A foreign limited cooperative association
14 may apply for a certificate of authority to transact business in
15 this state by delivering an application to the Secretary of State
16 for filing. The application shall state:

17 (a) The name of the foreign limited cooperative
18 association and, if the name does not comply with section 8 of
19 this act, an alternative name adopted pursuant to section 106 of
20 this act;

21 (b) The name of the state or other jurisdiction under
22 whose law the foreign limited cooperative association is organized;

23 (c) The street and mailing addresses of the foreign
24 limited cooperative association's designated office and, if
25 the laws of the jurisdiction under which the foreign limited
26 cooperative association is organized require the foreign limited
27 cooperative association to maintain an office in that jurisdiction,

1 the street and mailing addresses of the required office;

2 (d) The name and street and mailing addresses of the
3 foreign limited cooperative association's agent for service of
4 process in this state; and

5 (e) The name and street and mailing addresses of each of
6 the foreign limited cooperative association's current directors and
7 officers.

8 (2) A foreign limited cooperative association shall
9 deliver with the completed application a certificate of good
10 standing or existence or a similar record signed by the Secretary
11 of State or other official having custody of the foreign limited
12 cooperative association's publicly filed records in the state or
13 other jurisdiction under whose law the foreign limited cooperative
14 association is organized.

15 Sec. 104. (1) Activities of a foreign limited cooperative
16 association which do not constitute transacting business in this
17 state within the meaning of this section include:

18 (a) Maintaining, defending, and settling an action or
19 proceeding;

20 (b) Holding meetings of its members or carrying on any
21 other activity concerning its internal affairs;

22 (c) Maintaining accounts in financial institutions;

23 (d) Maintaining offices or agencies for the transfer,
24 exchange, and registration of the foreign limited cooperative
25 association's own securities or maintaining trustees or
26 depositories with respect to those securities;

27 (e) Selling through independent contractors;

1 (f) Soliciting or obtaining orders, whether by mail or
2 electronic means or through employees or agents or otherwise, if
3 the orders require acceptance outside this state before they become
4 contracts;

5 (g) Creating or acquiring indebtedness, mortgages, or
6 security interests in real or personal property;

7 (h) Securing or collecting debts or enforcing mortgages
8 or other security interests in property securing the debts and
9 holding, protecting, and maintaining property so acquired;

10 (i) Conducting an isolated transaction that is completed
11 within thirty days and is not one in the course of similar
12 transactions of a like manner; and

13 (j) Transacting business in interstate commerce.

14 (2) For purposes of this section, the ownership in
15 this state of income-producing real property or tangible personal
16 property, other than property excluded under subsection (1) of this
17 section, constitutes transacting business in this state.

18 (3) This section does not apply in determining the
19 contacts or activities that may subject a foreign limited
20 cooperative association to service of process, taxation, or
21 regulation under any other law of this state.

22 Sec. 105. Unless the Secretary of State determines that
23 an application for a certificate of authority does not comply
24 with the filing requirements of the Nebraska Limited Cooperative
25 Association Act, the Secretary of State, upon payment of all
26 filing fees, shall file the application, prepare, sign, and file a
27 certificate of authority to transact business in this state, and

1 send a copy of the filed certificate, together with a receipt for
2 the fees, to the foreign limited cooperative association or its
3 representative.

4 Sec. 106. (1) A foreign limited cooperative association
5 whose name does not comply with section 8 of this act shall
6 not obtain a certificate of authority until it adopts, for
7 purposes of transacting business in this state, an alternative
8 name that complies with such section. A foreign limited cooperative
9 association that adopts an alternative name under this subsection
10 and then obtains a certificate of authority with the name need
11 not comply with sections 7 and 8 of this act. After obtaining
12 a certificate of authority with an alternative name, a foreign
13 limited cooperative association shall transact business in this
14 state under the name unless the foreign limited cooperative
15 association is authorized under sections 7 and 8 of this act
16 to transact business in this state under another name.

17 (2) If a foreign limited cooperative association
18 authorized to transact business in this state changes its name
19 to one that does not comply with sections 7 and 8 of this act,
20 it shall not thereafter transact business in this state until it
21 complies with subsection (1) of this section and obtains an amended
22 certificate of authority.

23 Sec. 107. (1) A certificate of authority of a foreign
24 limited cooperative association to transact business in this state
25 may be revoked by the Secretary of State in the manner provided
26 in subsections (2) and (3) of this section if the foreign limited
27 cooperative association does not:

1 (a) Pay, within sixty days after the due date, any fee,
2 tax, or penalty due to the Secretary of State under the Nebraska
3 Limited Cooperative Association Act or other law;

4 (b) Deliver, within sixty days after the due date, its
5 biennial report required under section 94 of this act;

6 (c) Appoint and maintain an agent for service of process
7 as required by section 103 of this act; or

8 (d) Deliver for filing a statement of a change under
9 section 14 of this act within thirty days after a change has
10 occurred in the name or address of the agent.

11 (2) To revoke a certificate of authority, the Secretary
12 of State shall prepare, sign, and file a certificate of revocation
13 and send a copy to the foreign limited cooperative association's
14 registered agent for service of process in this state, or if
15 the foreign limited cooperative association does not appoint and
16 maintain an agent for service of process in this state, to the
17 foreign limited cooperative association's designated office. The
18 notice shall state:

19 (a) The revocation's effective date, which shall be at
20 least sixty days after the date the Secretary of State sends the
21 copy; and

22 (b) The foreign limited cooperative association's
23 noncompliance with subsection (1) of this section which is the
24 reason for the revocation.

25 (3) The authority of the foreign limited cooperative
26 association to transact business in this state ceases on the
27 effective date of the certificate of revocation unless before that

1 date the foreign limited cooperative association cures each failure
2 to comply with subsection (1) of this section stated in the notice.
3 If the foreign limited cooperative association cures the failures,
4 the Secretary of State shall so indicate on the filed notice.

5 Sec. 108. (1) To cancel its certificate of authority
6 to transact business in this state, a foreign limited cooperative
7 association shall deliver to the Secretary of State for filing a
8 notice of cancellation. The certificate is canceled when the notice
9 becomes effective under section 19 of this act.

