

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO COOPERATIVES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that a worker cooperative  
2 has the purpose of creating and maintaining sustainable jobs and  
3 generating wealth to improve the quality of life of its worker-  
4 members, dignify human work, allow workers' democratic self-  
5 management, and promote community and local development in  
6 Hawaii. The purpose of this Act is to establish general  
7 provisions for Hawaii cooperatives that may be used to form  
8 worker as well as other types of cooperatives. This Act is  
9 intended to provide a definition of worker cooperative for  
10 purposes of this Act, and not for purposes of other laws.

11       SECTION 2. The Hawaii Revised Statutes is amended by  
12 adding a new chapter to be appropriately designated and to read  
13 as follows:

14                               "CHAPTER

15                               HAWAII COOPERATIVE LAW

16                               PART I. GENERAL PROVISIONS



1           §    -1   **Definitions.** As used in this chapter, unless the  
2 context otherwise requires:

3           "Agricultural cooperative" means a cooperative in which the  
4 members, including landlords and tenants, are all producers of  
5 agricultural products.

6           "Agricultural products" includes floricultural,  
7 horticultural, viticultural, forestry, nut, coffee, dairy,  
8 livestock, poultry, bee, farm or plantation products, and fish  
9 and aquacultural commodities.

10          "Articles" means the articles of incorporation of a  
11 cooperative and includes amended articles of incorporation,  
12 restated articles of incorporation, and other organizational  
13 documents of other entities.

14          "Board of directors" or "board" means the board of  
15 directors or other governing body of a cooperative or other  
16 entity.

17          "Bylaws" means the bylaws adopted by a cooperative and  
18 includes amended bylaws and restated bylaws.

19          "Candidate" means a worker who is being considered for  
20 membership in a worker cooperative, as defined in the  
21 corporation's articles or bylaws.



1 "Capital account cooperative" means a worker cooperative in  
2 which the entire net book value is reflected in member capital  
3 accounts, one for each member, and an unallocated capital  
4 account, if any.

5 "Collective board worker cooperative" means a worker  
6 cooperative in which there is only one class of members  
7 consisting of worker-members, all of whom are members of the  
8 board.

9 "Community investor" means a person who is not a worker-  
10 member and who holds a share or other proprietary interest in a  
11 worker cooperative.

12 "Cooperative" means any entity formed under or subject to  
13 this chapter by election or otherwise, including a cooperative  
14 formed under comparable law of another jurisdiction doing  
15 business in this State and having the following characteristics:

16 (1) The business of the cooperative is operated at cost by  
17 adjusting the prices charged for goods or services or  
18 by returning any net margins at the end of a fiscal  
19 year on a patronage basis to members and other persons  
20 qualified to share in the net margins pursuant to the  
21 articles or bylaws;



(2) Dividends on stock or interest on equity capital is limited, as prescribed in the articles or bylaws of the cooperative;

(3) Voting rights are limited to members of the cooperative as prescribed in the articles or bylaws of the cooperative;

(4) The cooperative's business is carried on for the mutual benefit of its members; and

(5) Members are not liable for any debt, obligation, or liability of the cooperative.

"Domestic" means an entity formed under the laws of this State.

"Equity capital" means all investments in the cooperative except loans or other types of indebtedness, whether made by direct investment, such as investment in stock or memberships, or by retention of amounts of net savings, net margins, or net profits allocated to members and other patrons of the cooperative, or charged to them as part of the transactions between them and the cooperative.

"Foreign entity" means an entity formed under the laws other than the laws of this State.



1       "Member" means a person who has been received into the  
2 membership of a cooperative without common stock, a person or  
3 stockholder who has acquired common stock in a cooperative  
4 formed with common stock, or possesses proprietary interests in  
5 the corporation and, in either case, is authorized to vote. The  
6 articles or bylaws may confer some or all the rights of a  
7 member, set forth in this part, upon any person or persons who  
8 do not have any of the enumerated voting rights. Where a member  
9 of a corporation is not a natural person, such member may  
10 authorize in writing one or more natural persons to vote on its  
11 behalf or any or all matters which may require a vote of the  
12 members. A person is not a member by virtue through any rights  
13 such person has as a delegate, any rights such person has to  
14 designate or select a director or directors, or any rights such  
15 person has to designate or select a director or directors.

16       "Net margins" means the receipts from operations less the  
17 expenses thereof.

18       "Patron" means a person who may, but need not, be a member  
19 of a cooperative who uses the services of the cooperative  
20 through the purchase or sale of property or services to or from



1 the cooperative. If the corporation is organized as a worker  
2 cooperative, the corporation's "patrons" are its worker-members.

3 "Patronage" means the volume or dollar value of business  
4 transacted with the cooperative. If the corporation is  
5 organized as a worker cooperative, "patronage" may be measured  
6 by work performed including but not limited to wages earned,  
7 number of hours worked, number of jobs created, or some  
8 combination of these measures.

9 "Patronage refund" means a portion of a cooperative's net  
10 margins paid or allocated to a patron based on the patron's  
11 patronage.

