

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 368

FINAL READING

Introduced by Erdman, 47; Flood, 19; Gay, 14; Pirsch, 4

Read first time January 12, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to cooperative associations; to amend section
2 77-5509, Reissue Revised Statutes of Nebraska, and
3 sections 77-2716, 77-27,187.01, 77-27,194, 77-5719,
4 77-5728, and 77-5903, Revised Statutes Cumulative
5 Supplement, 2006; to adopt the Nebraska Limited
6 Cooperative Association Act; to change taxation
7 provisions as prescribed; to redefine terms; to harmonize
8 provisions; to provide an operative date; and to repeal
9 the original sections.

10 Be it enacted by the people of the State of Nebraska,

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

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

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

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

15 (a) Have a function similar to articles of organization;
16 and

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

21 (2) Bylaws includes initial, amended, and restated
22 bylaws;

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

1 (4) Debtor in bankruptcy means a person that is the
2 subject of:

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

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

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

10 (6) Distribution means a transfer of money or other
11 property from a limited cooperative association to a member in the
12 member's capacity as a member or to a transferee because of a right
13 owned by the transferee;

14 (7) Domestic entity means an entity organized under the
15 laws of this state;

16 (8) Entity means an association, a business trust,
17 a company, a corporation, a limited cooperative association,
18 a general partnership, a limited liability company, a limited
19 liability partnership, or a limited partnership, domestic or
20 foreign;

21 (9) Financial rights means the right to participate in
22 allocation and distribution under sections 80 and 81 of this
23 act but does not include rights or obligations under a marketing
24 contract governed by sections 49 to 52 of this act;

25 (10) Foreign limited cooperative association means a

1 foreign entity organized under a law similar to the Nebraska
2 Limited Cooperative Association Act in another jurisdiction;

3 (11) Foreign entity means an entity that is not a
4 domestic entity;

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

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

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

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

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

18 (17) Members' meeting means an annual or a special
19 members' meeting;

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

24 (19) Patronage means business transactions between a
25 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; an entity; a trust; a
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

1 symbol, sound, or process to or with a record;

2 (26) State means a state of the United States, the
3 District of Columbia, Puerto Rico, the United States Virgin
4 Islands, or any territory or insular possession subject to the
5 jurisdiction of the United States;

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

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

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

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

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

25 Sec. 5. (1) Except as otherwise provided in the

1 Nebraska Limited Cooperative Association Act, a limited cooperative
2 association has the power to do all things necessary or convenient
3 to carry on its activities, including the power to sue, be sued,
4 and defend in its own name and to maintain an action against a
5 member for harm caused to the limited cooperative association by a
6 violation of the articles of organization or bylaws of the limited
7 cooperative association or violation of a duty to the limited
8 cooperative association.

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

17 (b) A limited cooperative association need not provide
18 the written disclosure statement described in subdivision (a) of
19 this subsection to any member that is described in subdivision (8)
20 of section 8-1111.

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

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

25 (ii) Be secured by real property, except that an

1 extension of credit in default at the end of the original term may
2 be extended or renewed for successive periods not exceeding nine
3 months in length and may be secured by real property at the end of
4 the original term or any extension or renewal thereof.

5 (d) No new money may be advanced by an association in
6 connection with the extension or renewal of an extension of credit
7 granted under subdivision (2) (c) of this section.

8 Sec. 6. (1) The name of a limited cooperative association
9 must contain the words "limited cooperative association" or their
10 abbreviation.

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

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

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

17 (c) A fictitious name approved for a foreign limited
18 cooperative association authorized to transact business in this
19 state.

20 Sec. 7. (1) A person may reserve the exclusive use of the
21 name of a limited cooperative association, including a fictitious
22 name for a foreign limited cooperative association whose name is
23 unavailable, by delivering an application to the Secretary of State
24 for filing. The application shall set forth the name and address
25 of the applicant and the name proposed to be reserved. If the

1 Secretary of State finds that the name applied for is available,
2 it shall be reserved for the applicant's exclusive use for a
3 nonrenewable one-hundred-twenty-day period.

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

8 Sec. 8. (1) A foreign limited cooperative association
9 may register its name pursuant to section 7 of this act if the
10 name is not the same as or deceptively similar to names that are
11 unavailable under section 6 of this act.

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

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

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

22 (3) A foreign limited cooperative association whose
23 registration is effective may qualify as a foreign limited
24 cooperative association under its name or consent in a record to
25 the use of its name by a limited cooperative association later

1 organized under the Nebraska Limited Cooperative Association Act
2 or by a foreign limited cooperative association later authorized
3 to transact business in this state. The registration of the name
4 terminates when the limited cooperative association is organized or
5 the foreign limited cooperative association qualifies or consents
6 to the qualification of another foreign limited cooperative
7 association under the registered name.

8 Sec. 9. The use of the terms "cooperative or nonstock
9 cooperative" or an abbreviation of the terms under the Nebraska
10 Limited Cooperative Association Act is not a violation of the
11 provisions restricting the use of the terms under the Nonstock
12 Cooperative Marketing Act or sections 21-1301 to 21-1339, however,
13 use of the term "cooperative" by a limited cooperative association
14 shall not be construed under any other law to qualify a limited
15 cooperative association as a cooperative organized under the
16 Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339.

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

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

22 (2) A copy of the initial articles of organization and
23 all amendments to and restatement of the articles, together with
24 signed copies of any powers of attorney under which any articles,
25 amendments, or restatement has been signed;

- 1 (3) A copy of the initial bylaws and all amendments to or
2 restatement of the bylaws;
- 3 (4) A copy of any filed articles of merger;
- 4 (5) A copy of any audited financial statements;
- 5 (6) A copy of the minutes of meetings of members and
6 records of all actions taken by members without a meeting for the
7 three most recent years;
- 8 (7) A current list showing the full name and last-known
9 street and mailing addresses, separately identifying the patron
10 members, in alphabetical order, and the investor members, in
11 alphabetical order;
- 12 (8) A copy of the minutes of directors' meetings and
13 records of all actions taken by directors without a meeting for the
14 three most recent years;
- 15 (9) A record stating:
- 16 (a) The amount of cash contributed and agreed to be
17 contributed by each member;
- 18 (b) A description and statement of the agreed value of
19 other benefits contributed and agreed to be contributed by each
20 member;
- 21 (c) The times at which, or events on the happening of
22 which, any additional contributions agreed to be made by each
23 member are to be made; and
- 24 (d) For a person that is both a patron member and an
25 investor member, a specification of the interest the person owns in

1 each capacity; and

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

5 Sec. 11. A member may lend money to and transact other
6 business with the limited cooperative association and has the
7 same rights and obligations with respect to the loan or other
8 transaction as a person that is not a member subject to the
9 articles of organization or bylaws or a specific contract relating
10 to the transaction.

11 Sec. 12. A person may be both a patron member and an
12 investor member. A person that is both a patron member and an
13 investor member has the rights, powers, duties, and obligations
14 provided by the Nebraska Limited Cooperative Association Act and
15 the articles of organization or bylaws in each of those capacities.
16 When the person acts as a patron member, the person is subject to
17 the obligations, duties, and restrictions under the act and the
18 articles of organization or bylaws governing patron members. When
19 the person acts as an investor member, the person is subject to
20 the obligations, duties, and restrictions under the act and the
21 articles of organization or bylaws governing investor members.

22 Sec. 13. (1) A limited cooperative association and
23 a foreign limited cooperative association shall designate and
24 continuously maintain in this state:

25 (a) An office, which need not be a place of its activity

1 in this state; and

2 (b) An agent for service of process.