10 (2) A foreign limited cooperative association transacting
11 business in this state shall not maintain an action or proceeding
12 in this state unless it has a certificate of authority to transact
13 business in this state.

14 (3) The failure of a foreign limited cooperative
15 association to have a certificate of authority to transact business
16 in this state does not impair the validity of a contract or act
17 of the foreign limited cooperative association or prevent the
18 foreign limited cooperative association from defending an action or
19 proceeding in this state.

20 (4) A member of a foreign limited cooperative association
21 is not liable for the obligations of the foreign limited
22 cooperative association solely by reason of the foreign limited
23 cooperative association's having transacted business in this state
24 without a certificate of authority.

25 (5) If a foreign limited cooperative association
26 transacts business in this state without a certificate of authority
27 or cancels its certificate of authority, it may be served in

1 accordance with section 16 of this act for rights of action arising
2 out of the transaction of business in this state.

3 Sec. 109. The Attorney General may maintain an action to
4 restrain a foreign limited cooperative association from transacting
5 business in this state in violation of the Nebraska Limited
6 Cooperative Association Act.

7 Sec. 110. (1) A limited cooperative association may amend
8 its articles of organization or bylaws.

9 (2) A member of a limited cooperative association does
10 not have vested rights in any provision in the articles of
11 organization or bylaws.

12 Sec. 111. To amend its articles of organization or
13 bylaws:

14 (1) A proposed amendment shall be approved by a majority
15 vote of the board of directors unless a greater vote is required by
16 the articles of organization or bylaws; and

17 (2) The board of directors shall mail or otherwise
18 transmit or deliver in a record to each member:

19 (a) The proposed amendment;

20 (b) A recommendation that the members approve the
21 amendment unless the board determines because of conflict of
22 interest or other special circumstances it should not make such a
23 recommendation;

24 (c) If the board makes no recommendation, the basis of
25 that decision;

26 (d) Any condition of its submission of the amendment to
27 the members; and

1 (e) To give notice of the meeting in the same manner as
2 a special members' meeting.

3 Sec. 112. (1) No substantive change to the proposed
4 amendment of the articles of organization or bylaws shall be made
5 at the members' meeting at which the vote occurs.

6 (2) Subject to subsection (1) of this section, any
7 amendment of the amendment need not be separately voted upon by the
8 board of directors.

9 (3) The vote to adopt an amendment to the amendment is
10 the same as that required to pass the proposed amendment.

11 Sec. 113. (1) An amendment to the articles of
12 organization shall be approved by at least a two-thirds vote of
13 members voting at the meeting.

14 (2) An amendment to the bylaws shall be approved by at
15 least a majority vote of members voting at the meeting and by at
16 least a majority of investor members voting at the meeting.

17 Sec. 114. Members shall vote as a separate group, if a
18 proposed amendment affects the group, class, or district of members
19 in:

20 (1) The equity capital structure of the limited
21 cooperative association, including the rights of the limited
22 cooperative association's members to share in profits or
23 distributions, and the relative rights, preferences, and
24 restrictions granted to or imposed upon one or more districts,
25 classes, or voting groups of similarly situated members;

26 (2) The transferability of members' interests;

27 (3) The manner or method of allocation of profits or

1 losses among members;

2 (4) The quorum for a meeting and rights of voting
3 and governance not including the modification of district
4 boundaries which may, unless otherwise provided in the articles of
5 organization or operating agreement, be determined by the board of
6 directors; or

7 (5) The terms for admission of new members.

8 Sec. 115. (1) Unless the articles of organization provide
9 otherwise, the board of directors may adopt bylaws to be effective
10 only in an emergency described in subsection (4) of this section.
11 The emergency bylaws may be amended or repealed by the members
12 and may make all provisions necessary for managing the limited
13 cooperative association during the emergency, including:

14 (a) Procedures for calling a meeting of the board of
15 directors;

16 (b) Quorum requirements for the meeting; and

17 (c) Designation of additional or substitute directors.

18 (2) The regular bylaws consistent with the emergency
19 bylaws remain effective during the emergency. The emergency bylaws
20 are not effective after the emergency ends.

21 (3) Action taken by the limited cooperative association
22 in good faith in accordance with the emergency bylaws:

23 (a) Binds the limited cooperative association; and

24 (b) May not be used to impose liability on a director,
25 officer, employee, or agent of the limited cooperative association.

26 (4) An emergency exists for purposes of this section if
27 a quorum of the board of directors cannot readily be assembled

1 because of a catastrophic event.

2 Sec. 116. (1) To amend or restate its articles of
3 organization, a limited cooperative association shall deliver to
4 the Secretary of State for filing an amendment or restatement of
5 the articles of organization stating:

6 (a) The name of the limited cooperative association;

7 (b) The date of filing of its initial articles of
8 organization; and

9 (c) The changes the amendment makes to the articles of
10 organization as most recently amended or restated.

11 (2) A limited cooperative association shall promptly
12 deliver to the Secretary of State for filing an amendment to the
13 articles of organization to reflect the appointment of a person
14 to wind up the limited cooperative association's activities under
15 sections 89 and 90 of this act.

16 (3) An organizer that knows that any information in a
17 filed articles of organization was false when the articles were
18 filed or has become false due to changed circumstances shall
19 promptly:

20 (a) Cause the articles to be amended; and

21 (b) Deliver to the Secretary of State an amendment for
22 filing.

23 (4) Articles of organization may be amended at any
24 time for any other proper purpose as determined by the limited
25 cooperative association.

26 (5) Restated articles of organization shall be delivered
27 to the Secretary of State for filing in the same manner as an

1 amendment.

2 (6) Subject to section 19 of this act, an amendment or
3 restated article is effective when filed by the Secretary of State.

