

AMENDMENTS TO LB 848

Introduced by Erdman, 47.

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

3           Section 1. Section 21-2901, Revised Statutes Supplement,  
4 2007, is amended to read:

5           21-2901 Sections 21-2901 to 21-29,134 and sections 21 to  
6 23 of this act shall be known and may be cited as the Nebraska  
7 Limited Cooperative Association Act.

8           Sec. 2. Section 21-2903, Revised Statutes Supplement,  
9 2007, is amended to read:

10          21-2903 For purposes of the Nebraska Limited Cooperative  
11 Association Act, unless the context otherwise requires:

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

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

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

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

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

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

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

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

11           (5) Designated office means the office designated under  
12 section 21-2913;

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

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

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

26           (9) Financial rights means the right to participate in  
27 allocation and distribution under sections 21-2980 and 21-2981 but

1 does not include rights or obligations under a marketing contract  
2 governed by sections 21-2949 to 21-2952;

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

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

8 (12) Governance rights means the right to participate  
9 in governance of the limited cooperative association under section  
10 21-2928;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Sec. 3. Section 21-2910, Revised Statutes Supplement,  
15 2007, is amended to read:

16 21-2910 A limited cooperative association shall maintain  
17 in a record at its principal office the following information:

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

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

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

27 (4) A copy of any filed articles of merger or

1 consolidation;

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

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

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

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

13 (9) A record stating:

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

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

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

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

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

1           Sec. 4. Section 21-2922, Revised Statutes Supplement,  
2 2007, is amended to read:

3           21-2922 (1) The Secretary of State, upon application  
4 and payment of the required fee, shall furnish a certificate of  
5 ~~existence~~ good standing for a limited cooperative association if  
6 the records filed in the office of the Secretary of State show  
7 that the Secretary of State has filed articles of organization, the  
8 limited cooperative association is in good standing, and there has  
9 not been filed articles of dissolution.

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

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

23           Sec. 5. Section 21-2929, Revised Statutes Supplement,  
24 2007, is amended to read:

25           21-2929 In order to commence business, a limited  
26 cooperative association shall have two or more patron members,  
27 except that a limited cooperative association may have only one

1 member if the member is an entity organized under the Nebraska  
2 Limited Cooperative Association Act, the Nonstock Cooperative  
3 Marketing Act, or sections 21-1301 to 21-1339.

4 Sec. 6. Section 21-2930, Revised Statutes Supplement,  
5 2007, is amended to read:

6 21-2930 A person becomes a member:

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

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

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

12 Sec. 7. Section 21-2935, Revised Statutes Supplement,  
13 2007, is amended to read:

14 21-2935 (1) Special members' meetings shall be called:

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

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

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

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

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

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

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

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

11           Sec. 8. Section 21-2939, Revised Statutes Supplement,  
12 2007, is amended to read:

13           21-2939 (1) Each patron member has one vote, but the  
14 articles of organization or bylaws may provide additional voting  
15 power to members on the basis of patronage under section 21-2941  
16 and may provide for voting by district, group, or class under  
17 section 21-2956.

18           (2) If the articles of organization provide for investor  
19 members, each investor member has one vote, unless the articles  
20 of organization or bylaws otherwise provide. The articles of  
21 organization or bylaws may provide for the allocation of investor  
22 member voting power by class, classes, or any combination of  
23 classes.

24           ~~(2)~~ (3) If a limited cooperative association has both  
25 patron and investor members:

26           (a) The aggregate voting power of all patron members  
27 shall not be less than fifty-one percent of the entire voting power

1 entitled to vote, but the articles of organization or bylaws may  
2 reduce the collective voting power of patron members to not less  
3 than fifteen percent of the entire voting power entitled to vote;  
4 and

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

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

10 21-2945 A member's interest:

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

15 (2) Is personal property; and

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

17 Sec. 10. Section 21-2949, Revised Statutes Supplement,  
18 2007, is amended to read:

19 21-2949 In this section and sections 21-2950 to 21-2952,  
20 marketing contract means a contract between a limited cooperative  
21 association and another person that need not be a patron member:

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

26 (1) Requiring the other person to sell, or deliver for  
27 sale or marketing on the person's behalf, a specified part of

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

10 (2) Authorizing the limited cooperative association to  
11 act for the person in any manner with respect to the products,  
12 commodities, or goods. ~~(2) Buy or procure from or through the~~  
13 ~~limited cooperative association or any facilities furnished by~~  
14 ~~the limited cooperative association all or a specified part of~~  
15 ~~the goods or services to be bought or procured by the party or~~  
16 ~~authorize the limited cooperative association to act for the party~~  
17 ~~in any manner in the procurement of goods or the performance of~~  
18 ~~services.~~