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

7 Sec. 14. (1) In order to change its registered office,
8 its agent for service of process, or the address of its agent for
9 service of process, a limited cooperative association or a foreign
10 limited cooperative association shall deliver to the Secretary of
11 State for filing a statement of change containing:

12 (a) The name of the limited cooperative association or
13 foreign limited cooperative association;

14 (b) The street and mailing addresses of its current
15 registered office;

16 (c) If the current registered office is to be changed,
17 the street and mailing addresses of the new registered office;

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

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

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

24 Sec. 15. (1) To resign as an agent for service of
25 process of a limited cooperative association or a foreign limited

1 cooperative association, the agent shall deliver to the Secretary
2 of State for filing a statement of resignation containing the
3 name of the limited cooperative association or foreign limited
4 cooperative association.

5 (2) After receiving a statement of resignation, the
6 Secretary of State shall file it and mail a copy to the principal
7 office of the limited cooperative association or foreign limited
8 cooperative association and another copy to the principal office
9 if the address of the principal office appears in the records of
10 the Secretary of State and is different from the address of the
11 registered office.

12 (3) An agency for service of process terminates thirty
13 days after the Secretary of State files the statement of
14 resignation.

15 Sec. 16. (1) An agent for service of process appointed by
16 a limited cooperative association or a foreign limited cooperative
17 association is an agent of the limited cooperative association or
18 foreign limited cooperative association for service of any process,
19 notice, or demand required or permitted by law to be served upon
20 the limited cooperative association or foreign limited cooperative
21 association.

22 (2) (a) If a limited cooperative association or a foreign
23 limited cooperative association has no agent for service of process
24 or the agent cannot with reasonable diligence be served the
25 limited cooperative association may be served by registered or

1 certified mail, return receipt requested, addressed to the limited
2 cooperative association at its principal office. Service shall be
3 perfected under this subsection at the earliest of:

4 (i) The date the limited cooperative association receives
5 the mail;

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

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

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

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

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

20 (2) A notice of cancellation under section 108 of this
21 act shall be signed by each organizer that signed the initial
22 articles of organization;

23 (3) Except as otherwise provided in this subsection,
24 a record signed on behalf of an existing limited cooperative
25 association shall be signed by an officer or authorized

1 representative; and

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

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

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

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

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

22 (3) A record filed unsigned pursuant to this section is
23 effective without being signed.

24 Sec. 19. (1) A record authorized to be delivered to
25 the Secretary of State for filing under the Nebraska Limited

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

9 (2) Upon request and payment of a fee, the Secretary of
10 State shall send to the requester a certified copy of the requested
11 record.

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

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

21 (b) If the record specifies an effective time but not a
22 delayed effective date, on the date the record is filed at the time
23 specified in the record;

24 (c) If the record specifies a delayed effective date but
25 not an effective time, at 12:01 a.m. on the earlier of:

1 (i) The specified date; or
2 (ii) The ninetieth day after the record is filed; or
3 (d) If the record specifies an effective time and a
4 delayed effective date, at the specified time on the earlier of:

5 (i) The specified date; or
6 (ii) Ninety days after the record is filed.

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

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

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

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

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

23 (3) When filed by the Secretary of State, a statement of
24 correction is effective retroactively as of the effective date of
25 the record the statement corrects, but the statement is effective

1 when filed as to persons relying on the uncorrected record and
2 adversely affected by the correction prior to its correction.

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

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

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

24 (3) Subject to any qualification stated in the
25 certificate, a certificate of good standing or authorization issued

1 by the Secretary of State may be relied upon as conclusive evidence
2 that the limited cooperative association or foreign limited
3 cooperative association is in good standing or is authorized to
4 transact business in this state.

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

9 (a) The name of the limited cooperative association or
10 foreign limited cooperative association;

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

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

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

22 (2) Information in the biennial report must be current as
23 of the date the biennial report is delivered to the Secretary of
24 State.

25 (3) Commencing on January 1, 2009, a biennial report

1 shall be filed between January 1 and April 1 of each odd-numbered
2 year following the year in which a limited cooperative association
3 files articles of organization or a foreign limited cooperative
4 association becomes authorized to transact business in this state.
5 A correction or amendment to a biennial report may be filed at any
6 time.

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

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

21 (6) If a limited cooperative association fails to file
22 a biennial report under this section, the Secretary of State may
23 proceed under section 94 of this act to administratively dissolve
24 the limited cooperative association.

25 (7) If a foreign limited cooperative association fails to

1 file a biennial report under this section, the Secretary of State
2 may proceed under section 107 of this act to revoke the certificate
3 of authority of the foreign limited cooperative association.

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

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

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

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

12 (b) The purposes for which the limited cooperative
13 association was formed;

14 (c) The street and mailing addresses of the initial
15 registered office and the name, street, and mailing addresses of
16 the registered agent for service of process;

17 (d) The name and the street and mailing addresses of each
18 organizer;

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

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

23 (g) Any additional information required by the Secretary
24 of State.

25 (2) Articles of organization may contain any other

1 matters deemed relevant by the organizer or organizers.

2 (3) Unless the articles of organization state a delayed
3 effective date, a limited cooperative association is formed when
4 the Secretary of State receives for filing the articles of
5 organization. If the articles state a delayed effective date,
6 a limited cooperative association is not formed if, before the
7 articles take effect, one or more organizers sign and deliver to
8 the Secretary of State for filing a notice of cancellation.

9 Sec. 27. After the effective date of the articles of
10 organization:

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

15 (2) If initial directors are not named in the articles of
16 organization, the organizers shall designate the initial directors
17 and call a meeting of them to adopt initial bylaws or carry on any
18 other business necessary and proper to complete the organization of
19 the limited cooperative association.

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

22 (a) A statement of the capital structure of the limited
23 cooperative association, including a statement of the classes
24 and relative rights, preferences, and restrictions granted to or
25 imposed upon each group, class, or other type of member interest,

1 the rights to share in profits or distributions of the limited
2 cooperative association, and the method to admit members;

3 (b) A statement designating the voting and governance
4 rights, including which members have voting power and any
5 limitations or restrictions on the voting power under sections 39
6 and 42 of this act;

7 (c) A statement that member interests held by a member
8 are transferable only with the approval of the board of directors
9 or as otherwise provided in the articles of organization or bylaws;
10 and

11 (d) If investor members are authorized, a statement
12 concerning how profits and losses are apportioned and how
13 distributions are made as between patron members and investor
14 members.

15 (2) The bylaws of the limited cooperative association may
16 contain any provision for managing and regulating the affairs of
17 the limited cooperative association which is not inconsistent with
18 the articles of organization.

19 Sec. 29. In order to commence business, a limited
20 cooperative association shall have two or more patron members,
21 except that a limited cooperative association may have only one
22 member if the member is an entity organized under the Nebraska
23 Limited Cooperative Association Act.

24 Sec. 30. A person becomes a member:

25 (1) As provided in the articles of organization and

1 bylaws;

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

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

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

7 Sec. 32. Unless otherwise provided by the articles of
8 organization, an obligation of a limited cooperative association,
9 whether arising in contract, tort, or otherwise, is not the
10 obligation of a member. A member is not personally liable, by way
11 of contribution or otherwise, for an obligation of the limited
12 cooperative association solely by reason of being a member.

13 Sec. 33. (1) On ten days' demand, made in a record
14 received by the limited cooperative association, a member may
15 inspect and copy required information under subdivisions (1)
16 through (7) of section 10 of this act during regular business
17 hours in the limited cooperative association's principal office. A
18 demand to inspect and copy records shall be in good faith and for
19 a proper purpose. A member may demand the same information under
20 subdivisions (1) through (7) of section 10 of this act no more than
21 once during a twelve-month period.