12 "Per unit retain" means a deduction authorized by a patron  
13 to be made by the cooperative from proceeds of sale of a product  
14 or service by the patron to the cooperative or by the  
15 cooperative on behalf of the patron where the deduction is based  
16 upon the value or quantity of the product or service sold to the  
17 cooperative or on behalf of the patron and is deducted as a  
18 contribution or investment by the patron in the capital of the  
19 cooperative.

20 "Person" includes individuals, partnerships, corporations,  
21 limited liability companies, associations, and sacred species



1 and natural ecosystems. A sacred species or natural ecosystem  
2 may participate in the cooperative, through a guardian speaking  
3 on behalf, and in the best interest, of the sacred species or  
4 natural ecosystem.

5 "Worker" means a natural person contributing labor or  
6 services to a worker cooperative.

7 "Worker cooperative" means a cooperative formed under this  
8 chapter that includes a class of worker-members who are natural  
9 persons whose patronage consists of labor contributed to or  
10 other work performed for the cooperative.

11 "Worker-member" means a member of a worker cooperative who  
12 is a natural person and is also a patron of a worker  
13 cooperative.

14 **§ -2 Annual report.** (a) A cooperative formed under  
15 this chapter shall file an annual report with the director of  
16 the department of commerce and consumer affairs. The annual  
17 report shall contain:

18 (1) The name of the cooperative;

19 (2) The mailing address of its principal office, the  
20 address of its registered office in this State, and



1 the name of its registered agent at its registered  
2 office in the State; and

3 (3) A general statement of its business operations during  
4 the fiscal year that includes:

5 (A) The amount of capital stock paid up;

6 (B) The number of shareholders, if a stock  
7 corporation, or the number of members and the  
8 amount of membership fees received, if a nonstock  
9 association;

10 (C) An income statement; and

11 (D) Its balance sheet.

12 (b) The annual report shall be filed within the time  
13 periods prescribed in subsection (c).

14 (c) Effective January 1, 2022, for cooperatives whose date  
15 of registration in the State falls between:

16 (1) January 1 and March 31, an annual report shall be  
17 filed on or before March 31 of each year and shall  
18 reflect the state of the cooperative's affairs as of  
19 January 1 of the year when filed;

20 (2) April 1 and June 30, an annual report shall be filed  
21 on or before June 30 of each year and shall reflect





1 the state of the cooperative's affairs as of April 1  
2 of the year when filed;

3 (3) July 1 and September 30, an annual report shall be  
4 filed on or before September 30 of each year and shall  
5 reflect the state of the cooperative's affairs as of  
6 July 1 of the year when filed; and

7 (4) October 1 and December 31, an annual report shall be  
8 filed on or before December 31 of each year and shall  
9 reflect the state of the cooperative's affairs as of  
10 October 1 of the year when filed;

11 provided that if a cooperative is formed in the same year in  
12 which the annual report is due, the cooperative shall not be  
13 required to file an annual report for that year. Thereafter,  
14 the cooperative shall comply with the requirements of this  
15 section.

16 (d) A copy of the report shall be submitted to the members  
17 at their annual meeting, or mailed to each member of the  
18 cooperative, or printed in an official publication of the  
19 cooperative.

20 § -3 Cooperative records. (a) A cooperative shall keep  
21 as permanent records, minutes of all meetings of its members and



1 of the board, a record of all actions taken by the members or  
2 the board without a meeting by a written unanimous consent in  
3 lieu of a meeting, and a record of all waivers of notices of  
4 meetings of the members and of the board.

5 (b) A cooperative shall maintain appropriate accounting  
6 records.

7 (c) A cooperative shall maintain its records in written  
8 form or in another form capable of conversion into written form  
9 within a reasonable time.

10 (d) A cooperative shall keep a copy of each of the  
11 following records at its principal office:

12 (1) Its articles of incorporation or other governing  
13 instrument;

14 (2) Its bylaws or other similar instrument;

15 (3) A record of the names and addresses of its members, in  
16 a form that permits preparation of a list of members  
17 that is in alphabetical order and shows each member's  
18 address and the investment qualifying a member to vote  
19 held by each member;

20 (4) The minutes of members' meetings, and records of all  
21 actions taken by members without a meeting by



1 unanimous written consent in lieu of a meeting, for  
2 the past three years;

3 (5) All written communications within the past three years  
4 to members as a group or to any class of members as a  
5 group;

6 (6) A list of the names and business addresses of its  
7 current board of directors and officers;

8 (7) A copy of its most recent annual report filed with the  
9 department of commerce and consumer affairs pursuant  
10 to section -2; and

11 (8) All financial statements prepared for periods ending  
12 during the last fiscal year.

13 (e) Except as otherwise limited by this chapter, the board  
14 of directors of a cooperative shall have discretion to determine  
15 what records are appropriate for the purposes of the  
16 cooperative; the length of time records are to be retained; and  
17 policies relating to the confidentiality, disclosure, inspection  
18 and copying of the records of the cooperative.

19 § -4 Referendum. The articles or bylaws may provide  
20 that upon demand of two-fifths of all the directors, or by the  
21 affirmative vote of two-thirds of the members voting thereon at



1 any regular meeting or at a special meeting called for the  
2 purpose, any matter of policy that has been approved or passed  
3 by the board must be referred to the members for their approval  
4 before it becomes effective.

