

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 848

FINAL READING

Introduced by Erdman, 47.

Read first time January 10, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to cooperatives; to amend sections 21-2901,
 2 21-2903, 21-2910, 21-2922, 21-2929, 21-2930, 21-2935,
 3 21-2939, 21-2945, 21-2949, 21-2950, 21-2951, 21-2952,
 4 21-2953, 21-2955, 21-2956, 21-2959, 21-2960, 21-2978,
 5 21-2980, 21-2982, 21-2992, 21-29,110, 21-29,117,
 6 21-29,122, 21-29,123, 29-21,124, 21-29,125, 21-29,126,
 7 and 21-29,127, Revised Statutes Supplement, 2007; to
 8 change and eliminate provisions relating to the Nebraska
 9 Limited Cooperative Association Act; to harmonize
 10 provisions; to repeal the original sections; and to
 11 outright repeal sections 21-29,118, 21-29,119, 21-29,120,
 12 21-29,121, and 21-29,128, Revised Statutes Supplement,
 13 2007.

LB 848

LB 848

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

1 Section 1. Section 21-2901, Revised Statutes Supplement,
2 2007, is amended to read:

3 21-2901 Sections 21-2901 to 21-29,134 and sections 21 to
4 23 of this act shall be known and may be cited as the Nebraska
5 Limited Cooperative Association Act.

6 Sec. 2. Section 21-2903, Revised Statutes Supplement,
7 2007, is amended to read:

8 21-2903 For purposes of the Nebraska Limited Cooperative
9 Association Act, unless the context otherwise requires:

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

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

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

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

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

25 (4) Debtor in bankruptcy means a person that is the

1 subject of:

2 (a) An order for relief under 11 U.S.C. 101 et seq., as
3 the sections existed on January 1, 2008; or

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

7 (5) Designated office means the office designated under
8 section 21-2913;

9 (6) Distribution means a transfer of money or other
10 property from a limited cooperative association to a member ~~in the~~
11 ~~member's capacity as a member or to a transferee because of a right~~
12 ~~owned by the transferee,~~ because of the member's financial rights
13 or to a transferee of a member's financial rights. The term does
14 not include the amounts described in section 21-2983;

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

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

22 (9) Financial rights means the right to participate in
23 allocation and distribution under sections 21-2980 and 21-2981 but
24 does not include rights or obligations under a marketing contract
25 governed by sections 21-2949 to 21-2952;

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

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

6 (12) Governance rights means the right to participate
7 in governance of the limited cooperative association under section
8 21-2928;

9 (13) Investor member means a ~~person admitted as a member~~
10 ~~that is not required~~ member that has made a contribution to a
11 limited cooperative association and is not permitted or required
12 by the articles of association or bylaws to conduct patronage
13 business with the limited cooperative association in order to
14 receive financial rights;

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

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

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

22 (17) Members' meeting means an annual or a special
23 members' meeting;

24 (18) Patron means a person or entity that conducts
25 economic activity with a limited cooperative association which

1 entitles the person to receive financial rights based upon
2 patronage;

3 (19) Patronage means business transactions between a
4 limited cooperative association and a person which entitles the
5 person to receive financial rights based on the value or quantity
6 of business done between the person and the limited cooperative
7 association;

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

13 (21) Person means an individual; an entity; a trust; a
14 governmental subdivision, agency, or instrumentality; or any other
15 legal or commercial entity;

16 (22) Principal office means the office, whether or
17 not in this state, where the principal executive office of a
18 limited cooperative association or a foreign limited cooperative
19 association is located;

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

23 (24) Required information means the information a limited
24 cooperative association is required to maintain under section
25 21-2910;

1 (25) Sign means, with the present intent to authenticate
2 a record:

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

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

6 (26) State means a state of the United States, the
7 District of Columbia, Puerto Rico, the United States Virgin
8 Islands, or any territory or insular possession subject to the
9 jurisdiction of the United States;

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

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

16 Sec. 3. Section 21-2910, Revised Statutes Supplement,
17 2007, is amended to read:

18 21-2910 A limited cooperative association shall maintain
19 in a record at its principal office the following information:

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

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

1 amendments, or restatement has been signed;

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

4 (4) A copy of any filed articles of merger or
5 consolidation;