4 Sec. 117. For purposes of sections 117 to 128 of this
5 act:

6 (1) Constituent limited cooperative association means a
7 limited cooperative association that is a party to a merger;

8 (2) Constituent organization means an organization that
9 is a party to a merger;

10 (3) Converted organization means the organization into
11 which a converting organization converts pursuant to sections 118
12 to 121 of this act;

13 (4) Converting limited cooperative association means a
14 converting organization that is a limited cooperative association;

15 (5) Converting organization means an organization that
16 converts to another organization pursuant to section 118 of this
17 act;

18 (6) Governing statute of an organization means the
19 statute that governs the organization's internal affairs;

20 (7) Organization means a limited cooperative association,
21 limited cooperative association governed by a law other
22 than the Nebraska Limited Cooperative Association Act, a
23 general partnership, a limited liability partnership, a limited
24 partnership, a limited liability company, a business trust, a
25 corporation, or any other person having a governing statute. The
26 term includes domestic and foreign organizations whether or not
27 organized for profit;

1 (8) Personal liability means personal liability for a
2 debt, liability, or other obligation of an organization which is
3 imposed on a person that co-owns, has an interest in, or is a
4 member of the organization:

5 (a) By the organization's governing statute solely by
6 reason of co-owning, having an interest in, or being a member of
7 the organization; or

8 (b) By the organization's organizational documents under
9 a provision of the organization's governing statute authorizing
10 those documents to make one or more specified persons liable for
11 all or for specified debts, liabilities, and other obligations of
12 the organization solely by reason of co-owning, having an interest
13 in, or being a member of the organization; and

14 (9) Surviving organization means an organization into
15 which one or more other organizations are merged. A surviving
16 organization may exist before the merger or be created by the
17 merger.

18 Sec. 118. (1) An organization other than a limited
19 cooperative association may convert to a limited cooperative
20 association and a limited cooperative association may convert
21 to another organization pursuant to this section and a plan of
22 conversion, if:

23 (a) The other organization's governing statute authorizes
24 the conversion;

25 (b) The conversion is not prohibited by the law of the
26 jurisdiction that enacted the governing statute; and

27 (c) The other organization complies with its governing

1 statute in effecting the conversion.

2 (2) A plan of conversion shall be in a record and shall
3 include:

4 (a) The name and form of the organization before
5 conversion;

6 (b) The name and form of the organization after
7 conversion;

8 (c) The terms and conditions of the conversion, including
9 the manner and basis for converting interests in the converting
10 organization into any combination of money, interests in the
11 converted organization, and other consideration; and

12 (d) The organizational documents of the converted
13 organization.

14 Sec. 119. (1) A plan of conversion shall be consented to
15 by at least two-thirds vote of patron members voting under section
16 39 of this act and by at least two-thirds vote of investor members,
17 if any, voting under section 42 of this act. If, as a result of the
18 conversion, any member of the limited cooperative association has
19 personal liability as a result of the conversion, consent of that
20 member in a record shall be required.

21 (2) Subject to any contractual rights, after a conversion
22 is approved, and at any time before a filing is made under section
23 120 of this act, a converting limited cooperative association may
24 amend the plan or abandon the planned conversion:

25 (a) As provided in the plan; and

26 (b) Except as prohibited by the plan, by the same consent
27 as required to approve the plan.

1 Sec. 120. (1) After a plan of conversion is approved:

2 (a) A converting limited cooperative association shall
3 deliver to the Secretary of State for filing articles of
4 conversion, which shall include:

5 (i) A statement that the limited cooperative association
6 has been converted into another organization;

7 (ii) The name and form of the organization and the
8 jurisdiction of its governing statute;

9 (iii) The date the conversion is effective under the
10 governing statute of the converted organization;

11 (iv) A statement that the conversion was approved as
12 required by the Nebraska Limited Cooperative Association Act;

13 (v) A statement that the conversion was approved as
14 required by the governing statute of the converted organization;
15 and

16 (vi) If the converted organization is a foreign
17 organization not authorized to transact business in this state, the
18 street and mailing address of an office which may be used for the
19 purposes of section 16 of this act; and

20 (b) If the converting organization is not a converting
21 limited cooperative association, the converting organization
22 shall deliver to the Secretary of State for filing articles of
23 organization, which shall include, in addition to the information
24 required by section 16 of this act:

25 (i) A statement that the limited cooperative association
26 was converted from another organization;

27 (ii) The name and form of the organization and the

1 jurisdiction of its governing statute; and

2 (iii) A statement that the conversion was approved in a
3 manner that complied with the organization's governing statute.

4 (2) A conversion becomes effective:

5 (a) If the converted organization is a limited
6 cooperative association, when the certificate of limited
7 partnership takes effect; and

8 (b) If the converted organization is not a limited
9 cooperative association, as provided by the governing statute of
10 the converted organization.

11 Sec. 121. (1) An organization that has been converted
12 pursuant to sections 117 to 121 of this act is for all purposes the
13 same entity that existed before the conversion.

14 (2) When a conversion takes effect:

15 (a) All property owned by the converting organization
16 remains vested in the converted organization;

17 (b) All debts, liabilities, and other obligations of the
18 converting organization continue as obligations of the converted
19 organization;

20 (c) An action or proceeding pending by or against the
21 converting organization may be continued as if the conversion had
22 not occurred;

23 (d) Except as prohibited by other law, all of the rights,
24 privileges, immunities, powers, and purposes of the converting
25 organization remain vested in the converted organization;

26 (e) Except as otherwise provided in the plan of
27 conversion, the terms and conditions of the plan of conversion take

1 effect; and

2 (f) Except as otherwise agreed, the conversion does
3 not dissolve a converting limited cooperative association for the
4 purposes of section 87 of this act.

5 (3) A converted organization that is a foreign
6 organization consents to the jurisdiction of the courts of this
7 state to enforce any obligation owed by the converting limited
8 cooperative association if, before the conversion, the converting
9 limited cooperative association was subject to suit in this state
10 on the obligation. A converted organization that is a foreign
11 organization and not authorized to transact business in this state
12 appoints the Secretary of State as its agent for service of process
13 for purposes of enforcing an obligation under this subsection.
14 Service on the Secretary of State under this subsection is made
15 in the same manner and with the same consequences as in sections
16 13 and 16 of this act.