5       § -5 **Volunteers exempted.** Section 421C-33 shall apply  
6 to cooperatives formed under this chapter.

7                               **PART II. INCORPORATION**

8       § -6 **Articles of incorporation.** (a) A cooperative may  
9 be formed pursuant to this chapter for the transaction of any  
10 lawful business. One or more persons may act as the  
11 incorporator or incorporators of a cooperative by delivering  
12 articles for the cooperative to the director of department of  
13 commerce and consumer affairs for filing.

14       (b) The articles shall contain the following:

15       (1) The domestic entity name of the cooperative, which  
16       shall comply with section 414D-61 and shall include  
17       the word "cooperative" as part of the name;

18       (2) The principal office address of the cooperative's  
19       principal office;

20       (3) The registered agent name and registered agent address  
21       of the cooperative's initial registered agent;



1           (4) If formed without common voting stock, whether the  
2           property rights and interests of each member are equal  
3           or unequal and, if unequal, the general rule or rules  
4           applicable to all members by which the property rights  
5           and interests of each member are determined and fixed;  
6           provisions for the admission of new members who are  
7           entitled to share in the property of the cooperative  
8           with the old members in accordance with such general  
9           rules; and whether the cooperative is authorized to  
10          issue one or more classes of preferred stock or other  
11          equity interests and, if so authorized, a statement as  
12          to the number of shares of stock of each class or  
13          other equity interests and the nature and extent of  
14          the preferences, limitations, relative rights, and  
15          privileges granted to each;

16          (5) If formed with stock, the classes of shares and the  
17          number of shares of each class the cooperative is  
18          authorized to issue. The stock may be divided into  
19          preferred and common stock, voting and nonvoting  
20          stock, or into any other class of stock. If so  
21          divided, the articles shall contain a statement as to



1 the number of shares of stock in each class and the  
2 nature and extent of the preferences, limitations,  
3 relative rights, and privileges granted to each; and  
4 (6) The true name and mailing address of each  
5 incorporator.  
6 (c) The articles may contain provisions:  
7 (1) Eliminating or limiting the personal liability of a  
8 director as provided in this chapter;  
9 (2) Specifying the number and terms of the board of  
10 directors, which number shall be not less than three,  
11 together with the names and the street addresses of  
12 the initial directors. If the names of the initial  
13 directors are not stated in the articles, the initial  
14 board of directors shall be designated by the  
15 incorporator or incorporators following the delivery  
16 of the articles to the director of the department of  
17 commerce and consumer affairs for filing;  
18 (3) Specifying the purpose or purposes for which the  
19 cooperative is incorporated that may state any lawful  
20 business;



- (4) Specifying a par value for authorized shares of stock or classes of shares;
- (5) Defining, limiting, and regulating the powers of the cooperative, its board, and its members;
- (6) Limiting membership to producers of agricultural products;
- (7) Limiting the handling of products or services for its own members only, or for members and nonmembers, and whether nonmembers are entitled to share in allocations of net margins or are subject to per unit retains;
- (8) For the removal for cause of any director by the members at any regular or special members' meeting;
- (9) Eliminating or limiting the indemnification of directors, officers, employees, or agents of the cooperatives as otherwise provided in this chapter;
- (10) Required or permitted under this chapter to be stated in the bylaws;
- (11) Not inconsistent with law; and
- (12) Specifying whether the cooperative has elected to be governed as a worker cooperative.



1 (d) When incorporated, no member or shareholder shall be  
2 liable directly or indirectly, including by way of  
3 indemnification, contribution, or otherwise, under a judgment,  
4 decree, or order of a court, or in any other manner for a debt,  
5 obligation, or liability of, or chargeable to, the cooperative.

6 (e) A member does not have any vested property right  
7 resulting from any provision in the articles that may exist from  
8 time to time or at any time, including any provision relating to  
9 management, control, capital structure, dividend entitlement  
10 purpose, or duration of the cooperative.

11 **§ -7 Amendment of articles.** (a) A cooperative may  
12 amend its articles of incorporation by the affirmative vote of  
13 two-thirds of the members voting thereon at any regular meeting,  
14 or at a special meeting called for the purpose, or if the  
15 cooperative permits its members to vote on the basis of  
16 patronage, by the affirmative vote of a majority of the members  
17 and of two-thirds of the patronage, voting thereon. A written  
18 or printed notice of the proposed amendment, and of the time and  
19 place of holding the meetings shall be delivered to each member,  
20 or mailed to the member's last known address as shown by the  
21 books of the cooperative, at least thirty days prior to any





1 meetings. No amendment affecting the preferential rights of any  
2 outstanding stock shall be adopted until the written consent of  
3 the holders of two-thirds of the outstanding preference shares  
4 has been obtained.

5 (b) Unless otherwise provided in the articles, the board  
6 may adopt, without shareholder action, one or more amendments to  
7 the articles to:

8 (1) Delete the statement of names and addresses of the  
9 incorporators or directors;

10 (2) Delete the statement of the registered agent name and  
11 registered agent address of the registered agent or  
12 registered office, if a statement of change is on file  
13 at the director of department of commerce and consumer  
14 affairs containing the registered agent name and  
15 registered agent address of the cooperative's  
16 registered agent;

17 (3) Delete the statement of the names and addresses of any  
18 or all of the individuals named in the articles as  
19 being individuals who caused the articles to be  
20 delivered for filing; and



(4) Except as otherwise prohibited by law, change each issued and unissued share of a class into a greater number of whole shares if the cooperative has only shares of that class outstanding.