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

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

10 (7) A current list showing the full name and last-known
11 street and mailing addresses, separately identifying the patron
12 members, in alphabetical order, and the investor members, in
13 alphabetical order;

14 (8) A copy of the minutes of directors' meetings and
15 records of all actions taken by directors without a meeting for the
16 three most recent years;

17 (9) A record stating:

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

20 (b) A description and statement of the agreed value of
21 other benefits contributed and agreed to be contributed by each
22 member;

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

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

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

7 Sec. 4. Section 21-2922, Revised Statutes Supplement,
8 2007, is amended to read:

9 21-2922 (1) The Secretary of State, upon application
10 and payment of the required fee, shall furnish a certificate of
11 ~~existence~~ good standing for a limited cooperative association if
12 the records filed in the office of the Secretary of State show
13 that the Secretary of State has filed articles of organization, the
14 limited cooperative association is in good standing, and there has
15 not been filed articles of dissolution.

16 (2) The Secretary of State, upon application and payment
17 of the required fee, shall furnish a certificate of authorization
18 for a foreign limited cooperative association if the records filed
19 in the office of the Secretary of State show that the Secretary
20 of State has filed a certificate of authority, has not revoked
21 the certificate of authority, and has not filed a notice of
22 cancellation pursuant to section 21-29,108.

23 (3) Subject to any qualification stated in the
24 certificate, a certificate of good standing or authorization issued
25 by the Secretary of State may be relied upon as conclusive evidence

1 that the limited cooperative association or foreign limited
2 cooperative association is in good standing or is authorized to
3 transact business in this state.

4 Sec. 5. Section 21-2929, Revised Statutes Supplement,
5 2007, is amended to read:

6 21-2929 In order to commence business, a limited
7 cooperative association shall have two or more patron members,
8 except that a limited cooperative association may have only one
9 member if the member is an entity organized under the Nebraska
10 Limited Cooperative Association Act, the Nonstock Cooperative
11 Marketing Act, or sections 21-1301 to 21-1339.

12 Sec. 6. Section 21-2930, Revised Statutes Supplement,
13 2007, is amended to read:

14 21-2930 A person becomes a member:

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

17 (2) As the result of merger or consolidation under
18 section 21-29,122; or ~~or 21-29,128; or~~

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

20 Sec. 7. Section 21-2935, Revised Statutes Supplement,
21 2007, is amended to read:

22 21-2935 (1) Special members' meetings shall be called:

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

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

1 (c) By demand in a record signed by members holding
2 at least ~~ten~~ twenty percent of the votes of any class or group
3 entitled to be cast on the matter that is the purpose of the
4 meeting; or

5 (d) By demand in a record signed by members holding at
6 least ~~ten~~ twenty percent of all votes entitled to be cast on the
7 matter that is the purpose of the meeting.

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

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

15 (4) Only affairs within the purpose or purposes stated
16 pursuant to subsection (2) of section 21-2965 may be conducted at
17 a special members' meeting.

18 (5) Unless otherwise provided by the articles of
19 organization or bylaws, the presiding officer of the meeting shall
20 be designated by the board of directors.

21 Sec. 8. Section 21-2939, Revised Statutes Supplement,
22 2007, is amended to read:

23 21-2939 (1) Each patron member has one vote, but the
24 articles of organization or bylaws may provide additional voting
25 power to members on the basis of patronage under section 21-2941

1 and may provide for voting by district, group, or class under
2 section 21-2956.

3 (2) If the articles of organization provide for investor
4 members, each investor member has one vote, unless the articles
5 of organization or bylaws otherwise provide. The articles of
6 organization or bylaws may provide for the allocation of investor
7 member voting power by class, classes, or any combination of
8 classes.