17 Sec. 122. (1) A limited cooperative association may merge
18 with one or more other constituent organizations pursuant to this
19 section and a plan of merger, if:

20 (a) The governing statute of each of the other
21 organizations authorizes the merger;

22 (b) The merger is not prohibited by the law of a
23 jurisdiction that enacted any of those governing statutes; and

24 (c) Each of the other organizations complies with its
25 governing statute in effecting the merger.

26 (2) A plan of merger shall be in a record and shall
27 include:

1 (a) The name and form of each constituent organization;

2 (b) The name and form of the surviving organization and,
3 if the surviving organization is to be created by the merger, a
4 statement to that effect;

5 (c) The terms and conditions of the merger, including the
6 manner and basis for converting the interests in each constituent
7 organization into any combination of money, interests in the
8 surviving organization, and other consideration;

9 (d) If the surviving organization is to be created by the
10 merger, the surviving organization's organizational documents;

11 (e) If the surviving organization is not to be created
12 by the merger, any amendments to be made by the merger to the
13 surviving organization's organizational documents; and

14 (f) If a member of a constituent limited cooperative
15 association will have personal liability with respect to a
16 surviving organization, the identity by descriptive class or other
17 reasonable manner of the member.

18 Sec. 123. (1) Unless otherwise provided in the articles
19 of organization or bylaws, the plan of merger shall be approved by
20 a majority vote of the board of directors.

21 (2) The board of directors shall mail or otherwise
22 transmit or deliver in a record to each member:

23 (a) The plan of merger;

24 (b) A recommendation that the members approve the plan of
25 merger unless the board makes a determination because of conflicts
26 of interest or other special circumstances that it should not make
27 such a recommendation;

1 (c) If the board makes no recommendation, the basis for
2 that decision;

3 (d) Any condition of its submission of the plan of merger
4 to the members; and

5 (e) Notice of the meeting in the same manner as a special
6 members' meeting.

7 Sec. 124. (1) Unless the articles of organization or
8 bylaws provide for a greater quorum and subject to section 39
9 of this act, a plan of merger shall be approved by at least a
10 two-thirds vote of patron members voting under section 39 of this
11 act by at least a two-thirds vote of investor members, if any,
12 voting under section 42 of this act.

13 (2) Subject to any contractual rights, after a merger is
14 approved, and at any time before a filing is made under section
15 126 of this act, a constituent limited cooperative association may
16 amend the plan of merger or abandon the planned merger:

17 (a) As provided in the plan; and

18 (b) Except as prohibited by the plan, with the same
19 consent as was required to approve the plan.

20 Sec. 125. (1) Unless the articles of organization or
21 bylaws of the limited cooperative association or the organic law
22 or articles of organization or bylaws of the other organization
23 otherwise provide, a limited cooperative association that owns at
24 least ninety percent of each class of the voting power of a
25 subsidiary organization may merge the subsidiary into itself or
26 into another subsidiary.

27 (2) The limited cooperative association owning at least

1 ninety percent of the subsidiary organization before the merger
2 shall notify each other owner of the subsidiary, if any, of the
3 merger within ten days after the effective date of the merger.

4 Sec. 126. (1) After each constituent organization has
5 approved a merger, articles of merger shall be signed on behalf
6 of each other preexisting constituent organization by an authorized
7 representative.

8 (2) The articles of merger shall include:

9 (a) The name and form of each constituent organization
10 and the jurisdiction of its governing statute;

11 (b) The name and form of the surviving organization,
12 the jurisdiction of its governing statute, and, if the surviving
13 organization is created by the merger, a statement to that effect;

14 (c) The date the merger is effective under the governing
15 statute of the surviving organization;

16 (d) If the surviving organization is to be created by the
17 merger:

18 (i) If it will be a limited cooperative association, the
19 limited cooperative association's articles of organization; or

20 (ii) If it will be an organization other than a limited
21 cooperative association, the organizational document that creates
22 the organization;

23 (e) If the surviving organization preexists the merger,
24 any amendments provided for in the plan of merger for the
25 organizational document that created the organization;

26 (f) A statement as to each constituent organization that
27 the merger was approved as required by the organization's governing

1 statute;

2 (g) If the surviving organization is a foreign
3 organization not authorized to transact business in this state, the
4 street and mailing addresses of an office which the Secretary of
5 State may use for the purposes of service of process; and

6 (h) Any additional information required by the governing
7 statute of any constituent organization.

8 (3) Each constituent limited cooperative association
9 shall deliver the articles of merger for filing in the office
10 of the Secretary of State.

11 (4) A merger becomes effective under this section:

12 (a) If the surviving organization is a limited
13 cooperative association, upon the later of:

14 (i) Compliance with subsection (3) of this section; or

15 (ii) Subject to section 19 of this act, as specified in
16 the articles of merger; or

17 (b) If the surviving organization is not a limited
18 cooperative association, as provided by the governing statute of
19 the surviving organization.

20 Sec. 127. When a merger becomes effective:

21 (1) The surviving organization continues or comes into
22 existence;

23 (2) Each constituent organization that merges into the
24 surviving organization ceases to exist as a separate entity;

25 (3) All property owned by each constituent organization
26 that ceases to exist vests in the surviving organization;

27 (4) All debts, liabilities, and other obligations of

1 each constituent organization that ceases to exist continue as
2 obligations of the surviving organization;

3 (5) An action or proceeding pending by or against any
4 constituent organization that ceases to exist may be continued as
5 if the merger had not occurred;

6 (6) Except as prohibited by other law, all of the
7 rights, privileges, immunities, powers, and purposes of each
8 constituent organization that ceases to exist vest in the surviving
9 organization;

10 (7) Except as otherwise provided in the plan of merger,
11 the terms and conditions of the plan take effect;

12 (8) Except as otherwise agreed, if a constituent limited
13 cooperative association ceases to exist, the merger does not
14 dissolve the limited cooperative association for purposes of
15 section 87 of this act;

16 (9) If the surviving organization is created by the
17 merger:

18 (a) If it is a limited cooperative association, the
19 articles of organization become effective; or

20 (b) If it is an organization other than a limited
21 cooperative association, the organizational document that creates
22 the organization becomes effective; and

23 (10) If the surviving organization exists before the
24 merger, any amendments provided for in the articles of merger for
25 the organizational document that created the organization become
26 effective.