22 (2) On demand, made in a record received by the limited
23 cooperative association, a member may obtain from the limited
24 cooperative association and inspect and copy required information
25 if the demand is just and reasonable. A demand to inspect and copy

1 records is just and reasonable if:

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

4 (b) The demand includes a description, with reasonable
5 particularity, of the information sought and the purpose for
6 seeking the information; and

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

9 (3) Within ten days after receiving a demand pursuant
10 to subdivision (2)(b) of this section, the limited cooperative
11 association shall inform, in a record, the member that made the
12 demand:

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

15 (b) Of the reasonable time and place that the limited
16 cooperative association will provide the information; and

17 (c) That the limited cooperative association will decline
18 to provide any demanded information and the limited cooperative
19 association's reasons for declining.

20 (4) A person dissociated as a member pursuant to section
21 82 of this act may inspect and copy required information during
22 regular business hours in the limited cooperative association's
23 principal office if:

24 (a) The information pertains to the period during which
25 the person was a member;

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

2 (c) The person complies with this section.

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

6 (6) The limited cooperative association may impose
7 reasonable restrictions, including nondisclosure restrictions,
8 on the use of information obtained under this section. In a
9 dispute concerning the reasonableness of a restriction, the limited
10 cooperative association has the burden of proving reasonableness.

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

14 (8) A member or person dissociated as a member may
15 exercise the rights under this section through an attorney or other
16 agent. A restriction imposed under this section or by the articles
17 of organization or bylaws on a member or person dissociated as
18 a member applies both to the attorney or other agent and to the
19 member or person dissociated as a member.

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

24 Sec. 34. (1) The members of the limited cooperative
25 association shall meet annually as provided in the articles of

1 organization or bylaws or at the direction of the board of
2 directors not inconsistent with the articles of organization or
3 bylaws.

4 (2) Annual members' meetings may be held in or out of
5 this state at the place stated in the articles of organization or
6 bylaws or by the board of directors in accordance with the articles
7 of organization or bylaws.

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

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

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

15 (a) As provided in the articles of organization or
16 bylaws;

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

18 (c) By demand in a record signed by members holding at
19 least ten percent of the votes of any class or group entitled to be
20 cast on the matter that is the purpose of the meeting; or

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

24 (2) Any voting member may withdraw its demand under this
25 section before the receipt by the limited cooperative association

1 of demands sufficient to require a special members' meeting.

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

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

9 (5) Unless otherwise provided by the articles of
10 organization or bylaws, the presiding officer of the meeting shall
11 be designated by the board of directors.

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

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

19 (3) Notice of a special members' meeting shall include a
20 description of the purpose or purposes of the meeting as contained
21 in the demand under section 35 of this act or as voted upon by the
22 board of directors under such section.

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

25 (2) A member's participation in a meeting is waiver of

1 notice of that meeting unless the member objects to the meeting
2 at the beginning of the meeting or promptly upon arrival at the
3 meeting and does not thereafter vote for or assent to action taken
4 at the meeting.

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

9 Sec. 39. (1) Each patron member has one vote but the
10 articles of organization or bylaws may provide additional voting
11 power to members on the basis of patronage under section 41 of this
12 act and may provide for voting by district, group, or class under
13 section 56 of this act.

14 (2) If a limited cooperative association has both patron
15 and investor members:

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

22 (b) The entire aggregate voting power of patron members
23 shall be voted as determined by the majority vote of patron members
24 voting at the members' meeting.

25 Sec. 40. (1) Unless otherwise provided by the articles of

1 organization or bylaws, any action that may be taken by the members
2 may be taken without a meeting if each member entitled to vote on
3 such action consents to the action in a record.

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

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

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

12 (1) Actual, estimated, or potential patronage or any
13 combination thereof;

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

16 (3) Any combination of subdivisions (1) and (2) of this
17 section.

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

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

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

25 (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 members' 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 members' meetings by districts and that elections of directors may
12 be 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 41 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

1 obligation, if any, to do business with the limited cooperative
2 association;

3 (2) Is personal property; and

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

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

7 (2) The articles of organization or bylaws may establish
8 investor member interests.

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

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

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

24 (4) The transferee does not become a member upon transfer
25 of a member's financial rights unless it is admitted as a member by

1 the limited cooperative association.

2 (5) A limited cooperative association need not give
3 effect to a transfer under this section until the limited
4 cooperative association has notice of the transfer.

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

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

11 (2) A patron member shall not grant a security interest
12 in financial rights or governance rights in a limited cooperative
13 association.

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

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

25 Sec. 49. Unless otherwise provided by the articles of

1 organization or bylaws, a limited cooperative association may
2 contract with another party, who need not be a patron member,
3 requiring the other party to:

4 (1) Sell or deliver for sale or marketing on the person's
5 behalf a specified portion of the other party's agricultural
6 product or specified commodity exclusively to or through the
7 limited cooperative association or any facilities furnished by
8 the limited cooperative association or authorize the limited
9 cooperative association to act for the party in any manner with
10 respect to the product; and

11 (2) Buy or procure from or through the limited
12 cooperative association or any facilities furnished by the limited
13 cooperative association all or a specified part of the goods or
14 services to be bought or procured by the party or authorize the
15 limited cooperative association to act for the party in any manner
16 in the procurement of goods or the performance of services.

17 Sec. 50. (1) The contract may provide for sale of
18 the product or commodity to the limited cooperative association,
19 and, if so, the sale transfers title absolutely to the limited
20 cooperative association except for security interests properly
21 perfected under other law, upon delivery, or at any other specific
22 time expressly provided by the contract.

23 (2) The contract may authorize the limited cooperative
24 association to grant a security interest in the product or
25 commodity delivered and may provide that the limited cooperative

1 association may sell the product or commodity delivered and pay or
2 distribute the sales price on a pooled or other basis to the other
3 party after deducting the following:

4 (a) Selling, processing, overhead, and other costs and
5 expenses; and

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

8 Sec. 51. A single term of a contract shall not exceed ten
9 years, but may be renewable for additional periods not exceeding
10 five years each, subject to the right of either party not to renew
11 by giving record notice during a period of the current term as
12 specified in the contract.

13 Sec. 52. (1) The contract or articles of organization
14 or bylaws may establish a specific sum of money as liquidated
15 damages to be paid by a patron member to the limited cooperative
16 association. The damages may be a percentage of the value of
17 a specific amount per unit of the products, goods, or services
18 involved by the breach or a fixed sum of money.

19 (2) If there is a breach or threatened breach of a
20 contract, the limited cooperative association is entitled to an
21 injunction to prevent the breach and continuing breach and to
22 a judgment of specific performance. Pending adjudication of the
23 action, and upon filing sufficient bond, the limited cooperative
24 association is entitled to a temporary restraining order and a
25 preliminary injunction.

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

4 Sec. 53. (1) A limited cooperative association shall have
5 a board of directors consisting of three or more directors as set
6 forth in the articles of organization or bylaws unless the number
7 of members is less than three. If there are fewer than three
8 members, the number of directors shall not be less than the number
9 of members in the limited cooperative association.

10 (2) The affairs of the limited cooperative association
11 shall be managed by, or under the direction of, the board of
12 directors.

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

15 Sec. 54. An obligation of a limited cooperative
16 association, whether arising in contract, tort, or otherwise, is
17 not the obligation of a director. A director is not personally
18 liable, directly or indirectly, by way of contribution or
19 otherwise, for an obligation of the limited cooperative association
20 solely by reason of being a director.

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

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

25 (3) Except as otherwise provided in the articles of

1 organization or bylaws and subject to subsections (4) and (5)
2 of this section, each director shall be a member of the limited
3 cooperative association or a designee of a member that is not an
4 individual.

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

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

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

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

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

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

21 (3) The articles of organization or bylaws may provide
22 for the nomination or election of directors by geographic district
23 directly or by district delegates.

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

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

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

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

11 (2) Unless otherwise provided in the articles of
12 organization or bylaws, a director may be reelected for subsequent
13 terms.

14 (3) A director continues to serve as director until a
15 successor director is elected and qualified or until the director
16 is removed, resigns, or dies.