9 ~~(2)~~ (3) If a limited cooperative association has both
10 patron and investor members:

11 (a) The aggregate voting power of all patron members
12 shall not be less than fifty-one percent of the entire voting power
13 entitled to vote, but the articles of organization or bylaws may
14 reduce the collective voting power of patron members to not less
15 than fifteen percent of the entire voting power entitled to vote;
16 and

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

20 Sec. 9. Section 21-2945, Revised Statutes Supplement,
21 2007, is amended to read:

22 21-2945 A member's interest:

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

1 association;

2 (2) Is personal property; and

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

4 Sec. 10. Section 21-2949, Revised Statutes Supplement,
5 2007, is amended to read:

6 21-2949 In this section and sections 21-2950 to 21-2952,
7 marketing contract means a contract between a limited cooperative
8 association and another person that need not be a patron
9 member:Unless otherwise provided by the articles of organization or
10 bylaws, a limited cooperative association may contract with another
11 party, who need not be a patron member, requiring the other party
12 to:

13 (1) Requiring the other person to sell, or deliver for
14 sale or marketing on the person's behalf, a specified part of
15 the person's products, commodities, or goods exclusively to or
16 through the limited cooperative association or any facilities
17 furnished by the association; or(1) Sell or deliver for sale or
18 marketing on the person's behalf a specified portion of the other
19 party's agricultural product or specified commodity exclusively to
20 or through the limited cooperative association or any facilities
21 furnished by the limited cooperative association or authorize the
22 limited cooperative association to act for the party in any manner
23 with respect to the product; and

24 (2) Authorizing the limited cooperative association to
25 act for the person in any manner with respect to the products,

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

8 Sec. 11. Section 21-2950, Revised Statutes Supplement,
9 2007, is amended to read:

10 21-2950 (1) If a marketing contract provides for the
11 sale of products, commodities, or goods to a limited cooperative
12 association, the sale transfers title absolutely, except for
13 security interests properly perfected, to the association upon
14 delivery or at any other specific time expressly provided by the
15 contract.~~(1) The contract may provide for sale of the product~~
16 ~~or commodity to the limited cooperative association, and, if so,~~
17 ~~the sale transfers title absolutely to the limited cooperative~~
18 ~~association except for security interests properly perfected under~~
19 ~~other law, upon delivery, or at any other specific time expressly~~
20 ~~provided by the contract.~~

21 (2) A marketing contract may:~~(2) The contract may~~
22 ~~authorize the limited cooperative association to grant a security~~
23 ~~interest in the product or commodity delivered and may provide~~
24 ~~that the limited cooperative association may sell the product~~
25 ~~or commodity delivered and pay or distribute the sales price on~~

1 a pooled or other basis to the other party after deducting the
2 following:

3 (a) Authorize a limited cooperative association to create
4 an enforceable security interest in the products, commodities, or
5 goods delivered; and~~(a) Selling, processing, overhead, and other~~
6 ~~costs and expenses; and~~

7 (b) Allow the limited cooperative association to sell
8 the products, commodities, or goods delivered and pay the sales
9 price on a pooled or other basis after deducting selling costs,
10 processing costs, overhead, expenses, and other charges.~~(b)~~
11 ~~Reserves for the purposes set forth in subdivision (3)(b) of~~
12 ~~section 21-2980.~~

13 Sec. 12. Section 21-2951, Revised Statutes Supplement,
14 2007, is amended to read:

15 21-2951 The initial duration of a marketing contract may
16 not exceed ten years, but the contract may be made self-renewing
17 for additional periods not exceeding five years each. Unless the
18 contract provides for another manner or time for termination,
19 either party may terminate the contract by giving notice in a
20 record at least ninety days before the end of the current term.~~A~~
21 ~~single term of a contract shall not exceed ten years, but may be~~
22 ~~renewable for additional periods not exceeding five years each,~~
23 ~~subject to the right of either party not to renew by giving record~~
24 ~~notice during a period of the current term as specified in the~~
25 ~~contract.~~

1 Sec. 13. Section 21-2952, Revised Statutes Supplement,
2 2007, is amended to read:

3 21-2952 (1) A marketing contract may liquidate damages
4 to be paid to a limited cooperative association for a breach or
5 anticipatory repudiation of the marketing contract but only at an
6 amount or at a formula that is reasonable in light of the actual
7 or then anticipated harm caused by the breach or to be caused
8 by the anticipatory repudiation. The provision may be enforced as
9 liquidated damages and is not to be considered a penalty.~~(1) The~~
10 ~~contract or articles of organization or bylaws may establish a~~
11 ~~specific sum of money as liquidated damages to be paid by a patron~~
12 ~~member to the limited cooperative association. The damages may be~~
13 ~~a percentage of the value of a specific amount per unit of the~~
14 ~~products, goods, or services involved by the breach or a fixed sum~~
15 ~~of money.~~

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

1 ~~preliminary injunction.~~

2 (3) In the case of a marketing contract between a limited
3 cooperative association and a patron member, the articles of
4 organization or bylaws may also provide additional remedies for the
5 remedies under subsections (1) and (2) of this section. ~~(3) Nothing~~
6 ~~in this section shall restrict a limited cooperative association~~
7 ~~from seeking any other remedy at law or equity in the enforcement~~
8 ~~of a marketing contract.~~

9 (4) Nothing in this section shall restrict a limited
10 cooperative association from seeking any other remedy at law or
11 equity in the enforcement of a marketing contract.