27 Sec. 128. (1) The limited cooperative associations may

1 agree to substitute the word consolidation for the term merger
2 pursuant to this section if:

3 (a) Each constituent organization is a limited
4 cooperative association or its governing statute expressly provides
5 for a consolidation; and

6 (b) The surviving organization is a limited cooperative
7 association or its governing statute expressly provides for a
8 consolidation.

9 (2) All provisions governing mergers or using the term
10 merger in the Nebraska Limited Cooperative Association Act shall
11 apply equally to mergers that the constituent organizations choose
12 to name consolidations under subsection (1) of this section.

13 Sec. 129. Member approval by at least two-thirds of the
14 patron members voting under section 39 of this act and by at
15 least a two-thirds vote of the investor members, if voting, under
16 section 42 of this act, is required for a limited cooperative
17 association to sell, lease, exchange, or otherwise dispose of all
18 or substantially all of the assets of the limited cooperative
19 association.

20 Sec. 130. To dispose of assets subject to section 129 of
21 this act:

22 (1) The proposed disposition shall be approved by a
23 majority vote of the board of directors unless a greater vote is
24 required by the articles of organization or bylaws; and

25 (2) The board of directors shall mail or otherwise
26 transmit or deliver in a record to each member notice of a special
27 meeting of the members as required by section 35 of this act that

1 sets forth:

2 (a) The terms of the proposed disposition;

3 (b) A recommendation that the members approve the
4 disposition unless the board determines because of conflict of
5 interest or other special circumstances it should not make such a
6 recommendation;

7 (c) If the board makes no recommendation, the basis of
8 that decision;

9 (d) Any condition of its submission of the proposed
10 disposition to the members; and

11 (e) Notice of the meeting in the same manner as a special
12 members meeting under sections 35 and 36 of this act.

13 Sec. 131. Disposition of assets subject to section 129 of
14 this act shall be consented to by:

15 (1) At least two-thirds vote of patron members voting
16 under section 39 of this act; and

17 (2) At least a two-thirds vote of investor members, if
18 any, under section 42 of this act.

19 Sec. 132. Member interests offered or sold by a limited
20 cooperative association are exempt from the Securities Act of
21 Nebraska to the extent interests offered or sold by other types of
22 organizations are exempt under subdivision (15) of section 8-1111.

23 Sec. 133. Limited cooperative associations have the
24 same immunities, rights, and privileges provided other types of
25 associations formed under other laws of this state and shall be
26 exempt from those laws to the same extent, but only to the same
27 extent, as those entities organized under the Nonstock Cooperative

1 Marketing Act or sections 21-1301 to 21-1339 are exempt.

2 Sec. 134. The Secretary of State shall have all powers
3 reasonably necessary to perform the duties required of him or her
4 under the Nebraska Limited Cooperative Association Act.

5 Sec. 135. Section 77-2716, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 77-2716 (1) The following adjustments to federal adjusted
8 gross income or, for corporations and fiduciaries, federal taxable
9 income shall be made for interest or dividends received:

10 (a) There shall be subtracted interest or dividends
11 received by the owner of obligations of the United States and its
12 territories and possessions or of any authority, commission, or
13 instrumentality of the United States to the extent includable in
14 gross income for federal income tax purposes but exempt from state
15 income taxes under the laws of the United States;

16 (b) There shall be subtracted that portion of the
17 total dividends and other income received from a regulated
18 investment company which is attributable to obligations described
19 in subdivision (a) of this subsection as reported to the recipient
20 by the regulated investment company;

21 (c) There shall be added interest or dividends received
22 by the owner of obligations of the District of Columbia, other
23 states of the United States, or their political subdivisions,
24 authorities, commissions, or instrumentalities to the extent
25 excluded in the computation of gross income for federal income
26 tax purposes except that such interest or dividends shall not be
27 added if received by a corporation which is a regulated investment

1 company;

2 (d) There shall be added that portion of the total
3 dividends and other income received from a regulated investment
4 company which is attributable to obligations described in
5 subdivision (c) of this subsection and excluded for federal
6 income tax purposes as reported to the recipient by the regulated
7 investment company; and

8 (e) (i) Any amount subtracted under this subsection shall
9 be reduced by any interest on indebtedness incurred to carry the
10 obligations or securities described in this subsection or the
11 investment in the regulated investment company and by any expenses
12 incurred in the production of interest or dividend income described
13 in this subsection to the extent that such expenses, including
14 amortizable bond premiums, are deductible in determining federal
15 taxable income.

16 (ii) Any amount added under this subsection shall be
17 reduced by any expenses incurred in the production of such income
18 to the extent disallowed in the computation of federal taxable
19 income.

20 (2) There shall be allowed a net operating loss derived
21 from or connected with Nebraska sources computed under rules
22 and regulations adopted and promulgated by the Tax Commissioner
23 consistent, to the extent possible under the Nebraska Revenue
24 Act of 1967, with the laws of the United States. For a resident
25 individual, estate, or trust, the net operating loss computed
26 on the federal income tax return shall be adjusted by the
27 modifications contained in this section. For a nonresident

1 individual, estate, or trust or for a partial-year resident
2 individual, the net operating loss computed on the federal return
3 shall be adjusted by the modifications contained in this section
4 and any carryovers or carrybacks shall be limited to the portion of
5 the loss derived from or connected with Nebraska sources.

6 (3) There shall be subtracted from federal adjusted gross
7 income for all taxable years beginning on or after January 1, 1987,
8 the amount of any state income tax refund to the extent such refund
9 was deducted under the Internal Revenue Code, was not allowed in
10 the computation of the tax due under the Nebraska Revenue Act of
11 1967, and is included in federal adjusted gross income.

12 (4) Federal adjusted gross income, or, for a fiduciary,
13 federal taxable income shall be modified to exclude the portion of
14 the income or loss received from a small business corporation with
15 an election in effect under subchapter S of the Internal Revenue
16 Code or from a limited liability company organized pursuant to the
17 Limited Liability Company Act that is not derived from or connected
18 with Nebraska sources as determined in section 77-2734.01.