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

19 (2) A resignation is effective when notice is received
20 by the limited cooperative association unless the notice states a
21 later effective date.

22 Sec. 59. The members may remove a director only for cause
23 unless the articles of organization or bylaws provide for removal
24 without cause.

25 Sec. 60. (1) The board of directors may suspend a

1 director, if, considering the director's course of conduct and
2 the inadequacy of other available remedies, immediate suspension
3 is necessary for the best interests of the limited cooperative
4 association and the director is engaged in:

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

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

8 (c) Intentional infliction of harm on the limited
9 cooperative association.

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

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

15 (a) By majority vote of the remaining directors until the
16 next annual members' meeting or special members' meeting held for
17 that purpose; and

18 (b) For the unexpired term by members at the next annual
19 members' meeting or special members' meeting called for that
20 purpose.

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

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

25 (b) The election of the director for the unexpired term

1 shall be conducted in the same manner as would the election for
2 that position without a vacancy.

3 Sec. 62. Unless the articles of organization or bylaws
4 otherwise provide, the board of directors may fix the remuneration
5 of directors and nondirector committee members.

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

8 (2) Unless otherwise provided in the articles of
9 organization or bylaws, the board of directors may permit directors
10 to attend board meetings or conduct board meetings through the
11 use of any means of communication, if all directors attending the
12 meeting can communicate with each other during the meeting.

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

17 (2) Consent under subsection (1) of this section may be
18 withdrawn by a director in a record at any time before the limited
19 cooperative association receives a record of consent from each
20 director.

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

23 Sec. 65. (1) Unless otherwise provided by the articles of
24 organization or bylaws, the board of directors may establish a time
25 and place for regular board meetings and notice of the time, place,

1 or purpose of those meetings is not required.

2 (2) Unless otherwise provided by the articles of
3 organization or bylaws, special meetings of the board of directors
4 shall be preceded by at least three days' notice of the time, date,
5 and place of the meeting. The notice shall contain a statement of
6 the purpose of the special meeting and the meeting shall be limited
7 to the matters contained in the statement.

8 Sec. 66. (1) Unless otherwise provided in the articles of
9 organization or bylaws, a director may waive any required notice of
10 a meeting of the board of directors in a record before, during, or
11 after the meeting.

12 (2) Unless otherwise provided in the articles of
13 organization or bylaws, a director's participation in a meeting is
14 waiver of notice of that meeting, unless the director objects to
15 the meeting at the beginning of the meeting or promptly upon the
16 director's arrival at the meeting and does not thereafter vote for
17 or assent to action taken at the meeting.

18 Sec. 67. (1) Unless otherwise provided in the articles of
19 organization or bylaws, a majority of the fixed number of directors
20 on the board of directors constitutes a quorum for the management
21 of the affairs of the limited cooperative association.

22 (2) If a quorum is in attendance at the beginning of
23 the meeting, any action taken by the board of directors present
24 is valid even if the withdrawal of directors originally present
25 results in the number of directors being less than the number

1 required for a quorum.

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

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

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

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

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

19 (b) Approve or propose to members action requiring
20 approval of members; or

21 (c) Fill vacancies on the board of directors or any of
22 its committees.

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

1 (a) In good faith;

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

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

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

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

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

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

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

23 (4) A director shall not be liable for any action taken
24 as a director or any failure to take any action if he or she
25 performed the duties of his or her office in compliance with this

1 section.

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

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

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

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

24 (2) The articles of organization or bylaws or the board
25 of directors shall designate one of the officers for preparing all

1 records required by section 10 of this act for the authentication
2 of records.

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

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

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

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

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

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

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

1 directors to establish the manner and terms of any contributions
2 for members.

3 Sec. 78. (1) Unless otherwise provided in the articles of
4 organization or bylaws, the contributions of a member may consist
5 of tangible or intangible property or other benefit to the limited
6 cooperative association, including money, services performed or to
7 be performed, promissory notes, other agreements to contribute cash
8 or property, and contracts to be performed.

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

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

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

22 (a) Otherwise provided by the agreement; or

23 (b) All parties to the agreement consent to the
24 revocation.

25 (2) Upon default by a party to a contribution agreement

1 entered into before formation, the limited cooperative association,
2 once formed, may:

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

4 (b) Unless otherwise provided in the agreement, rescind
5 the agreement if the debt remains unpaid more than twenty days
6 after the limited cooperative association demands payment from the
7 party in a record.

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

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

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

23 (a) Creating or accumulating a capital reserve; and

24 (b) Creating or accumulating reserves for specific
25 purposes, including expansion and replacement of capital assets and

1 other necessary business purposes.

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

6 (a) To patron members annually in accordance with the
7 ratio of each members' patronage during the period to total
8 patronage of all patron members during the period; and

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

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

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

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

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

4 (2) Unless otherwise provided by the articles of
5 organization or bylaws, a member is dissociated from a limited
6 cooperative association upon the occurrence of any of the following
7 events:

8 (a) The limited cooperative association's having notice
9 in a record of the person's express will to withdraw as a member or
10 to withdraw on a later date specified by the person;

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

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

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

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

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

22 (iii) The person is a corporation or association whether
23 or not organized under the Nebraska Limited Cooperative Association
24 Act, and:

25 (A) The limited cooperative association notifies the

1 person that it will be expelled as a member because it has filed a
2 statement of intent to dissolve or articles of dissolution, it has
3 been administratively or judicially dissolved, its charter has been
4 revoked, or its right to conduct business has been suspended by the
5 jurisdiction of its organization; and

6 (B) Within ninety days after the person receives the
7 notification described in subdivision (2)(d)(iii)(A) of this
8 section, there is no revocation of the certificate of dissolution
9 or no reinstatement of its charter or its right to conduct
10 business; or

11 (iv) The person is a limited liability company,
12 association, whether or not organized under the act, or partnership
13 that has been dissolved and whose business is being wound up;

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

16 (f) In the case of a person that is a trust, distribution
17 of the trust's entire financial rights in the limited cooperative
18 association, but not merely by the substitution of a successor
19 trustee;

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

24 (h) Termination of a member that is not an individual,
25 partnership, limited liability company, limited cooperative

1 association, whether or not organized under the act, corporation,
2 trust, or estate; or

3 (i) The limited cooperative association's participation
4 in a merger, if, under the plan of merger as approved under section
5 122 of this act, the person ceases to be a member.

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

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

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

13 (2) A person's dissociation as a member does not of
14 itself discharge the person from any obligation to the limited
15 cooperative association which the person incurred while a member.

16 Sec. 84. Except as otherwise provided in sections 86 and
17 87 of this act, a limited cooperative association is dissolved and
18 its activities shall be wound up only upon the occurrence of any of
19 the following:

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

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

24 (3) The passage of ninety days after the dissociation of
25 a member, resulting in the limited cooperative association having

1 less than two members, unless before the end of the period the
2 limited cooperative association admits at least one member in
3 accordance with its articles of organization or bylaws; or

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

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

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

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

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

15 (2) In a proceeding by a member, if it is established
16 that:

17 (a) The directors are deadlocked in the management of
18 the limited cooperative association's affairs, the members are
19 unable to break the deadlock, and irreparable injury to the limited
20 cooperative association is occurring or is threatened because of
21 the deadlock;

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

25 (c) The members are deadlocked in voting power and have

1 failed, for a period that includes at least two consecutive annual
2 members' meetings, to elect successors to directors whose terms
3 have expired; or

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

6 (3) In a proceeding by the limited cooperative
7 association to have its voluntary dissolution continued under
8 judicial supervision.

9 Sec. 86. A majority of the organizers or initial
10 directors of a limited cooperative association that has not yet
11 begun activity or the conduct of its affairs may dissolve the
12 limited cooperative association.