19 Sec. 11. Section 21-2950, Revised Statutes Supplement,  
20 2007, is amended to read:

21 21-2950 (1) If a marketing contract provides for the  
22 sale of products, commodities, or goods to a limited cooperative  
23 association, the sale transfers title absolutely, except for  
24 security interests properly perfected, to the association upon  
25 delivery or at any other specific time expressly provided by the  
26 contract. ~~(1) The contract may provide for sale of the product~~  
27 ~~or commodity to the limited cooperative association, and, if so,~~

1 the sale transfers title absolutely to the limited cooperative  
2 association except for security interests properly perfected under  
3 other law, upon delivery, or at any other specific time expressly  
4 provided by the contract.

5 (2) A marketing contract may: ~~(2)~~ The contract may  
6 authorize the limited cooperative association to grant a security  
7 interest in the product or commodity delivered and may provide  
8 that the limited cooperative association may sell the product or  
9 commodity delivered and pay or distribute the sales price on a  
10 pooled or other basis to the other party after deducting the  
11 following:

12 (a) Authorize a limited cooperative association to create  
13 an enforceable security interest in the products, commodities, or  
14 goods delivered; and ~~(a)~~ Selling, processing, overhead, and other  
15 costs and expenses, and

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

22 Sec. 12. Section 21-2951, Revised Statutes Supplement,  
23 2007, is amended to read:

24 21-2951 The initial duration of a marketing contract may  
25 not exceed ten years, but the contract may be made self-renewing  
26 for additional periods not exceeding five years each. Unless the  
27 contract provides for another manner or time for termination,

1 either party may terminate the contract by giving notice in a  
2 record at least ninety days before the end of the current term.

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

8 Sec. 13. Section 21-2952, Revised Statutes Supplement,  
9 2007, is amended to read:

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

23 (2) If there is a breach or anticipatory repudiation of  
24 a marketing contract the limited cooperative association may seek  
25 an injunction to prevent the further breach or an anticipatory  
26 repudiation of the contract and the specific performance of the  
27 contract. (2) If there is a breach or threatened breach of a

1 ~~contract, the limited cooperative association is entitled to an~~  
2 ~~injunction to prevent the breach and continuing breach and to~~  
3 ~~a judgment of specific performance. Pending adjudication of the~~  
4 ~~action, and upon filing sufficient bond, the limited cooperative~~  
5 ~~association is entitled to a temporary restraining order and a~~  
6 ~~preliminary injunction.~~

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

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

17 Sec. 14. Section 21-2953, Revised Statutes Supplement,  
18 2007, is amended to read:

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

25 (2) The affairs of the limited cooperative association  
26 shall be managed by, or under the direction of, the board of  
27 directors. The board of directors may adopt policies and procedures

1 that are not in conflict with the articles of organization, the  
2 bylaws, and the Nebraska Limited Cooperative Association Act.

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

5 Sec. 15. Section 21-2955, Revised Statutes Supplement,  
6 2007, is amended to read:

7 21-2955 (1) A director shall be an individual or  
8 individual representative of a member that is not an individual.

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

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

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

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

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

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

26 Sec. 16. Section 21-2956, Revised Statutes Supplement,  
27 2007, is amended to read:

1           21-2956 (1) At least fifty percent of the board of  
2 directors of a limited cooperative association shall be elected  
3 exclusively by patron members.

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

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

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

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

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

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

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

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

27           (2) A member or members holding at least twenty-five

1 percent of the total voting power entitled to be voted in the  
2 election of the director may demand removal of a director by a  
3 signed petition submitted to the officer of the limited cooperative  
4 association charged with keeping its records;

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

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

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

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

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

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

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

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

- 1 (b) Gross abuse of the position of the director; ~~ex~~  
2 (c) Intentional infliction of harm on the limited  
3 cooperative association; or ~~or~~  
4 (d) Any other behavior, act, or omission as provided by  
5 the articles of organization or bylaws.

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

12 ~~(2)~~ (3) After suspension, a director may be removed  
13 pursuant to section 21-2959.

14 Sec. 19. Section 21-2978, Revised Statutes Supplement,  
15 2007, is amended to read:

16 21-2978 (1) Unless otherwise provided in the articles of  
17 organization or bylaws, the contributions of a member may consist  
18 of tangible or intangible property or other benefit to the limited  
19 cooperative association, including money, services performed or to  
20 be performed, promissory notes, other agreements to contribute cash  
21 or property, and contracts to be performed.

22 (2) The receipt and acceptance of contributions and  
23 the valuation of contributions shall be reflected in the limited  
24 cooperative association's required records pursuant to section  
25 21-2910.