19 (5) There shall be subtracted from federal adjusted gross
20 income or, for corporations and fiduciaries, federal taxable income
21 dividends received or deemed to be received from corporations which
22 are not subject to the Internal Revenue Code.

23 (6) There shall be subtracted from federal taxable income
24 a portion of the income earned by a corporation subject to the
25 Internal Revenue Code of 1986 that is actually taxed by a foreign
26 country or one of its political subdivisions at a rate in excess
27 of the maximum federal tax rate for corporations. The taxpayer may

1 make the computation for each foreign country or for groups of
2 foreign countries. The portion of the taxes that may be deducted
3 shall be computed in the following manner:

4 (a) The amount of federal taxable income from operations
5 within a foreign taxing jurisdiction shall be reduced by the amount
6 of taxes actually paid to the foreign jurisdiction that are not
7 deductible solely because the foreign tax credit was elected on the
8 federal income tax return;

9 (b) The amount of after-tax income shall be divided by
10 one minus the maximum tax rate for corporations in the Internal
11 Revenue Code; and

12 (c) The result of the calculation in subdivision (b) of
13 this subsection shall be subtracted from the amount of federal
14 taxable income used in subdivision (a) of this subsection. The
15 result of such calculation, if greater than zero, shall be
16 subtracted from federal taxable income.

17 (7) Federal adjusted gross income shall be modified to
18 exclude any amount repaid by the taxpayer for which a reduction
19 in federal tax is allowed under section 1341(a)(5) of the Internal
20 Revenue Code.

21 (8) (a) Federal adjusted gross income or, for corporations
22 and fiduciaries, federal taxable income shall be reduced, to the
23 extent included, by income from interest, earnings, and state
24 contributions received from the Nebraska educational savings plan
25 trust created in sections 85-1801 to 85-1814.

26 (b) Federal adjusted gross income or, for corporations
27 and fiduciaries, federal taxable income shall be reduced, to the

1 extent not deducted for federal income tax purposes, by the amount
2 of any gift, grant, or donation made to the Nebraska educational
3 savings plan trust for deposit in the endowment fund of the trust.

4 (c) Federal adjusted gross income or, for corporations
5 and fiduciaries, federal taxable income shall be reduced by any
6 contributions as a participant in the Nebraska educational savings
7 plan trust, to the extent not deducted for federal income tax
8 purposes, but not to exceed five hundred dollars per married filing
9 separate return or one thousand dollars for any other return.

10 (d) Federal adjusted gross income or, for corporations
11 and fiduciaries, federal taxable income shall be increased by
12 the amount resulting from the cancellation of a participation
13 agreement refunded to the taxpayer as a participant in the Nebraska
14 educational savings plan trust to the extent previously deducted as
15 a contribution to the trust.

16 (9)(a) For income tax returns filed after September 10,
17 2001, for taxable years beginning or deemed to begin before January
18 1, 2006, under the Internal Revenue Code of 1986, as amended,
19 federal adjusted gross income or, for corporations and fiduciaries,
20 federal taxable income shall be increased by eighty-five percent
21 of any amount of any federal bonus depreciation received under
22 the federal Job Creation and Worker Assistance Act of 2002 or the
23 federal Jobs and Growth Tax Act of 2003, under section 168(k) or
24 section 1400L of the Internal Revenue Code of 1986, as amended,
25 for assets placed in service after September 10, 2001, and before
26 December 31, 2005.

27 (b) For a partnership, limited liability company,

1 cooperative, including any cooperative exempt from income taxes
2 under section 521 of the Internal Revenue Code of 1986, as amended,
3 limited cooperative association, subchapter S corporation, or
4 joint venture, the increase shall be distributed to the partners,
5 members, shareholders, patrons, or beneficiaries in the same
6 manner as income is distributed for use against their income tax
7 liabilities.

8 (c) For a corporation with a unitary business having
9 activity both inside and outside the state, the increase shall be
10 apportioned to Nebraska in the same manner as income is apportioned
11 to the state by section 77-2734.05.

12 (d) The amount of bonus depreciation added to federal
13 adjusted gross income or, for corporations and fiduciaries, federal
14 taxable income by this subsection shall be subtracted in a
15 later taxable year. Twenty percent of the total amount of bonus
16 depreciation added back by this subsection for tax years beginning
17 or deemed to begin before January 1, 2003, under the Internal
18 Revenue Code of 1986, as amended, may be subtracted in the first
19 taxable year beginning or deemed to begin on or after January 1,
20 2005, under the Internal Revenue Code of 1986, as amended, and
21 twenty percent in each of the next four following taxable years.
22 Twenty percent of the total amount of bonus depreciation added back
23 by this subsection for tax years beginning or deemed to begin on or
24 after January 1, 2003, may be subtracted in the first taxable year
25 beginning or deemed to begin on or after January 1, 2006, under the
26 Internal Revenue Code of 1986, as amended, and twenty percent in
27 each of the next four following taxable years.

1 (10) For taxable years beginning or deemed to begin on
2 or after January 1, 2003, and before January 1, 2006, under the
3 Internal Revenue Code of 1986, as amended, federal adjusted gross
4 income or, for corporations and fiduciaries, federal taxable income
5 shall be increased by the amount of any capital investment that is
6 expensed under section 179 of the Internal Revenue Code of 1986,
7 as amended, that is in excess of twenty-five thousand dollars that
8 is allowed under the federal Jobs and Growth Tax Act of 2003.
9 Twenty percent of the total amount of expensing added back by
10 this subsection for tax years beginning or deemed to begin on or
11 after January 1, 2003, may be subtracted in the first taxable year
12 beginning or deemed to begin on or after January 1, 2006, under the
13 Internal Revenue Code of 1986, as amended, and twenty percent in
14 each of the next four following tax years.

15 (11)(a) Federal adjusted gross income shall be reduced
16 by contributions, up to two thousand dollars per married filing
17 jointly return or one thousand dollars for any other return, and
18 any investment earnings made as a participant in the Nebraska
19 long-term care savings plan under the Long-Term Care Savings Plan
20 Act, to the extent not deducted for federal income tax purposes.