13 Sec. 87. In order to voluntarily dissolve:

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

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

19 (a) The resolution required by subdivision (1) of this
20 section;

21 (b) A recommendation that the members vote in favor of
22 the resolution, unless the board determines because of conflict of
23 interest or other special circumstances it should not make such a
24 recommendation;

25 (c) If the board makes no recommendation, the basis of

1 that decision; and

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

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

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

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

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

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

17 (c) Any other information it deems relevant.

18 (2) A person has notice of a limited cooperative
19 association's dissolution the later of ninety days after the
20 filing of the statement or the effective date under subdivision
21 (1)(b) of this section.

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

24 (2) In winding up its activities, the limited cooperative
25 association shall:

1 (a) Discharge its liabilities, settle and close its
2 activities, and marshal and distribute its assets; and

3 (b) File articles of dissolution indicating it is winding
4 up, preserve the limited cooperative association or its property
5 as a going concern for a reasonable time, prosecute and defend
6 actions and proceedings, transfer limited cooperative association
7 property, settle disputes by mediation or arbitration, and perform
8 other necessary acts.

9 (3) On the application of the limited cooperative
10 association, any member, or a holder of financial rights the
11 district court may order judicial supervision of the winding up,
12 including the appointment of a person to wind up the dissolved
13 limited cooperative association's activities, if:

14 (a) After a reasonable time, the limited cooperative
15 association has not executed winding up under subsection (2) of
16 this section; or

17 (b) The applicant establishes other good cause.

18 Sec. 90. (1) In winding up a limited cooperative
19 association's business, unless otherwise stated in the articles
20 of organization or bylaws, the assets of the limited cooperative
21 association shall be applied to discharge its obligations to
22 creditors, including members who are creditors. Any remaining
23 assets shall be applied to pay in money the net amount
24 distributable to members in accordance with their right to
25 distributions under subsection (2) of this section.

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

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

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

12 (a) Specify the information required to be included in a
13 claim;

14 (b) Provide a mailing address to which the claim is to be
15 sent;

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

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

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

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

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

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

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

16 (2) The notice shall:

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

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

25 (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

1 total amount of assets distributed to the person as part of the
2 winding up of the dissolved limited cooperative association.

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

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

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

23 (4) Provision by the dissolved limited cooperative
24 association for security in the amount and the form ordered by the
25 court under section 92 of this act shall satisfy the dissolved

1 limited cooperative association's obligations with respect to
2 claims that are contingent, have not been made known to the
3 dissolved limited cooperative association, or are based on an event
4 occurring after the effective date of dissolution, and such claims
5 may not be enforced against a member who received a distribution.

6 Sec. 94. (1) The Secretary of State may dissolve a
7 limited cooperative association administratively if the limited
8 cooperative association does not, within sixty days after the due
9 date:

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

13 (b) Deliver its biennial report to the Secretary of
14 State;

15 (c) Have a registered agent or registered office in this
16 state; or

17 (d) Notify the Secretary of State that its registered
18 agent or registered office has been changed, that its registered
19 agent has resigned, or that its registered office has been
20 discontinued.

21 (2) If the Secretary of State determines that a ground
22 exists for administratively dissolving a limited cooperative
23 association, the Secretary of State shall file a record of the
24 determination and serve the limited cooperative association with a
25 copy of the filed record.

1 (3) If, within sixty days after service of the copy, the
2 limited cooperative association does not correct each ground for
3 dissolution or demonstrate to the reasonable satisfaction of the
4 Secretary of State that each uncorrected ground determined by the
5 Secretary of State does not exist, the Secretary of State shall
6 administratively dissolve the limited cooperative association by
7 preparing, signing, and filing a declaration of dissolution that
8 states the grounds for dissolution. The Secretary of State shall
9 serve the limited cooperative association with a copy of the filed
10 declaration.

11 (4) A limited cooperative association administratively
12 dissolved continues its existence but may carry on only activities
13 necessary to wind up its activities and liquidate its assets under
14 sections 89 and 90 of this act and to notify claimants under
15 sections 91 and 92 of this act.

16 (5) The administrative dissolution of a limited
17 cooperative association does not terminate the authority of its
18 agent for service of process.

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

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

25 (b) That the grounds for dissolution either did not exist

1 or have been eliminated; and

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

4 (2) If the Secretary of State determines that (a) the
5 application contains the information required by subsection (1)
6 of this section and that the information is correct and (b) the
7 limited cooperative association has paid to the Secretary of State
8 all delinquent occupation taxes and has forwarded to the Secretary
9 of State a properly executed and signed biennial report for the
10 current year, the Secretary of State shall:

11 (a) Prepare a declaration of reinstatement that states
12 this determination;

13 (b) Sign and file the original of the declaration of
14 reinstatement; and

15 (c) Serve the limited cooperative association with a
16 copy.

17 (3) When reinstatement becomes effective it relates back
18 to and takes effect as of the effective date of the administrative
19 dissolution and the limited cooperative association may resume or
20 continue its activities as if the administrative dissolution had
21 never occurred.

22 Sec. 96. (1) If the Secretary of State denies a limited
23 cooperative association's application for reinstatement following
24 administrative dissolution, the Secretary of State shall prepare,
25 sign, and file a notice that explains the reason or reasons for

1 denial and serve the limited cooperative association with a copy of
2 the notice.

3 (2) Within thirty days after service of the notice of
4 denial, the limited cooperative association may appeal the denial
5 of restatement by petitioning the district court to set aside the
6 dissolution. The petition shall be served on the Secretary of State
7 and contain a copy of the Secretary of State's declaration of
8 dissolution, the limited cooperative association's application for
9 reinstatement, and the Secretary of State's notice of denial.

10 (3) The court may summarily order the Secretary of State
11 to reinstate the dissolved limited cooperative association or may
12 take other action the court considers appropriate.

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

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

22 Sec. 98. A member may maintain a derivative action to
23 enforce a right of a limited cooperative association if the member
24 adequately represents the interests of the limited cooperative
25 association and if:

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

5 (2) Ninety days have expired after the date the demand
6 was made unless the member has earlier been notified that the
7 demand has been rejected by the limited cooperative association or
8 unless irreparable injury to the limited cooperative association
9 would result by waiting for the expiration of the time.

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

12 (1) That was a member when the conduct giving rise to the
13 action occurred; or

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

17 Sec. 100. In a derivative action, the complaint shall
18 state with particularity:

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

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

25 Sec. 101. (1) Except as otherwise provided in subsection

1 (2) of this section:

2 (a) Any proceeds or other benefits of a derivative
3 action, whether by judgment, compromise, or settlement, belong
4 to the limited cooperative association and not to the derivative
5 plaintiff; and

6 (b) If the derivative plaintiff receives any proceeds,
7 the derivative plaintiff shall immediately remit them to the
8 limited cooperative association.

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

13 Sec. 102. (1) The laws of the state or other jurisdiction
14 under which a foreign limited cooperative association is organized
15 govern relations among the members of the foreign limited
16 cooperative association and between the members and the foreign
17 limited cooperative association.

18 (2) A foreign limited cooperative association shall not
19 be denied a certificate of authority by reason of any difference
20 between the laws of the jurisdiction under which the foreign
21 limited cooperative association is organized and the laws of this
22 state.

23 (3) A certificate of authority does not authorize a
24 foreign limited cooperative association to engage in any activity
25 or exercise any power that a limited cooperative association cannot

1 engage in or exercise in this state.

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

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

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

12 (c) The street and mailing addresses of the foreign
13 limited cooperative association's designated office and, if
14 the laws of the jurisdiction under which the foreign limited
15 cooperative association is organized require the foreign limited
16 cooperative association to maintain an office in that jurisdiction,
17 the street and mailing addresses of the required office;

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

21 (e) The name and street and mailing addresses of each of
22 the foreign limited cooperative association's current directors and
23 officers.