12 Sec. 14. Section 21-2953, Revised Statutes Supplement,
13 2007, is amended to read:

14 21-2953 (1) A limited cooperative association shall have
15 a board of directors consisting of three or more directors as set
16 forth in the articles of organization or bylaws unless the number
17 of members is less than three. If there are fewer than three
18 members, the number of directors shall not be less than the number
19 of members in the limited cooperative association.

20 (2) The affairs of the limited cooperative association
21 shall be managed by, or under the direction of, the board of
22 directors. The board of directors may adopt policies and procedures
23 that are not in conflict with the articles of organization, the
24 bylaws, and the Nebraska Limited Cooperative Association Act.

25 (3) A director does not have agency authority on behalf

1 of the limited cooperative association solely by being a director.

2 Sec. 15. Section 21-2955, Revised Statutes Supplement,
3 2007, is amended to read:

4 21-2955 (1) A director shall be an individual or
5 individual representative of a member that is not an individual.

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

8 (3) Except as otherwise provided in the articles of
9 organization or bylaws and subject to subsections (4) and (5)
10 of this section, each director shall be a member of the limited
11 cooperative association or a designee of a member that is not an
12 individual.

13 (4) Unless otherwise provided in the articles of
14 organization or bylaws, a director ~~shall~~ may be an officer or
15 employee of the limited cooperative association.

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

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

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

23 Sec. 16. Section 21-2956, Revised Statutes Supplement,
24 2007, is amended to read:

25 21-2956 (1) At least fifty percent of the board of

1 directors of a limited cooperative association shall be elected
2 exclusively by patron members.

3 (2) The Subject to the provisions of subsection (1) of
4 this section, the articles of organization or bylaws may provide
5 for the election of all or a specified number of directors by the
6 holders of one or more groups of classes of members' interests.

7 (3) The Subject to the provisions of subsection (1) of
8 this section, the articles of organization or bylaws may provide
9 for the nomination or election of directors by geographic district
10 directly or by district delegates.

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

13 (5) Except as otherwise provided by the articles of
14 organization, bylaws, or section 21-2961, member directors shall be
15 elected at an annual members' meeting.

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

19 Sec. 17. Section 21-2959, Revised Statutes Supplement,
20 2007, is amended to read:

21 21-2959 Unless the articles of organization or bylaws
22 otherwise provide, the following rules apply:~~The members may remove~~
23 ~~a director only for cause unless the articles of organization or~~
24 ~~bylaws provide for removal without cause.~~

25 (1) Members may remove a director with or without cause;

1 (2) A member or members holding at least twenty-five
 2 percent of the total voting power entitled to be voted in the
 3 election of the director may demand removal of a director by a
 4 signed petition submitted to the officer of the limited cooperative
 5 association charged with keeping its records;

6 (3) Upon receipt of a petition for removal of a director,
 7 an officer or the board of directors shall:

8 (a) Call a special members' meeting to be held within
 9 ninety days after receipt of the petition by the association; and

10 (b) Mail or otherwise transmit or deliver in a record to
 11 the members entitled to vote on the removal notice of the meeting
 12 which complies with section 21-2936;

13 (4) A director against whom a petition has been submitted
 14 shall be informed in a record of the petition within a reasonable
 15 time before the members' meeting at which the members consider the
 16 petition; and

17 (5) A director is removed if the votes in favor of
 18 removal are equal to or greater than the votes required to elect
 19 the director.