(c) After an amendment has been adopted, the articles of amendment shall be certified and executed by the president or vice president and by the treasurer or secretary or assistant secretary, and filed with the department of commerce and consumer affairs as in the case of articles of incorporation, including the payment of fees.

(d) Any amendment to the articles may not be invalidated because of the manner of its adoption unless an action to do so is commenced within two years after the date of filing.

**§ -8 Cooperatives desiring to relinquish provisions of this chapter.** (a) Any cooperative formed under, or that has elected to be subject to, this chapter may relinquish being bound by this chapter by amending its articles in the manner provided in this chapter; provided that the amendment shall be approved by a two-thirds majority of all the members present and voting in person or in any other manner authorized by the



1 cooperative pursuant to this chapter unless a greater vote is  
2 required by the articles or bylaws.

3 (b) The board shall present to the members for approval,  
4 as described in subsection (a), a plan to relinquish the  
5 provisions of this chapter, including:

6 (1) A statement as to what type of business entity the  
7 cooperative is to become after the plan has been  
8 adopted;

9 (2) A statement as to what will be the effect on equities  
10 of the cooperative after the plan has been adopted;  
11 and

12 (3) A statement as to the procedures and mechanisms for  
13 changing the cooperative to another type of entity.

14 (c) Amendments to the articles shall be delivered to the  
15 director of department of commerce and consumer affairs for  
16 filing.

17 § -9 Entities formed under other law but subject to this  
18 chapter. Any domestic entity or foreign entity authorized to  
19 transact business or conduct activities in the State and engaged  
20 in any of the activities enumerated in this chapter but formed  
21 under other law may be considered for all purposes as subject to



1 this chapter by amending the entity's constituent operating  
2 document as necessary to conform to this chapter and delivering  
3 to the director of department of commerce and consumer affairs  
4 for filing a statement that the entity has determined to accept  
5 the benefits of and to be bound by this chapter and has amended  
6 its constituent operating document as necessary to conform to  
7 this chapter by amendments adopted in accordance with applicable  
8 law and its constituent operating document.

9       **§ -10 Bylaws.** (a) The initial board of each  
10 cooperative formed under this chapter, within thirty days after  
11 the articles become effective, shall adopt bylaws for the  
12 government and management of its affairs that are not  
13 inconsistent with law or the articles of the cooperative. The  
14 bylaws may be amended or modified in a manner as the bylaws may  
15 provide. If the bylaws do not provide a manner for their  
16 amendment, the bylaws may be amended at any time upon a majority  
17 vote of the members present and voting in person or in any other  
18 manner authorized by the cooperative pursuant to this chapter at  
19 a regular or special meeting, the notice of which meeting shall  
20 state that consideration will be given at the meeting to



1 amending the bylaws and stating the proposed amendment or  
2 amendments.

3 (b) The bylaws of the cooperative shall prohibit the  
4 transfer of the voting common stock or membership in the  
5 cooperative to persons not eligible to be a member of the  
6 cooperative and, if the cooperative issues certificates of  
7 common stock or of membership, the restrictions shall be printed  
8 upon every certificate of stock or certificate of membership  
9 subject to the restrictions. At the election of the  
10 cooperative, the restrictions may also be included in the  
11 articles.

12 (c) If not stated in the articles, the bylaws of the  
13 cooperative shall specify:

14 (1) The qualifications for membership, manner of  
15 succession, and conditions for suspension, withdrawal,  
16 or expulsion;

17 (2) The amount of any membership fee or capital  
18 subscription required by the cooperative to become a  
19 member, conditions of membership, and procedures for  
20 acquiring and repayment of membership capital;



- 1           (3) Any limitations on dividends on stock or interest on  
2           equity capital;
- 3           (4) The time, place, and manner of conducting or  
4           determining membership meetings of the cooperative,  
5           which shall be at least annually;
- 6           (5) The number, terms, and time of the election of  
7           directors, or the manner for determining the same;
- 8           (6) The number of directors that shall constitute a quorum  
9           for a meeting of the board, which shall be at least a  
10          majority;
- 11          (7) The number, terms, and titles of officers, their  
12          authority and duties as well as the manner of election  
13          or appointment, the filling of vacancies, or removal  
14          of officers; and
- 15          (8) A requirement that the cooperative's business shall be  
16          conducted on a cooperative basis for the mutual  
17          benefit of the cooperative's members.
- 18          (d) In addition to the provisions set forth in subsection  
19   (c), the bylaws may specify:
- 20          (1) The time, place, and manner of conducting its  
21          meetings;



- (2) The mode and manner of removal of directors and the mode and manner of filling vacancies on the board caused by death, resignation, or removal;
- (3) The compensation of directors and officers or the manner for determining compensation;
- (4) The mode and manner of conducting business;
- (5) The mode and manner of conducting elections and provisions for voting by ballots forwarded by mail or otherwise;
- (6) The manner of assignment and transfer of interests in the cooperative;
- (7) The manner of collection and enforcement for member nonpayment or nonperformance, including forfeiture of property rights and interests;
- (8) The method of determination of property rights and interests in the cooperative and the value thereof;
- (9) Methods and procedures for acquiring and returning equity capital to members and other patrons of the cooperative;



(10) Procedures for the handling of unclaimed equity capital and other funds declared payable by the cooperative and unclaimed by the holder; and

(11) Any other matter as may be proper to carry out the purpose for which the cooperative was formed or the governance of the cooperative.