24 (2) A foreign limited cooperative association shall
25 deliver with the completed application a certificate of good

1 standing or existence or a similar record signed by the Secretary
2 of State or other official having custody of the foreign limited
3 cooperative association's publicly filed records in the state or
4 other jurisdiction under whose law the foreign limited cooperative
5 association is organized.

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

9 (a) Maintaining, defending, and settling an action or
10 proceeding;

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

13 (c) Maintaining accounts in financial institutions;

14 (d) Maintaining offices or agencies for the transfer,
15 exchange, and registration of the foreign limited cooperative
16 association's own securities or maintaining trustees or
17 depositories with respect to those securities;

18 (e) Selling through independent contractors;

19 (f) Soliciting or obtaining orders, whether by mail or
20 electronic means or through employees or agents or otherwise, if
21 the orders require acceptance outside this state before they become
22 contracts;

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

25 (h) Securing or collecting debts or enforcing mortgages

1 or other security interests in property securing the debts and
2 holding, protecting, and maintaining property so acquired;

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

6 (j) Transacting business in interstate commerce.

7 (2) For purposes of this section, the ownership in
8 this state of income-producing real property or tangible personal
9 property, other than property excluded under subsection (1) of this
10 section, constitutes transacting business in this state.

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

15 Sec. 105. Unless the Secretary of State determines that
16 an application for a certificate of authority does not comply
17 with the filing requirements of the Nebraska Limited Cooperative
18 Association Act, the Secretary of State, upon payment of all
19 filing fees, shall file the application, prepare, sign, and file a
20 certificate of authority to transact business in this state, and
21 send a copy of the filed certificate, together with a receipt for
22 the fees, to the foreign limited cooperative association or its
23 representative.

24 Sec. 106. (1) A foreign limited cooperative association
25 whose name does not comply with section 8 of this act shall

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

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

18 Sec. 107. (1) A certificate of authority of a foreign
19 limited cooperative association to transact business in this state
20 may be revoked by the Secretary of State in the manner provided
21 in subsections (2) and (3) of this section if the foreign limited
22 cooperative association does not:

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

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

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

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

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

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

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

22 (3) The authority of the foreign limited cooperative
23 association to transact business in this state ceases on the
24 effective date of the certificate of revocation unless before that
25 date the foreign limited cooperative association cures each failure

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

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

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

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

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

24 (5) If a foreign limited cooperative association
25 transacts business in this state without a certificate of authority

1 or cancels its certificate of authority, it may be served in
2 accordance with section 16 of this act for rights of action arising
3 out of the transaction of business in this state.

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

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

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

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

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

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

20 (a) The proposed amendment;

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

25 (c) If the board makes no recommendation, the basis of

1 that decision;

2 (d) Any condition of its submission of the amendment to
3 the members; and

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

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

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

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

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

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

20 Sec. 114. Members shall vote as a separate group, if a
21 proposed amendment affects the group, class, or district of members
22 in:

23 (1) The equity capital structure of the limited
24 cooperative association, including the rights of the limited
25 cooperative association's members to share in profits or

1 distributions, and the relative rights, preferences, and
2 restrictions granted to or imposed upon one or more districts,
3 classes, or voting groups of similarly situated members;

4 (2) The transferability of members' interests;

5 (3) The manner or method of allocation of profits or
6 losses among members;

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

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

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

19 (a) Procedures for calling a meeting of the board of
20 directors;

21 (b) Quorum requirements for the meeting; and

22 (c) Designation of additional or substitute directors.

23 (2) The regular bylaws consistent with the emergency
24 bylaws remain effective during the emergency. The emergency bylaws
25 are not effective after the emergency ends.

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

3 (a) Binds the limited cooperative association; and

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

6 (4) An emergency exists for purposes of this section if
7 a quorum of the board of directors cannot readily be assembled
8 because of a catastrophic event.

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

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

14 (b) The date of filing of its initial articles of
15 organization; and

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

18 (2) A limited cooperative association shall promptly
19 deliver to the Secretary of State for filing an amendment to the
20 articles of organization to reflect the appointment of a person
21 to wind up the limited cooperative association's activities under
22 sections 89 and 90 of this act.

23 (3) An organizer that knows that any information in filed
24 articles of organization was false when the articles were filed or
25 has become false due to changed circumstances shall promptly:

1 (a) Cause the articles to be amended; and
2 (b) Deliver to the Secretary of State an amendment for
3 filing.

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

7 (5) Restated articles of organization shall be delivered
8 to the Secretary of State for filing in the same manner as an
9 amendment.

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

12 Sec. 117. For purposes of sections 117 to 128 of this
13 act:

14 (1) Constituent limited cooperative association means a
15 limited cooperative association that is a party to a merger;

16 (2) Constituent organization means an organization that
17 is a party to a merger;

18 (3) Converted organization means the organization into
19 which a converting organization converts pursuant to sections 118
20 to 121 of this act;

21 (4) Converting limited cooperative association means a
22 converting organization that is a limited cooperative association;

23 (5) Converting organization means an organization that
24 converts to another organization pursuant to section 118 of this
25 act;

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

3 (7) Organization means a limited cooperative association,
4 limited cooperative association governed by a law other
5 than the Nebraska Limited Cooperative Association Act, a
6 general partnership, a limited liability partnership, a limited
7 partnership, a limited liability company, a business trust, a
8 corporation, or any other person having a governing statute. The
9 term includes domestic and foreign organizations whether or not
10 organized for profit;

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

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

18 (b) By the organization's organizational documents under
19 a provision of the organization's governing statute authorizing
20 those documents to make one or more specified persons liable for
21 all or for specified debts, liabilities, and other obligations of
22 the organization solely by reason of co-owning, having an interest
23 in, or being a member of the organization; and

24 (9) Surviving organization means an organization into
25 which one or more other organizations are merged. A surviving

1 organization may exist before the merger or be created by the
2 merger.

3 Sec. 118. (1) An organization other than a limited
4 cooperative association may convert to a limited cooperative
5 association and a limited cooperative association may convert
6 to another organization pursuant to this section and a plan of
7 conversion, if:

8 (a) The other organization's governing statute authorizes
9 the conversion;

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

12 (c) The other organization complies with its governing
13 statute in effecting the conversion.

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

16 (a) The name and form of the organization before
17 conversion;

18 (b) The name and form of the organization after
19 conversion;

20 (c) The terms and conditions of the conversion, including
21 the manner and basis for converting interests in the converting
22 organization into any combination of money, interests in the
23 converted organization, and other consideration; and

24 (d) The organizational documents of the converted
25 organization.

1 Sec. 119. (1) A plan of conversion shall be consented to
2 by at least two-thirds vote of patron members voting under section
3 39 of this act and by at least two-thirds vote of investor members,
4 if any, voting under section 42 of this act. If, as a result of
5 the conversion, any member of the limited cooperative association
6 has personal liability, consent of that member in a record shall be
7 required.

8 (2) Subject to any contractual rights, after a conversion
9 is approved, and at any time before a filing is made under section
10 120 of this act, a converting limited cooperative association may
11 amend the plan or abandon the planned conversion:

12 (a) As provided in the plan; and

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

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

16 (a) A converting limited cooperative association shall
17 deliver to the Secretary of State for filing articles of
18 conversion, which shall include:

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

21 (ii) The name and form of the organization and the
22 jurisdiction of its governing statute;

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

25 (iv) A statement that the conversion was approved as

1 required by the Nebraska Limited Cooperative Association Act;

2 (v) A statement that the conversion was approved as
3 required by the governing statute of the converted organization;
4 and

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

9 (b) If the converting organization is not a converting
10 limited cooperative association, the converting organization
11 shall deliver to the Secretary of State for filing articles of
12 organization, which shall include, in addition to the information
13 required by section 16 of this act:

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

16 (ii) The name and form of the organization and the
17 jurisdiction of its governing statute; and

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

20 (2) A conversion becomes effective:

21 (a) If the converted organization is a limited
22 cooperative association, when the certificate of limited
23 partnership takes effect; and

24 (b) If the converted organization is not a limited
25 cooperative association, as provided by the governing statute of

1 the converted organization.