20 Sec. 18. Section 21-2960, Revised Statutes Supplement,
 21 2007, is amended to read:

22 21-2960 (1) The board of directors may suspend a
 23 director, if, considering the director's course of conduct and
 24 the inadequacy of other available remedies, immediate suspension
 25 is necessary for the best interests of the limited cooperative

1 association and the director is engaged in:

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

4 (b) Gross abuse of the position of the director; ~~or~~

5 (c) Intentional infliction of harm on the limited
6 cooperative association; or

7 (d) Any other behavior, act, or omission as provided by
8 the articles of organization or bylaws.

9 (2) A suspension under subsection (1) of this section
10 is effective for thirty days unless the board of directors calls
11 and gives notice of a special members' meeting for removal of the
12 director before the end of the thirty-day period in which case the
13 suspension is effective until adjournment of the special meeting or
14 the director is removed.

15 ~~(2)~~ (3) After suspension, a director may be removed
16 pursuant to section 21-2959.

17 Sec. 19. Section 21-2978, Revised Statutes Supplement,
18 2007, is amended to read:

19 21-2978 (1) Unless otherwise provided in the articles of
20 organization or bylaws, the contributions of a member may consist
21 of tangible or intangible property or other benefit to the limited
22 cooperative association, including money, services performed or to
23 be performed, promissory notes, other agreements to contribute cash
24 or property, and contracts to be performed.

25 (2) The receipt and acceptance of contributions and

1 the valuation of contributions shall be reflected in the limited
2 cooperative association's required records pursuant to section
3 21-2910.

4 (3) Unless otherwise provided in the articles of
5 organization or bylaws, the board of directors shall value the
6 contributions received or to be received. The determination by
7 the board of directors on valuation is conclusive for purposes of
8 determining whether the member's contribution obligation has been
9 fully ~~paid~~ met.

10 Sec. 20. Section 21-2980, Revised Statutes Supplement,
11 2007, is amended to read:

12 21-2980 (1) Subject to subsection (2) of this section,
13 the articles of organization or bylaws shall provide for the
14 allocation of net proceeds, savings, margins, profits, and losses
15 between classes or groups of members.

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

22 (b) For purposes of this subsection, the following rules
23 apply:

24 (i) Amounts paid or due on contracts for the delivery to
25 the association by patron members of products, goods, or services

1 are not considered amounts allocated to patron members; and

2 (ii) Amounts paid, due, or allocated to investor members
3 as a stated, fixed return on equity are not considered amounts
4 allocated to investor members.

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

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

11 (b) Creating or accumulating reserves for specific
12 purposes, including expansion and replacement of capital assets and
13 other necessary business purposes.

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

18 (a) To patron members annually in accordance with the
19 ratio of each member's patronage during the period to total
20 patronage of all patron members during the period; and

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

24 (5) For purposes of allocation of net proceeds, savings,
25 margins, profits, and losses to patron members, the articles of

1 organization or bylaws may establish allocation units based on
2 function, division, district, department, allocation units, pooling
3 arrangements, members' contributions, or other methods.

4 Sec. 21. Property distributed under subsection (2) of
5 section 21-2981, other than cash, may be redeemed or repurchased
6 as provided in the articles of organization or bylaws but no
7 redemption or repurchase may be made without full and final
8 authorization by the board of directors, which may be withheld
9 for any reason in the board's sole discretion. The redemption or
10 repurchase will be treated as a distribution under section 21-2981.

11 Sec. 22. (1) A limited cooperative association shall not
12 make a distribution if, after the distribution:

13 (a) The limited cooperative association would not be able
14 to pay its debts as they become due in the ordinary course of the
15 association's activities; or

16 (b) The limited cooperative association's assets would be
17 less than the sum of its total liabilities.

18 (2) A limited cooperative association may base a
19 determination that a distribution is not prohibited under
20 subsection (1) of this section on financial statements prepared
21 on the basis of accounting practices and principles that are
22 reasonable in the circumstances or on a fair valuation or other
23 methods that are reasonable in the circumstances.

24 (3) Except as otherwise provided in subsection (4) of
25 this section, the effect of a distribution allowed under subsection

1 (2) of this section is measured:

2 (a) In the case of distribution by purchase, redemption,
3 or other acquisition of financial rights in the limited cooperative
4 association, as of the date money or other property is transferred
5 or debt is incurred by the association; and

6 (b) In all other cases, as of the date:

7 (i) The distribution is authorized, if the payment occurs
8 within one-hundred-twenty days after that date; or

9 (ii) The payment is made, if payment occurs more than
10 one-hundred-twenty days after the distribution is authorized.