**§ -11 Renewable energy cooperatives.** (a) A renewable energy cooperative may be organized for the purpose of:

(1) Promoting electric energy efficiency technologies to its members, generating electricity from renewable resources and technologies, and transmitting and selling the electricity at wholesale; and

(2) Generating hydrogen from renewable resources and technologies and transmitting and selling the hydrogen at wholesale.

(b) No renewable energy cooperative shall sell electricity at retail in the State unless otherwise provided for under chapter 269.

(c) For the purposes of this section, "renewable resources and technologies" means biomass, geothermal energy, solar energy, small hydroelectricity, and wind energy. "Renewable





resources or technologies" does not include pumped storage facilities; hydroelectricity other than small hydroelectricity; coal, natural gas, oil, propane, or any other fossil fuel; nuclear energy; or hydrogen derived from pumped storage facilities.

§ -12 **Worker cooperatives.** (a) A cooperative organized under this chapter may elect to be governed as a worker cooperative by making the following statement in its articles of incorporation or its amended articles of incorporation: "This cooperative is a worker cooperative organized under the Hawaii Cooperative Law." The election to be organized as a worker cooperative shall not create a presumption that workers are employees of the cooperative for any reason.

(b) A cooperative that makes the election to be governed as a worker cooperative shall be subject to this chapter.

(c) A worker cooperative, including a capital account cooperative or collective board worker cooperative, may be formed under this chapter.

(d) The following shall apply to worker cooperatives:

(1) The net earnings and losses of a worker cooperative shall be apportioned and distributed at the time and



1 in the manner specified in the articles of  
2 incorporation or bylaws;

3 (2) Net earnings declared as patronage distributions with  
4 respect to a period of time, and paid to a creditor or  
5 member, shall be apportioned among the members in  
6 accordance with the ratio that each member's patronage  
7 during the period bears to total patronage by all  
8 members during the period;

9 (3) The apportionment, distribution, and payment of net  
10 earnings may be paid in cash, credits, written notices  
11 of allocation, or capital stock issued by the worker  
12 cooperative;

13 (4) A worker cooperative, in its articles or bylaws, may  
14 establish itself as a capital account cooperative;

15 (5) The articles or bylaws of a capital account  
16 cooperative may authorize assignment of a portion of  
17 retained net earnings and net losses to an unallocated  
18 capital account. The unallocated capital account in a  
19 capital account cooperative shall reflect any paid-in  
20 capital and retained net earnings not allocated to  
21 individual members. Earnings assigned to the



1 unallocated capital account may be used for any and  
2 all corporate purposes, as determined by the board of  
3 directors;

4 (6) The system of member and unallocated capital accounts  
5 may be used to determine the redemption price of  
6 member shares, capital stock, and written notices of  
7 allocation. The articles or bylaws may provide for  
8 the capital account cooperative worker cooperative to  
9 pay or credit interest on the balance in each member's  
10 capital account;

11 (7) The articles or bylaws of a capital account  
12 cooperative may permit the periodic redemption of  
13 written notices of allocation and capital stock and  
14 shall provide for recall and redemption of membership  
15 shares upon termination of membership in the  
16 cooperative; and

17 (8) A collective board worker cooperative shall not be  
18 required to hold an annual meeting of members.

19 **PART III. MEMBERS AND OWNERSHIP**

20 **§ -13 Members.** (a) A cooperative may limit admission  
21 or issue common stock only to persons engaged in the particular



1 business or using the goods or services provided by or through  
2 the cooperative, including any entity formed under the law of  
3 the State or any other jurisdiction, or may admit as members or  
4 issue common stock to any person meeting uniform terms and  
5 conditions stated in its articles or bylaws.

6 (b) When any required membership fee or payment for stock  
7 as required in the articles, the bylaws, or a resolution of the  
8 board has been paid in full or a promissory note executed for  
9 the required membership fee or capital subscription, a  
10 cooperative may issue a certificate of membership or common  
11 stock evidencing the membership or ownership of the stock or may  
12 evidence the same on the books or other records of the  
13 cooperative as determined by the articles, the bylaws, or the  
14 board; provided that for a cooperative formed with stock,  
15 promissory notes of members shall not be accepted by the  
16 cooperative as full or partial payment for stock unless  
17 permitted by the bylaws and adequately secured. The cooperative  
18 shall hold the stock as security for the payment of the note,  
19 but retention as security shall not affect the member's right to  
20 vote.



1 (c) No member shall have a right to vote until the  
2 required membership fee or payment for stock has been paid in  
3 full.

4 (d) A cooperative may limit the amount of common stock  
5 that a member may own.