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

5 (2) When a conversion takes effect:

6 (a) All property owned by the converting organization
7 remains vested in the converted organization;

8 (b) All debts, liabilities, and other obligations of the
9 converting organization continue as obligations of the converted
10 organization;

11 (c) An action or proceeding pending by or against the
12 converting organization may be continued as if the conversion had
13 not occurred;

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

17 (e) Except as otherwise provided in the plan of
18 conversion, the terms and conditions of the plan of conversion take
19 effect; and

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

23 (3) A converted organization that is a foreign
24 organization consents to the jurisdiction of the courts of this
25 state to enforce any obligation owed by the converting limited

1 cooperative association if, before the conversion, the converting
2 limited cooperative association was subject to suit in this state
3 on the obligation. A converted organization that is a foreign
4 organization and not authorized to transact business in this state
5 appoints the Secretary of State as its agent for service of process
6 for purposes of enforcing an obligation under this subsection.
7 Service on the Secretary of State under this subsection is made
8 in the same manner and with the same consequences as in sections
9 13 and 16 of this act.

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

13 (a) The governing statute of each of the other
14 organizations authorizes the merger;

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

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

19 (2) A plan of merger shall be in a record and shall
20 include:

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

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

25 (c) The terms and conditions of the merger, including the

1 manner and basis for converting the interests in each constituent
2 organization into any combination of money, interests in the
3 surviving organization, and other consideration;

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

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

9 (f) If a member of a constituent limited cooperative
10 association will have personal liability with respect to a
11 surviving organization, the identity by descriptive class or other
12 reasonable manner of the member.

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

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

18 (a) The plan of merger;

19 (b) A recommendation that the members approve the plan of
20 merger unless the board makes a determination because of conflicts
21 of interest or other special circumstances that it should not make
22 such a recommendation;

23 (c) If the board makes no recommendation, the basis for
24 that decision;

25 (d) Any condition of its submission of the plan of merger

1 to the members; and

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

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

10 (2) Subject to any contractual rights, after a merger is
11 approved, and at any time before a filing is made under section
12 126 of this act, a constituent limited cooperative association may
13 amend the plan of merger or abandon the planned merger:

14 (a) As provided in the plan; and

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

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

24 (2) The limited cooperative association owning at least
25 ninety percent of the subsidiary organization before the merger

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

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

7 (2) The articles of merger shall include:

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

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

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

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

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

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

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

25 (f) A statement as to each constituent organization that

1 the merger was approved as required by the organization's governing
2 statute;

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

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

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

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

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

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

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

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

21 Sec. 127. When a merger becomes effective:

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

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

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

3 (4) All debts, liabilities, and other obligations of
4 each constituent organization that ceases to exist continue as
5 obligations of the surviving organization;

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

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

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

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

19 (9) If the surviving organization is created by the
20 merger:

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

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

1 (10) If the surviving organization exists before the
2 merger, any amendments provided for in the articles of merger for
3 the organizational document that created the organization become
4 effective.

5 Sec. 128. (1) The limited cooperative associations may
6 agree to substitute the word consolidation for the term merger
7 pursuant to this section if:

8 (a) Each constituent organization is a limited
9 cooperative association or its governing statute expressly provides
10 for a consolidation; and

11 (b) The surviving organization is a limited cooperative
12 association or its governing statute expressly provides for a
13 consolidation.

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

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

25 Sec. 130. To dispose of assets subject to section 129 of

1 this act:

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

5 (2) The board of directors shall mail or otherwise
6 transmit or deliver in a record to each member notice of a special
7 meeting of the members as required by section 35 of this act that
8 sets forth:

9 (a) The terms of the proposed disposition;

10 (b) A recommendation that the members approve the
11 disposition unless the board determines because of conflict of
12 interest or other special circumstances it should not make such a
13 recommendation;

14 (c) If the board makes no recommendation, the basis of
15 that decision;

16 (d) Any condition of its submission of the proposed
17 disposition to the members; and

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

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

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

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

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

5 Sec. 133. Limited cooperative associations have the
6 same immunities, rights, and privileges provided other types of
7 associations formed under other laws of this state and shall be
8 exempt from those laws to the same extent, but only to the same
9 extent, as those entities organized under the Nonstock Cooperative
10 Marketing Act or sections 21-1301 to 21-1339 are exempt.

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

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

16 77-2716 (1) The following adjustments to federal adjusted
17 gross income or, for corporations and fiduciaries, federal taxable
18 income shall be made for interest or dividends received:

19 (a) There shall be subtracted interest or dividends
20 received by the owner of obligations of the United States and its
21 territories and possessions or of any authority, commission, or
22 instrumentality of the United States to the extent includable in
23 gross income for federal income tax purposes but exempt from state
24 income taxes under the laws of the United States;

25 (b) There shall be subtracted that portion of the

1 total dividends and other income received from a regulated
2 investment company which is attributable to obligations described
3 in subdivision (a) of this subsection as reported to the recipient
4 by the regulated investment company;

5 (c) There shall be added interest or dividends received
6 by the owner of obligations of the District of Columbia, other
7 states of the United States, or their political subdivisions,
8 authorities, commissions, or instrumentalities to the extent
9 excluded in the computation of gross income for federal income
10 tax purposes except that such interest or dividends shall not be
11 added if received by a corporation which is a regulated investment
12 company;

13 (d) There shall be added that portion of the total
14 dividends and other income received from a regulated investment
15 company which is attributable to obligations described in
16 subdivision (c) of this subsection and excluded for federal
17 income tax purposes as reported to the recipient by the regulated
18 investment company; and

19 (e)(i) Any amount subtracted under this subsection shall
20 be reduced by any interest on indebtedness incurred to carry the
21 obligations or securities described in this subsection or the
22 investment in the regulated investment company and by any expenses
23 incurred in the production of interest or dividend income described
24 in this subsection to the extent that such expenses, including
25 amortizable bond premiums, are deductible in determining federal

1 taxable income.

2 (ii) Any amount added under this subsection shall be
3 reduced by any expenses incurred in the production of such income
4 to the extent disallowed in the computation of federal taxable
5 income.

6 (2) There shall be allowed a net operating loss derived
7 from or connected with Nebraska sources computed under rules
8 and regulations adopted and promulgated by the Tax Commissioner
9 consistent, to the extent possible under the Nebraska Revenue
10 Act of 1967, with the laws of the United States. For a resident
11 individual, estate, or trust, the net operating loss computed
12 on the federal income tax return shall be adjusted by the
13 modifications contained in this section. For a nonresident
14 individual, estate, or trust or for a partial-year resident
15 individual, the net operating loss computed on the federal return
16 shall be adjusted by the modifications contained in this section
17 and any carryovers or carrybacks shall be limited to the portion of
18 the loss derived from or connected with Nebraska sources.

19 (3) There shall be subtracted from federal adjusted gross
20 income for all taxable years beginning on or after January 1, 1987,
21 the amount of any state income tax refund to the extent such refund
22 was deducted under the Internal Revenue Code, was not allowed in
23 the computation of the tax due under the Nebraska Revenue Act of
24 1967, and is included in federal adjusted gross income.

25 (4) Federal adjusted gross income, or, for a fiduciary,

1 federal taxable income shall be modified to exclude the portion of
2 the income or loss received from a small business corporation with
3 an election in effect under subchapter S of the Internal Revenue
4 Code or from a limited liability company organized pursuant to the
5 Limited Liability Company Act that is not derived from or connected
6 with Nebraska sources as determined in section 77-2734.01.