11 (4) If indebtedness is issued as a distribution, each
12 payment of principal or interest on the indebtedness is treated as
13 a distribution, the effect of which is measured on the date the
14 payment is made.

15 (5) For purposes of this section, distribution does not
16 include reasonable amounts paid to a member in the ordinary course
17 of business as payment or compensation for commodities, goods, past
18 or present services, or reasonable payments made in the ordinary
19 course of business under a bona fide retirement or other benefits
20 program.

21 Sec. 23. (1) A director who consents to a distribution
22 made in violation of section 21-2981 is personally liable to the
23 limited cooperative association for the amount of the distribution
24 which exceeds the amount that could have been distributed without
25 the violation if it is established that in consenting to the

1 distribution the director failed to comply with section 21-2970 or
2 21-2971.

3 (2) A member or holder of financial rights which received
4 a distribution knowing that the distribution to the member or
5 holder was made in violation of section 22 of this act is
6 personally liable to the limited cooperative association but only
7 to the extent that the distribution received by the member or
8 holder exceeded the amount that could have been properly paid under
9 section 22 of this act.

10 (3) A director against whom an action is commenced under
11 subsection (1) of this section may:

12 (a) Implead in the action any other director that is
13 liable under subsection (1) of this section and compel contribution
14 from the person; and

15 (b) Implead in the action any person that is liable under
16 subsection (2) of this section and compel contribution from the
17 person in the amount the person received as described in such
18 subsection.

19 (4) An action under this section is barred if it is not
20 commenced within two years after the distribution.

21 Sec. 24. Section 21-2982, Revised Statutes Supplement,
22 2007, is amended to read:

23 21-2982 (1) A member does not have a right to withdraw as
24 a member of a limited cooperative association but has the power to
25 withdraw.

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

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

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

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

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

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

16 (ii) Subject to section 21-2947, there has been a
17 transfer of all of the person's financial rights in the limited
18 cooperative association;

19 (iii) The person is a corporation or association whether
20 or not organized under the Nebraska Limited Cooperative Association
21 Act; and:

22 (A) The limited cooperative association notifies the
23 person that it will be expelled as a member because it has filed a
24 statement of intent to dissolve or articles of dissolution, it has
25 been administratively or judicially dissolved, its charter has been

1 revoked, or its right to conduct business has been suspended by the
2 jurisdiction of its organization; and

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

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

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

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

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

21 (h) Termination of a member that is not an individual,
22 partnership, limited liability company, limited cooperative
23 association, whether or not organized under the act, corporation,
24 trust, or estate; or

25 (i) The limited cooperative association's participation

1 in a merger or consolidation, if, under the plan of merger or
2 consolidation as approved under section 21-29,122, the person
3 ceases to be a member.

4 Sec. 25. Section 21-2992, Revised Statutes Supplement,
5 2007, is amended to read:

6 21-2992 (1) A dissolved limited cooperative association
7 shall publish notice of its dissolution and may request persons
8 having claims against the limited cooperative association to
9 present them in accordance with the notice.

10 (2) The notice shall:

11 (a) Be published at least once in a newspaper of
12 general circulation in the county in which the dissolved limited
13 cooperative association's principal office is located or, if it has
14 none in this state, in the county in which the limited cooperative
15 association's designated office is or was last located;

16 (b) Describe the information required to be contained in
17 a claim and provide a mailing address to which the claim is to be
18 sent; and

19 (c) State that a claim against the limited cooperative
20 association is barred unless an action to enforce the claim is
21 commenced within three years after publication of the notice.

22 (3) If a dissolved limited cooperative association
23 publishes a notice in accordance with subsection (2) of this
24 section, the claim of each of the following claimants is barred,
25 unless the claimant commences an action to enforce the claim

1 against the dissolved limited cooperative association within three
2 years after the publication date of the notice:

3 (a) A claimant that did not receive notice in a record
4 under section 21-2991;

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

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

9 (4) A claim not barred under this section may be
10 enforced:

11 (a) Against the dissolved limited cooperative
12 association, to the extent of its undistributed assets;
13 or

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

22 Sec. 26. Section 21-29,110, Revised Statutes Supplement,
23 2007, is amended to read:

24 21-29,110 (1) A limited cooperative association may amend
25 its articles of organization or bylaws.