6 (e) No member shall be liable directly or indirectly,  
7 including by way of indemnification, contribution, or otherwise,  
8 under a judgment, decree, or order of a court, or in any other  
9 manner, for a debt, obligation, or liability of or chargeable to  
10 the cooperative while it is incorporated for an amount exceeding  
11 the sum remaining unpaid on the member's membership fee or the  
12 member's subscription to the stock, including any unpaid balance  
13 on any promissory note given in payment thereof; provided that  
14 this subsection shall not affect the liability of a member who  
15 is also a member of the board or an officer for that member's  
16 negligence, wrongful act, or misconduct in that capacity.

17 (f) A cooperative formed with or without capital stock  
18 under this chapter may issue or accept investments in nonvoting  
19 stock or equity that may have rights and preferences, including  
20 being subject to per unit retains or allocations of net margins,  
21 as may be provided in the articles, the bylaws, or by the board.



1 Nonvoting stock or equity may be issued and sold by the  
2 cooperative to any person, including but not limited to those  
3 persons not otherwise qualified to be members, and may be  
4 redeemable or retireable by the cooperative on terms and  
5 conditions as are provided for in the articles, the bylaws, or a  
6 resolution of the board providing for the issuance of or the  
7 investment in the nonvoting stock or equity. The terms and  
8 conditions of redemption shall be printed on any certificate  
9 evidencing the stock or equity.

10 (g) A cooperative shall impose restrictions on the  
11 transfer of voting common stock or membership in the cooperative  
12 in its bylaws and may also impose restrictions in its articles  
13 and on the transfer of other equity investments in the  
14 cooperative in its articles, bylaws, or by resolution of its  
15 board. Any restriction shall be printed upon any certificate or  
16 other written evidence of the membership, voting common stock,  
17 or other equity investment if one is issued.

18 (h) A cooperative may, at any time as stated in its  
19 articles, bylaws, or resolution of the board adopted at the time  
20 of issuance, acquire, recall, redeem, exchange, or reissue its  
21 common stock, memberships, preferred stock, preferred equity,



1 memberships, or other equity capital. Consideration paid for  
2 stock, memberships, or other equity capital acquired, recalled,  
3 redeemed, exchanged, or reissued by the cooperative shall be the  
4 par value, stated value, price originally paid, or book value,  
5 whichever is less, as conclusively determined by the board, plus  
6 any accrued and unpaid dividends, if any, and, if the price  
7 originally paid for the stock, memberships, or other equity  
8 capital included an additional amount based upon the right of  
9 the holder to engage in business with the cooperative, the  
10 consideration shall include the additional amount. If stock,  
11 memberships, or other equity capital acquired, recalled,  
12 redeemed, or exchanged does not have a par value, then the par  
13 value shall not be considered in determining the consideration.  
14 The cooperative may set off against the consideration to be paid  
15 obligations to it of the holder of stock, membership, or other  
16 equity capital and shall have a continuing perfected security  
17 interest in the stock, membership, and other equity capital of a  
18 member, stockholder, or holder of other equity capital to secure  
19 payment of any indebtedness to the cooperative of the  
20 stockholder, member, or holder of other equity capital, whenever  
21 indebtedness is incurred. Notwithstanding any other provision



1 of law, the security interest shall take priority over all other  
2 perfected security interests. No acquisition, recall, or  
3 redemption shall be made if the result would be to bring the  
4 value of the remaining assets of the cooperative below the  
5 aggregate of its indebtedness. The articles or bylaws may  
6 provide other limitations on the right of a cooperative to  
7 acquire recall, redeem, exchange, or reissue its stock  
8 memberships or other equity capital.

9 (i) If a member of a cooperative is other than an  
10 individual, the member may be represented by any individual,  
11 associate, officer, manager, member, shareholder, or other  
12 equity holder thereof duly authorized in writing by the member's  
13 board or other governing body having the right to authorize the  
14 representation.

15 (j) A cooperative may group its members in districts, or  
16 other units, or by types of goods or services used, for  
17 administration or otherwise achieving the purposes of the  
18 cooperative.

19 (k) A cooperative may limit the amount of common stock or  
20 other equity capital held by members or other persons.





(1) All worker-members shall have the rights, privileges, preferences, restrictions, or conditions as provided in the articles or bylaws. This membership shall not be divided into partial memberships.

(m) A worker cooperative shall only make patronage distributions to the worker-member class.

**§ -14 Member meetings.** (a) Each cooperative shall provide for one or more regular member meetings annually, except for a collective worker board cooperative. Either the board or officers designated in the bylaws shall have the right to call a special meeting of the members at any time, and the president, or other officer designated in the bylaws, shall call a special meeting to be held within sixty days upon petition by ten per cent of the total number of members stating the specific business to be brought before the meeting; provided that in a worker cooperative with four or more worker-members, a special meeting may be called by only the greater of three worker-members or five per cent of the worker-members. In a worker cooperative with fewer than four worker-members, special meetings may be called by one worker-member. The board or the



1 person calling the special meeting shall determine the date,  
2 time, and place of the meeting.

