

LEGISLATIVE BILL 368

Approved by the Governor May 16, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) Patron means a person or entity that conducts economic activity

with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. (1) Except as otherwise provided in the Nebraska Limited Cooperative Association Act, a limited cooperative association has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a member for harm caused to the limited cooperative association by a violation of the articles of organization or bylaws of the limited cooperative association or violation of a duty to the limited cooperative association.

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

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

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

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

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

thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A copy of any audited financial statements;

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

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

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

(9) A record stating:

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

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

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

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

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

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

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

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

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

(b) An agent for service of process.

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

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

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

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

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

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

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

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

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

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

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

Sec. 16. (1) An agent for service of process appointed by a limited cooperative association or a foreign limited cooperative association is an agent of the limited cooperative association or foreign limited cooperative association for service of any process, notice, or demand required or

permitted by law to be served upon the limited cooperative association or foreign limited cooperative association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The specified date; or

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

(d) If the record specifies an effective time and a delayed

effective date, at the specified time on the earlier of:

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

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

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

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

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

(c) Correct the incorrect information or defective signature.

(3) When filed by the Secretary of State, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to persons relying on the uncorrected record and adversely affected by the correction prior to its correction.

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

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

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

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

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

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

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

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

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

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

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

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited

cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

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

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

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

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

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

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

(a) The name of the limited cooperative association;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

organization.

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

Sec. 30. A person becomes a member:

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

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

(3) With the consent of all the members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The person complies with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The articles of organization or bylaws may provide for member voting by secret ballot delivered by mail or other means.

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

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

(a) For the formation of districts and the conduct of members' meetings by districts and that elections of directors may be held at district meetings; or

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

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

(3) The articles of organization or bylaws may provide additional voting power be allocated to each district, group, or class or delegate for the aggregate of the number of patron members in each district, group, or class as provided under section 41 of this act.

Sec. 45. A member's interest:

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

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 55. (1) A director shall be an individual or individual

representative of a member that is not an individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The election of the director for the unexpired term shall be conducted in the same manner as would the election for that position without

a vacancy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In good faith;

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

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

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial

statements and other financial data, if prepared or presented by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Otherwise provided by the agreement; or
- (b) All parties to the agreement consent to the revocation.

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

- (a) Collect the amount owed as any other debt; or
- (b) Unless otherwise provided in the agreement, rescind the agreement if the debt remains unpaid more than twenty days after the limited cooperative association demands payment from the party in a record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The person's expulsion as a member by the board of directors if:
(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

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

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

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent

to dissolve or articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 87. In order to voluntarily dissolve:

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

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

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

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

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

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

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

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

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

(a) The name of the limited cooperative association;

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

(c) Any other information it deems relevant.

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

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

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

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

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

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

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

(b) The applicant establishes other good cause.

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

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

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

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

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

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

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

claimant; and

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

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

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

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

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

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

(2) The notice shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court under section 92

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited cooperative association or may take other

action the court considers appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Maintaining accounts in financial institutions;

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

(e) Selling through independent contractors;

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

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

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

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

(j) Transacting business in interstate commerce.

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

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

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

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

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

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

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

(b) Deliver, within sixty days after the due date, its biennial

report required under section 94 of this act;

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

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

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

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

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

(3) The authority of the foreign limited cooperative association to transact business in this state ceases on the effective date of the certificate of revocation unless before that date the foreign limited cooperative association cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited cooperative association cures the failures, the Secretary of State shall so indicate on the filed notice.

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

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

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

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

(5) If a foreign limited cooperative association transacts business in this state without a certificate of authority or cancels its certificate of authority, it may be served in accordance with section 16 of this act for rights of action arising out of the transaction of business in this state.

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

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

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

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

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

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

(a) The proposed amendment;

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

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

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

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

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

(2) Subject to subsection (1) of this section, any amendment of the

amendment need not be separately voted upon by the board of directors.

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

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

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

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

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

(2) The transferability of members' interests;

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

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

(5) The terms for admission of new members.

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

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

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

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

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

(a) Binds the limited cooperative association; and

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

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

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

(a) The name of the limited cooperative association;

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

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

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

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

(a) Cause the articles to be amended; and

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

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

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

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

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

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

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

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

(4) Converting limited cooperative association means a converting

organization that is a limited cooperative association;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The organizational documents of the converted organization.

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

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

(a) As provided in the plan; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A conversion becomes effective:

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

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

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

(2) When a conversion takes effect:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vote of the board of directors.

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

(a) The plan of merger;

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

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

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

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

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

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

(a) As provided in the plan; and

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

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

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

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

(2) The articles of merger shall include:

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

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

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

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

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

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

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

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

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

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

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

(4) A merger becomes effective under this section:

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

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

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

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

organization.

Sec. 127. When a merger becomes effective:

- (1) The surviving organization continues or comes into existence;
- (2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- (3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;
- (5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
- (6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
- (7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;
- (8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger does not dissolve the limited cooperative association for purposes of section 87 of this act;
- (9) If the surviving organization is created by the merger:
 - (a) If it is a limited cooperative association, the articles of organization become effective; or
 - (b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and
- (10) If the surviving organization exists before the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

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

- (a) Each constituent organization is a limited cooperative association or its governing statute expressly provides for a consolidation; and
- (b) The surviving organization is a limited cooperative association or its governing statute expressly provides for a consolidation.

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

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

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

- (1) The proposed disposition shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and
- (2) The board of directors shall mail or otherwise transmit or deliver in a record to each member notice of a special meeting of the members as required by section 35 of this act that sets forth:
 - (a) The terms of the proposed disposition;
 - (b) A recommendation that the members approve the disposition unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;
 - (c) If the board makes no recommendation, the basis of that decision;
 - (d) Any condition of its submission of the proposed disposition to the members; and
 - (e) Notice of the meeting in the same manner as a special members' meeting under sections 35 and 36 of this act.

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

- (1) At least two-thirds vote of patron members voting under section 39 of this act; and
- (2) At least a two-thirds vote of investor members, if any, under section 42 of this act.

Sec. 132. Member interests offered or sold by a limited cooperative

association are exempt from the Securities Act of Nebraska to the extent interests offered or sold by other types of organizations are exempt under subdivision (15) of section 8-1111.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or

deemed to be received from corporations which are not subject to the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable

year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

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

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