1 (2) Unless the articles of organization or bylaws provide
 2 otherwise, a member of a limited cooperative association does
 3 not have vested property rights in resulting from any provision
 4 in the articles of organization or bylaws, including provisions
 5 relating to management, control, capital structure, distribution,
 6 entitlement, purpose, or duration of the limited cooperative
 7 association.

8 Sec. 27. Section 21-29,117, Revised Statutes Supplement,
 9 2007, is amended to read:

10 21-29,117 For purposes of sections 21-29,117 to
 11 ~~21-29,128+~~ 21-29,127:

12 (1) Constituent limited cooperative association means a
 13 limited cooperative association that is a party to a merger or
 14 consolidation;

15 (2) Constituent organization means an organization, other
 16 than a limited cooperative association, that is a party to a merger
 17 or consolidation;

18 ~~(3) Converted organization means the organization into~~
 19 ~~which a converting organization converts pursuant to sections~~
 20 ~~21-29,118 to 21-29,121;~~

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 21-29,118;~~

25 ~~(6)~~ (3) Governing statute of an organization means the

1 statute that governs the organization's internal affairs;

2 ~~(7)~~ (4) Organization means a limited cooperative
3 association, limited cooperative association governed by a law
4 other than the Nebraska Limited Cooperative Association Act, a
5 general partnership, a limited liability partnership, a limited
6 partnership, a limited liability company, a business trust, a
7 corporation, a cooperative, or any other person having a governing
8 statute. The term includes domestic and foreign organizations
9 whether or not organized for profit;

10 ~~(8)~~ (5) Personal liability means personal liability for
11 a debt, liability, or other obligation of an organization which
12 is imposed on a person that co-owns, has an interest in, or is a
13 member of the organization:

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

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

23 ~~(9)~~ (6) Surviving organization means an organization into
24 which one or more other organizations are merged or consolidated. A
25 surviving organization may exist before the merger or consolidation

1 or be created by the merger or consolidation.

2 Sec. 28. Section 21-29,122, Revised Statutes Supplement,
3 2007, is amended to read:

4 21-29,122 ~~(1)~~ A limited cooperative association may merge
5 with one or more other constituent organizations pursuant to this
6 section and a plan of merger, if:

7 ~~(a) The governing statute of each of the other
8 organizations authorizes the merger;~~

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

11 ~~(c) Each of the other organizations complies with its
12 governing statute in effecting the merger.~~

13 (1) Any one or more limited cooperative associations
14 may merge or consolidate with or into any one or more limited
15 cooperative associations, limited liability companies, general
16 partnerships, limited partnerships, cooperatives, or corporations,
17 and any one or more limited liability companies, general
18 partnerships, limited partnerships, cooperatives, or corporations
19 may merge or consolidate with or into any one or more limited
20 cooperative associations.

21 (2) A plan of merger or consolidation shall be in a
22 record and shall include:

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

24 (b) The name and form of the surviving organization and,
25 if the surviving organization is to be created by the merger or

1 consolidation, a statement to that effect;

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

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

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

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

18 Sec. 29. Section 21-29,123, Revised Statutes Supplement,
19 2007, is amended to read:

20 21-29,123 (1) Unless otherwise provided in the articles
21 of organization or bylaws, the plan of merger or consolidation
22 shall be approved by a majority vote of the board of directors.

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

25 (a) The plan of merger or consolidation;

1 (b) A recommendation that the members approve the plan
2 of merger or consolidation unless the board makes a determination
3 because of conflicts of interest or other special circumstances
4 that it should not make such a recommendation;

5 (c) If the board makes no recommendation, the basis for
6 that decision;

7 (d) Any condition of its submission of the plan of merger
8 or consolidation to the members; and

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

11 Sec. 30. Section 21-29,124, Revised Statutes Supplement,
12 2007, is amended to read:

13 21-29,124 (1) Unless the articles of organization or
14 bylaws provide for a greater quorum and subject to section 21-2939,
15 a plan of merger or consolidation shall be approved by at least a
16 two-thirds vote of patron members voting under section 21-2939 and
17 by at least a two-thirds vote of investor members, if any, voting
18 under section 21-2942.