3 (b) Written notice of all member meetings shall be mailed  
4 to each member at that member's last known address or  
5 transmitted to each member in any other manner as may be  
6 provided in the bylaws at least ten days prior to the meeting.  
7 A worker cooperative shall provide notice of the meeting not  
8 less than forty-eight hours before the meeting if the meeting is  
9 a meeting of only worker-members; provided that the notice is  
10 delivered personally to every worker-member. Notice of any  
11 special meeting shall include a statement of the purpose for the  
12 meeting. At all regular meetings of members of the cooperative,  
13 any and all lawful business may be brought before the meeting  
14 regardless of whether stated in the notice of the meeting;  
15 provided that amendments to the articles or the bylaws of the  
16 cooperative or other action required to be stated in the notice  
17 of the meeting by this article shall not be subject to action  
18 unless the notice is stated in the notice of the meeting. At  
19 all special meetings of the members of the cooperative, business  
20 brought before the meeting shall be limited to the purpose  
21 stated in the notice.



1 (c) Actions taken or agreed to be taken during a member  
2 meeting shall not be invalidated on account of any member's  
3 failure to receive notice of a meeting if reasonable effort has  
4 been made to give notice in accordance with this section.

5 (d) Lawful actions or other membership votes may be taken  
6 by the cooperative in lieu of or without a member meeting if all  
7 members entitled to act or vote with respect to the action agree  
8 to that action by unanimous written consent.

9 § -15 **Membership list for meeting.** (a) After fixing a  
10 record date for a meeting of the membership, the cooperative  
11 shall prepare a list of the names and addresses of all its  
12 members who are entitled to be given notice of the meeting. The  
13 membership list shall be available for inspection by any member  
14 or member's agent or attorney, for a proper corporate purpose,  
15 beginning the earlier of ten days before the meeting for which  
16 the list was prepared or two business days after notice of the  
17 meeting is given and continuing through the meeting, and any  
18 adjournment.

19 (b) The cooperative shall make the membership list  
20 available at the meeting and any member or member's agent or



1 attorney is entitled to inspect the list at any time and for a  
2 proper corporate purpose during the meeting or any adjournment.

3 (c) If the cooperative refuses to allow a member or the  
4 member's agent or attorney to inspect the membership list before  
5 or at the meeting, the member may apply to the circuit court of  
6 the circuit in which the street address of the cooperative's  
7 principal office is located or, if the cooperative has no  
8 principal office in the State, to the circuit court of the  
9 circuit in which the street address of its registered agent is  
10 located or, if the cooperative has no registered agent, to the  
11 circuit court of the first circuit for an order permitting the  
12 member or the member's agent or attorney to inspect the  
13 membership list.

14 (d) The court may order inspection of the membership list  
15 pursuant to subsection (c), unless the cooperative proves that  
16 it refused inspection or copying of the list in good faith  
17 because it had a reasonable basis for doubt about the right of  
18 the member or the agent or attorney of the member to inspect or  
19 copy the membership list. The court may also postpone or  
20 adjourn the meeting for which the list was prepared until the  
21 inspection ordered by the court is complete. In any action:



1           (1) The court may order the losing party to pay the  
2           prevailing party's reasonable costs, including  
3           reasonable attorney fees;

4           (2) The court may order the losing party to pay the  
5           prevailing party for any damages the prevailing party  
6           shall have incurred by reason of the subject matter of  
7           the litigation;

8           (3) If inspection or copying is ordered pursuant to  
9           subsection (c), the court may order the cooperative to  
10          pay the member's inspection and copying expenses; and

11          (4) The court may grant either party any other remedy  
12          provided by law.

13          (e) If a court orders inspection of the membership list  
14          pursuant to subsection (c), the court may impose reasonable  
15          restrictions on the use or distribution of the list by the  
16          member.

17          (f) Failure to prepare or make available the membership  
18          list shall not affect the validity of action taken at the  
19          meeting.

20          §   -16   **Quorum.** (a) A quorum for conducting business at  
21          all meetings of the members shall be five per cent of the total



1 number of members or thirty members present in person at the  
2 meeting, whichever is less. Members present and voting in  
3 person or in any other manner authorized by the cooperative  
4 shall be counted toward the quorum with respect to that matter;  
5 provided that this section shall not be construed to prevent a  
6 cooperative from requiring a greater number of members or  
7 percentage thereof as a quorum.

8 (b) An action by a cooperative shall not be valid in the  
9 absence of a quorum at the meeting at which the action was  
10 taken, unless the action taken is subsequently ratified by the  
11 required number of members.

12 § -17 Member voting. (a) Members of a cooperative may  
13 vote either in person or, if provided in the articles or the  
14 bylaws of the cooperative or a resolution of the board with  
15 respect to a particular issue, by any of the following methods:

16 (1) Mail or electronic transmission if a means is provided  
17 to verify that a member so voting has received the  
18 exact wording of the matter upon which the vote is to  
19 be taken;

20 (2) Telecommunication; or



1           (3) Any other means by which all persons in the meeting  
2                   may communicate with each other during the meeting.

3           (b) In this chapter, whenever reference is made to voting  
4 by membership, the vote may be taken in any manner established  
5 pursuant to this section unless specifically provided otherwise  
6 in this chapter or by the board with respect to a particular  
7 matter upon which the vote is to be taken.