26 (3) Unless otherwise provided in the articles of  
27 organization or bylaws, the board of directors shall value the

1 contributions received or to be received. The determination by  
2 the board of directors on valuation is conclusive for purposes of  
3 determining whether the member's contribution obligation has been  
4 fully ~~paid.~~ met.

5           Sec. 20. Section 21-2980, Revised Statutes Supplement,  
6 2007, is amended to read:

7           21-2980 (1) Subject to subsection (2) of this section,  
8 the articles of organization or bylaws shall provide for the  
9 allocation of net proceeds, savings, margins, profits, and losses  
10 between classes or groups of members.

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

17           (b) For purposes of this subsection, the following rules  
18 apply:

19           (i) Amounts paid or due on contracts for the delivery to  
20 the association by patron members of products, goods, or services  
21 are not considered amounts allocated to patron members; and

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

25           (3) Unless otherwise provided in the articles of  
26 organization or bylaws, in order to determine the amount of net  
27 proceeds, savings, margins, and profits, the board of directors may

1 set aside a portion of the revenue, whether or not allocated to  
2 members, after accounting for other expenses, for purposes of:

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

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

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

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

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

22 Sec. 21. Property distributed under subsection (2) of  
23 section 21-2981, other than cash, may be redeemed or repurchased  
24 as provided in the articles of organization or bylaws but no  
25 redemption or repurchase may be made without full and final  
26 authorization by the board of directors, which may be withheld  
27 for any reason in the board's sole discretion. The redemption or

1 repurchase will be treated as a distribution under section 21-2981.

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

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

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

9 (2) A limited cooperative association may base a  
10 determination that a distribution is not prohibited under  
11 subsection (1) of this section on financial statements prepared  
12 on the basis of accounting practices and principles that are  
13 reasonable in the circumstances or on a fair valuation or other  
14 methods that are reasonable in the circumstances.

15 (3) Except as otherwise provided in subsection (4) of  
16 this section, the effect of a distribution allowed under subsection  
17 (2) of this section is measured:

18 (a) In the case of distribution by purchase, redemption,  
19 or other acquisition of financial rights in the limited cooperative  
20 association, as of the date money or other property is transferred  
21 or debt is incurred by the association; and

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

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

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

27 (4) If indebtedness is issued as a distribution, each

1 payment of principal or interest on the indebtedness is treated as  
2 a distribution, the effect of which is measured on the date the  
3 payment is made.

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

10 Sec. 23. (1) A director who consents to a distribution  
11 made in violation of section 21-2981 is personally liable to the  
12 limited cooperative association for the amount of the distribution  
13 which exceeds the amount that could have been distributed without  
14 the violation if it is established that in consenting to the  
15 distribution the director failed to comply with section 21-2970 or  
16 21-2971.

17 (2) A member or holder of financial rights which received  
18 a distribution knowing that the distribution to the member or  
19 holder was made in violation of section 22 of this act is  
20 personally liable to the limited cooperative association but only  
21 to the extent that the distribution received by the member or  
22 holder exceeded the amount that could have been properly paid under  
23 section 22 of this act.

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

26 (a) Implead in the action any other director that is  
27 liable under subsection (1) of this section and compel contribution

1 from the person; and

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

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

8 Sec. 24. Section 21-2982, Revised Statutes Supplement,  
9 2007, is amended to read:

10 21-2982 (1) A member does not have a right to withdraw as  
11 a member of a limited cooperative association but has the power to  
12 withdraw.

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

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

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

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

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

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

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

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

7           (A) The limited cooperative association notifies the  
8 person that it will be expelled as a member because it has filed a  
9 statement of intent to dissolve or articles of dissolution, it has  
10 been administratively or judicially dissolved, its charter has been  
11 revoked, or its right to conduct business has been suspended by the  
12 jurisdiction of its organization; and

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

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

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

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

27           (g) In the case of a person that is an estate,

1 distribution of the estate's entire financial interest in the  
2 limited cooperative association, but not merely by the substitution  
3 of a successor personal representative;

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

8 (i) The limited cooperative association's participation  
9 in a merger or consolidation, if, under the plan of merger or  
10 consolidation as approved under section 21-29,122, the person  
11 ceases to be a member.

12 Sec. 25. Section 21-2992, Revised Statutes Supplement,  
13 2007, is amended to read:

14 21-2992 (1) A dissolved limited cooperative association  
15 shall publish notice of its dissolution and may request persons  
16 having claims against the limited cooperative association to  
17 present them in accordance with the notice.

18 (2) The notice shall:

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

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

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

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

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

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

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

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

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

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

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

1           Sec. 26. Section 21-29,110, Revised Statutes Supplement,  
2 2007, is amended to read:

3           21-29,110 (1) A limited cooperative association may amend  
4 its articles of organization or bylaws.