21 (b) Federal adjusted gross income shall be increased by
22 the withdrawals made as a participant in the Nebraska long-term
23 care savings plan under the act by a person who is not a qualified
24 individual or for any reason other than transfer of funds to a
25 spouse, long-term care expenses, long-term care insurance premiums,
26 or death of the participant, including withdrawals made by reason
27 of cancellation of the participation agreement or termination of

1 the plan, to the extent previously deducted as a contribution or as
2 investment earnings.

3 Sec. 136. Section 77-27,187.01, Revised Statutes
4 Cumulative Supplement, 2006, is amended to read:

5 77-27,187.01 For purposes of the Nebraska Advantage Rural
6 Development Act, unless the context otherwise requires:

7 (1) Any term has the same meaning as used in the Nebraska
8 Revenue Act of 1967;

9 (2) Equivalent Nebraska employees means the number of
10 Nebraska employees computed by dividing the total hours paid in a
11 year to Nebraska employees by the product of forty times the number
12 of weeks in a year;

13 (3) Livestock modernization or expansion means the
14 construction, improvement, or acquisition of buildings, facilities,
15 or equipment for livestock housing, confinement, feeding,
16 production, and waste management;

17 (4) Livestock production has the same meaning as in
18 section 77-5203;

19 (5) Nebraska employee means an individual who is either a
20 resident or partial-year resident of Nebraska;

21 (6) Qualified employee leasing company means a company
22 which places all employees of a client-lessee on its payroll and
23 leases such employees to the client-lessee on an ongoing basis
24 for a fee and, by written agreement between the employee leasing
25 company and a client-lessee, grants to the client-lessee input into
26 the hiring and firing of the employees leased to the client-lessee;

27 (7) Related taxpayers includes any corporations that are

1 part of a unitary business under the Nebraska Revenue Act of 1967
2 but are not part of the same corporate taxpayer, any business
3 entities that are not corporations but which would be a part of
4 the unitary business if they were corporations, and any business
5 entities if at least fifty percent of such entities are owned by
6 the same persons or related taxpayers and family members as defined
7 in the ownership attribution rules of the Internal Revenue Code of
8 1986, as amended;

9 (8) Taxpayer means a corporate taxpayer or other person
10 subject to either an income tax imposed by the Nebraska Revenue
11 Act of 1967 or a franchise tax under Chapter 77, article 38, or a
12 partnership, limited liability company, subchapter S corporation,
13 cooperative, including a cooperative exempt under section 521 of
14 the Internal Revenue Code of 1986, as amended, limited cooperative
15 association, or joint venture that is or would otherwise be a
16 member of the same unitary group if incorporated, which is,
17 or whose partners, members, or owners representing an ownership
18 interest of at least ninety percent of the control of such
19 entity are, subject to or exempt from such taxes, and any other
20 partnership, limited liability company, subchapter S corporation,
21 cooperative, including a cooperative exempt under section 521 of
22 the Internal Revenue Code of 1986, as amended, limited cooperative
23 association, or joint venture when the partners, members, or owners
24 representing an ownership interest of at least ninety percent of
25 the control of such entity are subject to or exempt from such
26 taxes; and

27 (9) Year means the taxable year of the taxpayer.

1 Sec. 137. Section 77-27,194, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-27,194 The credit allowed under the Nebraska Advantage
4 Rural Development Act shall not be transferable except in the
5 following situations:

6 (1) Any credit allowable to a partnership, a limited
7 liability company, a subchapter S corporation, a cooperative,
8 including a cooperative exempt under section 521 of the
9 Internal Revenue Code of 1986, as amended, a limited cooperative
10 association, or an estate or trust may be distributed to the
11 partners, limited liability company members, shareholders, patrons,
12 limited cooperative association members, or beneficiaries. Any
13 credit distributed shall be distributed in the same manner as
14 income is distributed. A credit distributed shall be considered
15 a credit used and the partnership, limited liability company,
16 subchapter S corporation, cooperative, including a cooperative
17 exempt under section 521 of the Internal Revenue Code of 1986, as
18 amended, limited cooperative association, estate, or trust shall be
19 liable for any repayment under section 77-27,188.02;

20 (2) The incentives previously allowed and the future
21 allowance of incentives may be transferred when a project covered
22 by an agreement is transferred by sale or lease to another taxpayer
23 or in an acquisition of assets qualifying under section 381 of the
24 Internal Revenue Code of 1986;

25 (3) The acquiring taxpayer, as of the date of
26 notification of the Tax Commissioner of the completed transfer,
27 shall be entitled to any unused credits and to any future

1 incentives allowable under the act;

2 (4) The acquiring taxpayer shall be liable for any
3 repayment that becomes due after the date of the transfer for
4 the repayment of any benefits received either before or after the
5 transfer; and

6 (5) If a taxpayer operating a qualifying business and
7 allowed a credit under section 77-27,188 dies and there is credit
8 remaining after the filing of the final return for the taxpayer,
9 the personal representative shall determine the distribution of the
10 credit or any remaining carryover with the initial fiduciary return
11 filed for the estate. The determination of the distribution of
12 credit may be changed only after obtaining the permission of the
13 Tax Commissioner.

14 Sec. 138. Section 77-5509, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 77-5509 Company means (1) any person subject to sales and
17 use taxes and either the income tax imposed by the Nebraska Revenue
18 Act of 1967 or the franchise tax under sections 77-3801 to 77-3807,
19 (2) any corporation, partnership, limited liability company, or
20 joint venture that is or would otherwise be a member of the
21 same unitary group, if incorporated, which is, or whose partners,
22 members, or owners are, subject to such taxes, and any other
23 partnership, limited liability company, subchapter S corporation,
24 or joint venture when the partners, owners, shareholders, or
25 members are subject to such taxes, and (3) any cooperative exempt
26 from such taxes under section 521 of the Internal Revenue Code of
27 1986, as amended, and (4) any limited cooperative association.