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

11 (6) There shall be subtracted from federal taxable income
12 a portion of the income earned by a corporation subject to the
13 Internal Revenue Code of 1986 that is actually taxed by a foreign
14 country or one of its political subdivisions at a rate in excess
15 of the maximum federal tax rate for corporations. The taxpayer may
16 make the computation for each foreign country or for groups of
17 foreign countries. The portion of the taxes that may be deducted
18 shall be computed in the following manner:

19 (a) The amount of federal taxable income from operations
20 within a foreign taxing jurisdiction shall be reduced by the amount
21 of taxes actually paid to the foreign jurisdiction that are not
22 deductible solely because the foreign tax credit was elected on the
23 federal income tax return;

24 (b) The amount of after-tax income shall be divided by
25 one minus the maximum tax rate for corporations in the Internal

1 Revenue Code; and

2 (c) The result of the calculation in subdivision (b) of
3 this subsection shall be subtracted from the amount of federal
4 taxable income used in subdivision (a) of this subsection. The
5 result of such calculation, if greater than zero, shall be
6 subtracted from federal taxable income.

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

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

16 (b) Federal adjusted gross income or, for corporations
17 and fiduciaries, federal taxable income shall be reduced, to the
18 extent not deducted for federal income tax purposes, by the amount
19 of any gift, grant, or donation made to the Nebraska educational
20 savings plan trust for deposit in the endowment fund of the trust.

21 (c) Federal adjusted gross income or, for corporations
22 and fiduciaries, federal taxable income shall be reduced by any
23 contributions as a participant in the Nebraska educational savings
24 plan trust, to the extent not deducted for federal income tax
25 purposes, but not to exceed five hundred dollars per married filing

1 separate return or one thousand dollars for any other return.

2 (d) Federal adjusted gross income or, for corporations
3 and fiduciaries, federal taxable income shall be increased by
4 the amount resulting from the cancellation of a participation
5 agreement refunded to the taxpayer as a participant in the Nebraska
6 educational savings plan trust to the extent previously deducted as
7 a contribution to the trust.

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

19 (b) For a partnership, limited liability company,
20 cooperative, including any cooperative exempt from income taxes
21 under section 521 of the Internal Revenue Code of 1986, as amended,
22 limited cooperative association, subchapter S corporation, or
23 joint venture, the increase shall be distributed to the partners,
24 members, shareholders, patrons, or beneficiaries in the same
25 manner as income is distributed for use against their income tax

1 liabilities.

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

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

22 (10) For taxable years beginning or deemed to begin on
23 or after January 1, 2003, and before January 1, 2006, under the
24 Internal Revenue Code of 1986, as amended, federal adjusted gross
25 income or, for corporations and fiduciaries, federal taxable income

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

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

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

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

3 77-27,187.01 For purposes of the Nebraska Advantage Rural
4 Development Act, unless the context otherwise requires:

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

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

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

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

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

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

25 (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

1 taxes; and

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

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

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

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

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

1 Internal Revenue Code of 1986;

2 (3) The acquiring taxpayer, as of the date of
3 notification of the Tax Commissioner of the completed transfer,
4 shall be entitled to any unused credits and to any future
5 incentives allowable under the act;

6 (4) The acquiring taxpayer shall be liable for any
7 repayment that becomes due after the date of the transfer for
8 the repayment of any benefits received either before or after the
9 transfer; and

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

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

20 77-5509 Company means (1) any person subject to sales and
21 use taxes and either the income tax imposed by the Nebraska Revenue
22 Act of 1967 or the franchise tax under sections 77-3801 to 77-3807,
23 (2) any corporation, partnership, limited liability company, or
24 joint venture that is or would otherwise be a member of the
25 same unitary group, if incorporated, which is, or whose partners,

1 members, or owners are, subject to such taxes, and any other
2 partnership, limited liability company, subchapter S corporation,
3 or joint venture when the partners, owners, shareholders, or
4 members are subject to such taxes, and (3) any cooperative exempt
5 from such taxes under section 521 of the Internal Revenue Code of
6 1986, as amended, and (4) any limited cooperative association.

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

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

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

3 77-5728 (1) The incentives allowed under the Nebraska
4 Advantage Act shall not be transferable except in the following
5 situations:

6 (a) 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, members, shareholders, patrons, or beneficiaries in the
12 same manner as income is distributed for use against their income
13 tax liabilities, and such partners, members, shareholders, or
14 beneficiaries shall be deemed to have made an underpayment of
15 their income taxes for any recapture required by section 77-5727.
16 A credit distributed shall be considered a credit used and the
17 partnership, limited liability company, subchapter S corporation,
18 cooperative, including a cooperative exempt under section 521
19 of the Internal Revenue Code of 1986, as amended, a limited
20 cooperative association, estate, or trust shall be liable for any
21 repayment required by section 77-5727; and

22 (b) The incentives previously allowed and the future
23 allowance of incentives may be transferred when a project covered
24 by an agreement is transferred in its entirety by sale or lease to
25 another taxpayer or in an acquisition of assets qualifying under

1 section 381 of the Internal Revenue Code of 1986, as amended.

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

6 (3) The acquiring taxpayer shall be liable for any
7 recapture that becomes due after the date of the transfer for
8 the repayment of any benefits received either before or after the
9 transfer.

10 (4) If a taxpayer operating a project and allowed a
11 credit under the act dies and there is a credit remaining after
12 the filing of the final return for the taxpayer, the personal
13 representative shall determine the distribution of the credit or
14 any remaining carryover with the initial fiduciary return filed for
15 the estate. The determination of the distribution of the credit
16 may be changed only after obtaining the permission of the Tax
17 Commissioner.

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

20 77-5903 For purposes of the Nebraska Advantage
21 Microenterprise Tax Credit Act:

22 (1) Actively engaged in the operation of a microbusiness
23 means personal involvement on a continuous basis in the daily
24 management and operation of the business;

25 (2) Distressed area means a municipality, county,

1 unincorporated area within a county, or census tract in Nebraska
2 that has (a) an unemployment rate which exceeds the statewide
3 average unemployment rate, (b) a per capita income below the
4 statewide average per capita income, or (c) had a population
5 decrease between the two most recent federal decennial censuses;

6 (3) Equivalent employees means the number of employees
7 computed by dividing the total hours paid in a year by the product
8 of forty times the number of weeks in a year;

9 (4) Microbusiness means any business employing five or
10 fewer equivalent employees;

11 (5) New employment means the amount by which the total
12 compensation paid during the tax year to employees who are Nebraska
13 residents exceeds the total compensation paid to employees who are
14 Nebraska residents in the tax year prior to application;

15 (6) New investment means the increase in the applicant's
16 purchases of buildings and depreciable personal property located
17 in Nebraska and expenditures on repairs and maintenance on
18 property located in Nebraska, not including vehicles required
19 to be registered for operation on the roads and highways of
20 this state, during the tax year. If the buildings or depreciable
21 personal property is leased, the amount of new investment shall be
22 the increase in average net annual rents multiplied by the number
23 of years of the lease for which the taxpayer is bound, not to
24 exceed ten years;

25 (7) Related persons means (a) any corporation,

1 partnership, limited liability corporation, cooperative, including
2 cooperatives exempt under section 521 of the Internal Revenue Code
3 of 1986, as amended, limited cooperative association, or joint
4 venture which is or would otherwise be a member of the same unitary
5 group, if incorporated, or any person who is considered to be
6 a related person under either section 267(b) and (c) or section
7 707(b) of the Internal Revenue Code of 1986, as amended, and (b)
8 any individual who is a spouse, parent if the taxpayer is a minor,
9 or minor son or daughter of the taxpayer; and

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

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

1 Sec. 143. Original section 77-5509, Reissue Revised
2 Statutes of Nebraska, and sections 77-2716, 77-27,187.01,
3 77-27,194, 77-5719, 77-5728, and 77-5903, Revised Statutes
4 Cumulative Supplement, 2006, are repealed.