19 (2) Subject to any contractual rights, after a merger
20 or consolidation is approved, and at any time before a filing is
21 made under section 21-29,126, a constituent limited cooperative
22 association may amend the plan of merger or consolidation or
23 abandon the planned merger or consolidation:

24 (a) As provided in the plan; and

25 (b) Except as prohibited by the plan, with the same

1 consent as was required to approve the plan.

2 Sec. 31. Section 21-29,125, Revised Statutes Supplement,
3 2007, is amended to read:

4 21-29,125 (1) Unless the articles of organization or
5 bylaws of the limited cooperative association or ~~the organic law~~
6 ~~or~~ articles of organization or bylaws of the other organization
7 otherwise provide, a limited cooperative association that owns at
8 least ninety percent of each class of the voting power of a
9 subsidiary organization may merge or consolidate the subsidiary
10 into itself or into another subsidiary.

11 (2) The limited cooperative association owning at least
12 ninety percent of the subsidiary organization before the merger or
13 consolidation shall notify each other owner of the subsidiary, if
14 any, of the merger within ten days after the effective date of the
15 merger or consolidation.

16 Sec. 32. Section 21-29,126, Revised Statutes Supplement,
17 2007, is amended to read:

18 21-29,126 (1) After each constituent organization has
19 approved a merger or consolidation, articles of merger or
20 consolidation shall be signed on behalf of each other preexisting
21 constituent organization by an authorized representative.

22 (2) The articles of merger or consolidation shall
23 include:

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

1 (b) The name and form of the surviving organization,
2 the jurisdiction of its governing statute, and, if the surviving
3 organization is created by the merger or consolidation, a statement
4 to that effect;

5 (c) The date the merger or consolidation is effective
6 under the governing statute of the surviving organization;

7 (d) If the surviving organization is to be created by the
8 merger or consolidation:

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

11 (ii) If it will be an organization other than a limited
12 cooperative association, the organizational document that creates
13 the organization;

14 (e) If the surviving organization preexists the merger or
15 consolidation, any amendments provided for in the plan of merger
16 or consolidation for the organizational document that created the
17 organization;

18 (f) A statement as to each constituent organization
19 that the merger or consolidation was approved as required by the
20 organization's governing statute;

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

25 (h) Any additional information required by the governing

1 statute of any constituent organization.

2 (3) Each constituent limited cooperative association
3 shall deliver the articles of merger or consolidation for filing in
4 the office of the Secretary of State.

5 (4) A merger or consolidation becomes effective under
6 this section:

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

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

10 (ii) Subject to section 21-2919, as specified in the
11 articles of merger or consolidation; or

12 (b) If the surviving organization is not a limited
13 cooperative association, as provided by the governing statute of
14 the surviving organization.

15 Sec. 33. Section 21-29,127, Revised Statutes Supplement,
16 2007, is amended to read:

17 21-29,127 When a merger or consolidation becomes
18 effective:

19 (1) The surviving organization continues or comes into
20 existence;

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

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

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

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

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

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

13 (8) Except as otherwise agreed, if a constituent
14 limited cooperative association ceases to exist, the merger or
15 consolidation does not dissolve the limited cooperative association
16 for purposes of section 21-2987;

17 (9) If the surviving organization is created by the
18 merger or consolidation:

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

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

24 (10) If the surviving organization exists before the
25 merger or consolidation, any amendments provided for in the

1 articles of merger or consolidation for the organizational document
2 that created the organization become effective.

3 Sec. 34. Original sections 21-2901, 21-2903, 21-2910,
4 21-2922, 21-2929, 21-2930, 21-2935, 21-2939, 21-2945, 21-2949,
5 21-2950, 21-2951, 21-2952, 21-2953, 21-2955, 21-2956, 21-2959,
6 21-2960, 21-2978, 21-2980, 21-2982, 21-2992, 21-29,110, 21-29,117,
7 21-29,122, 21-29,123, 21-29,124, 21-29,125, 21-29,126, and
8 21-29,127, Revised Statutes Supplement, 2007, are repealed.

9 Sec. 35. The following sections are outright repealed:
10 Sections 21-29,118, 21-29,119, 21-29,120, 21-29,121, and 21-29,128,
11 Revised Statutes Supplement, 2007.