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

12           Sec. 27. Section 21-29,117, Revised Statutes Supplement,  
13 2007, is amended to read:

14           21-29,117 For purposes of sections 21-29,117 to  
15 ~~21-29,128~~ 21-29,127:

16           (1) Constituent limited cooperative association means a  
17 limited cooperative association that is a party to a merger or  
18 consolidation;

19           (2) Constituent organization means an organization, other  
20 than a limited cooperative association, that is a party to a merger  
21 or consolidation;

22           ~~(3) Converted organization means the organization into~~  
23 ~~which a converting organization converts pursuant to sections~~  
24 ~~21-29,118 to 21-29,121;~~

25           ~~(4) Converting limited cooperative association means a~~  
26 ~~converting organization that is a limited cooperative association;~~

27           ~~(5) Converting organization means an organization that~~

1 ~~converts to another organization pursuant to section 21-29,118;~~

2       ~~(6)~~ (3) Governing statute of an organization means the  
3 statute that governs the organization's internal affairs;

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

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

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

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

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

1 or be created by the merger or consolidation.

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

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

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

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

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

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

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

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

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

27 (c) The terms and conditions of the merger or

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

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

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

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

16 Sec. 29. Section 21-29,123, Revised Statutes Supplement,  
17 2007, is amended to read:

18 21-29,123 (1) Unless otherwise provided in the articles  
19 of organization or bylaws, the plan of merger or consolidation  
20 shall be approved by a majority vote of the board of directors.

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

23 (a) The plan of merger or consolidation;

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

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

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

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

7 Sec. 30. Section 21-29,124, Revised Statutes Supplement,  
8 2007, is amended to read:

9 21-29,124 (1) Unless the articles of organization or  
10 bylaws provide for a greater quorum and subject to section 21-2939,  
11 a plan of merger or consolidation shall be approved by at least a  
12 two-thirds vote of patron members voting under section 21-2939 and  
13 by at least a two-thirds vote of investor members, if any, voting  
14 under section 21-2942.

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

20 (a) As provided in the plan; and

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

23 Sec. 31. Section 21-29,125, Revised Statutes Supplement,  
24 2007, is amended to read:

25 21-29,125 (1) Unless the articles of organization or  
26 bylaws of the limited cooperative association or ~~the organic law~~  
27 ~~or~~ articles of organization or bylaws of the other organization

1 otherwise provide, a limited cooperative association that owns at  
2 least ninety percent of each class of the voting power of a  
3 subsidiary organization may merge or consolidate the subsidiary  
4 into itself or into another subsidiary.

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

10 Sec. 32. Section 21-29,126, Revised Statutes Supplement,  
11 2007, is amended to read:

12 21-29,126 (1) After each constituent organization has  
13 approved a merger or consolidation, articles of merger or  
14 consolidation shall be signed on behalf of each other preexisting  
15 constituent organization by an authorized representative.

16 (2) The articles of merger or consolidation shall  
17 include:

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

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

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

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

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

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

6           (e) If the surviving organization preexists the merger or  
7 consolidation, any amendments provided for in the plan of merger  
8 or consolidation for the organizational document that created the  
9 organization;

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

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

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

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

22          (4) A merger or consolidation becomes effective under  
23 this section:

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

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

27           (ii) Subject to section 21-2919, as specified in the

1 articles of merger or consolidation; or

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

5 Sec. 33. Section 21-29,127, Revised Statutes Supplement,  
6 2007, is amended to read:

7 21-29,127 When a merger or consolidation becomes  
8 effective:

9 (1) The surviving organization continues or comes into  
10 existence;

11 (2) Each constituent organization that merges or  
12 consolidates into the surviving organization ceases to exist as a  
13 separate entity;

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

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

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

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

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

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

5           (9) If the surviving organization is created by the  
6 merger or consolidation:

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

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

12           (10) If the surviving organization exists before the  
13 merger or consolidation, any amendments provided for in the  
14 articles of merger or consolidation for the organizational document  
15 that created the organization become effective.

16           Sec. 34. Original sections 21-2901, 21-2903, 21-2910,  
17 21-2922, 21-2929, 21-2930, 21-2935, 21-2939, 21-2945, 21-2949,  
18 21-2950, 21-2951, 21-2952, 21-2953, 21-2955, 21-2956, 21-2959,  
19 21-2960, 21-2978, 21-2980, 21-2982, 21-2992, 21-29,110, 21-29,117,  
20 21-29,122, 21-29,123, 21-29,124, 21-29,125, 21-29,126, and  
21 21-29,127, Revised Statutes Supplement, 2007, are repealed.

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