1 Sec. 139. Section 77-5719, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-5719 Taxpayer means any person subject to sales and
4 use taxes under the Nebraska Revenue Act of 1967 and subject to
5 withholding under section 77-2753 and any corporation, partnership,
6 limited liability company, cooperative, including a cooperative
7 exempt under section 521 of the Internal Revenue Code of 1986,
8 as amended, limited cooperative association, or joint venture that
9 is or would otherwise be a member of the same unitary group, if
10 incorporated, that is subject to such sales and use taxes or such
11 withholding. Taxpayer does not include a political subdivision or
12 an organization that is exempt from income taxes under section
13 501(a) of the Internal Revenue Code of 1986, as amended, or any
14 partnership, limited liability company, cooperative, including a
15 cooperative exempt under section 521 of the Internal Revenue Code
16 of 1986, as amended, limited cooperative association, or joint
17 venture in which political subdivisions or organizations described
18 in section 501(c) or (d) of the code hold an ownership interest of
19 ten percent or more.

20 Sec. 140. Section 77-5728, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 77-5728 (1) The incentives allowed under the Nebraska
23 Advantage Act shall not be transferable except in the following
24 situations:

25 (a) Any credit allowable to a partnership, a limited
26 liability company, a subchapter S corporation, a cooperative,
27 including a cooperative exempt under section 521 of the

1 Internal Revenue Code of 1986, as amended, a limited cooperative
2 association, or an estate or trust may be distributed to the
3 partners, members, shareholders, patrons, or beneficiaries in the
4 same manner as income is distributed for use against their income
5 tax liabilities, and such partners, members, shareholders, or
6 beneficiaries shall be deemed to have made an underpayment of
7 their income taxes for any recapture required by section 77-5727.

8 A credit distributed shall be considered a credit used and the
9 partnership, limited liability company, subchapter S corporation,
10 cooperative, including a cooperative exempt under section 521
11 of the Internal Revenue Code of 1986, as amended, a limited
12 cooperative association, estate, or trust shall be liable for any
13 repayment required by section 77-5727; and

14 (b) The incentives previously allowed and the future
15 allowance of incentives may be transferred when a project covered
16 by an agreement is transferred in its entirety by sale or lease to
17 another taxpayer or in an acquisition of assets qualifying under
18 section 381 of the Internal Revenue Code of 1986, as amended.

19 (2) The acquiring taxpayer, as of the date of
20 notification of the Tax Commissioner of the completed transfer,
21 shall be entitled to any unused credits and to any future
22 incentives allowable under the act.

23 (3) The acquiring taxpayer shall be liable for any
24 recapture that becomes due after the date of the transfer for
25 the repayment of any benefits received either before or after the
26 transfer.

27 (4) If a taxpayer operating a project and allowed a

1 credit under the act dies and there is a credit remaining after
2 the filing of the final return for the taxpayer, the personal
3 representative shall determine the distribution of the credit or
4 any remaining carryover with the initial fiduciary return filed for
5 the estate. The determination of the distribution of the credit
6 may be changed only after obtaining the permission of the Tax
7 Commissioner.

8 Sec. 141. Section 77-5903, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 77-5903 For purposes of the Nebraska Advantage
11 Microenterprise Tax Credit Act:

12 (1) Actively engaged in the operation of a microbusiness
13 means personal involvement on a continuous basis in the daily
14 management and operation of the business;

15 (2) Distressed area means a municipality, county,
16 unincorporated area within a county, or census tract in Nebraska
17 that has (a) an unemployment rate which exceeds the statewide
18 average unemployment rate, (b) a per capita income below the
19 statewide average per capita income, or (c) had a population
20 decrease between the two most recent federal decennial censuses;

21 (3) Equivalent employees means the number of employees
22 computed by dividing the total hours paid in a year by the product
23 of forty times the number of weeks in a year;

24 (4) Microbusiness means any business employing five or
25 fewer equivalent employees;

26 (5) New employment means the amount by which the total
27 compensation paid during the tax year to employees who are Nebraska

1 residents exceeds the total compensation paid to employees who are
2 Nebraska residents in the tax year prior to application;

3 (6) New investment means the increase in the applicant's
4 purchases of buildings and depreciable personal property located
5 in Nebraska and expenditures on repairs and maintenance on
6 property located in Nebraska, not including vehicles required
7 to be registered for operation on the roads and highways of
8 this state, during the tax year. If the buildings or depreciable
9 personal property is leased, the amount of new investment shall be
10 the increase in average net annual rents multiplied by the number
11 of years of the lease for which the taxpayer is bound, not to
12 exceed ten years;

13 (7) Related persons means (a) any corporation,
14 partnership, limited liability corporation, cooperative, including
15 cooperatives exempt under section 521 of the Internal Revenue Code
16 of 1986, as amended, limited cooperative association, or joint
17 venture which is or would otherwise be a member of the same unitary
18 group, if incorporated, or any person who is considered to be
19 a related person under either section 267(b) and (c) or section
20 707(b) of the Internal Revenue Code of 1986, as amended, and (b)
21 any individual who is a spouse, parent if the taxpayer is a minor,
22 or minor son or daughter of the taxpayer; and

23 (8) Taxpayer means any person subject to the income tax
24 imposed by the Nebraska Revenue Act of 1967, any corporation,
25 partnership, limited liability company, cooperative, including a
26 cooperative exempt under section 521 of the Internal Revenue Code
27 of 1986, as amended, limited cooperative association, or joint

1 venture that is or would otherwise be a member of the same unitary
2 group, if incorporated, which is, or whose partners, members,
3 or owners representing an ownership interest of at least ninety
4 percent of such entity are, subject to such tax, and any other
5 partnership, limited liability company, subchapter S corporation,
6 cooperative, including a cooperative exempt under section 521 of
7 the Internal Revenue Code of 1986, as amended, limited cooperative
8 association, or joint venture when the partners, shareholders,
9 or members representing an ownership interest of at least ninety
10 percent of such entity are subject to such tax.

11 Sec. 142. This act becomes operative on January 1, 2008.

12 Sec. 143. Original section 77-5509, Reissue Revised
13 Statutes of Nebraska, and sections 77-2716, 77-27,187.01,
14 77-27,194, 77-5719, 77-5728, and 77-5903, Revised Statutes
15 Cumulative Supplement, 2006, are repealed.