8           (c) With respect to a matter where a vote has been cast by  
9 an authorized means other than the person being present and  
10 voting in person, the person casting the vote shall be counted  
11 as present and voting for purposes of those provisions in this  
12 chapter that refer to persons "present and voting".

13          (d) Notwithstanding any other law to the contrary, proxy  
14 or cumulative voting shall be prohibited; provided that the  
15 articles or bylaws may allow votes on specific preannounced  
16 items by mail or otherwise by members absent from meetings;  
17 provided further that where a member is other than an  
18 individual, the member's vote may be cast by a representative  
19 authorized pursuant to this chapter.



(e) Except as otherwise provided in subsection (f), each member of a cooperative formed under this chapter shall be entitled to one vote only.

(f) Community investor voting power in a worker cooperative shall be provided in the articles or bylaws, and shall be limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.

**§ -18 Reserves, distributions, and patronage refunds.**

(a) A cooperative shall periodically set aside a portion of net margins, per unit retains, or other funds that is reasonable as determined by the board or in accordance with the articles or bylaws, for reserves, distributions, patronage refunds, capital, or other lawful business purposes.

(b) Net margins, after deductions for reasonable reserves and for allowances for income tax, shall be calculated and allocated on a patronage basis at least once every twelve months to members or to members and other qualified persons on an equitable basis as determined by the board or in accordance with the articles or bylaws. This section shall not be construed as prohibiting the retention of net margins, excess per unit





1 retains, or other funds allocated to members as a means of  
2 providing capital for the cooperative.

3 (c) If a cooperative has retained net margins or other  
4 funds allocated to members, the board shall have the right in  
5 accordance with the articles, bylaws, and policies established  
6 by the board to redeem or retire the net margins or other funds  
7 so retained. All decisions relating to the redemption or  
8 retirement of those funds shall be made solely by the board.

9 (d) A worker cooperative may create an indivisible  
10 reserves account that shall not be distributed to members.  
11 Funds in the indivisible reserves account shall derive only from  
12 non-patronage-sourced income, in a manner provided in the  
13 articles or bylaws, or by the board, and shall be used as  
14 capital for the cooperative.

15 **§ -19 Inspection of cooperative records by member. (a)**

16 A member may inspect and copy, at the member's expense, during  
17 regular business hours at a reasonable location designated by  
18 the cooperative, any corporate records if the member meets the  
19 requirements of subsection (b) and gives the cooperative written  
20 demand at least five business days before the date on which the  
21 member wishes to inspect and copy records; provided that no



1 member shall have the right to inspect or copy any records of  
2 the cooperative relating to the amount of equity capital in the  
3 cooperative held by any person or any accounts receivable or  
4 other amounts due the cooperative from any person.

5 (b) To be entitled to inspect and copy permitted records,  
6 the member shall meet the following requirements:

7 (1) The member has been a member for at least one year  
8 immediately preceding the demand to inspect or copy or  
9 is a member holding at least five per cent of all of  
10 the outstanding equity interests in the cooperative as  
11 of the date the demand is made;

12 (2) The demand is made in good faith and for a proper  
13 corporate business purpose;

14 (3) The member describes with reasonable particularity the  
15 purpose and the records that the member desires to  
16 inspect; and

17 (4) The records are directly connected with the described  
18 purpose.

19 (c) The right of inspection granted under this section may  
20 not be abolished or limited by the articles, bylaws, or any  
21 actions of the board or the members.



(d) This section shall not affect:

(1) The right of a member to inspect records even if the member is in litigation with the cooperative; or

(2) The power of a court to compel the production of the cooperative's records for examination.

(e) If the records of the cooperative to be inspected or copied are in active use or storage at the time otherwise provided for inspection or copying, the cooperative shall notify the member of this fact and shall set a date and hour within three business days of the date otherwise set in this section for the inspection or copying.

**§ -20 Scope of member's inspection right.** (a) A member's agent or attorney has the same inspection and copying rights as the member.

(b) The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic copying, or other means.

(c) The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production and reproduction of the records.



1           §   -21 Court-ordered inspection. (a) If a cooperative  
2 refuses to allow a member, or the member's agent or attorney, to  
3 inspect or copy any records that the member is entitled to  
4 inspect or copy within a prescribed time limit or, if none,  
5 within a reasonable time, the circuit court of the circuit in  
6 which the street address of the cooperative's principal office  
7 is located or, if the cooperative has no principal office in the  
8 State, the circuit court of the circuit in which the street  
9 address of its registered agent is located or, if the  
10 cooperative has no registered agent, the circuit court of the  
11 first circuit on application of the member, may summarily order  
12 the inspection or copying of the records demanded at the  
13 cooperative's expense.

14           (b) If a court orders inspection or copying of the records  
15 demanded, unless the cooperative proves that it refused  
16 inspection or copying in good faith because it had a reasonable  
17 basis for doubt about the right of the member or the member's  
18 agent or attorney to inspect or copy the records demanded:

19           (1) The court may order the losing party to pay the  
20               prevailing party's reasonable costs, including  
21               reasonable attorney fees;



(2) The court may order the losing party to pay the prevailing party for any damages that the prevailing party shall have incurred by reason of the subject matter of the litigation;

(3) If inspection or copying is ordered pursuant to subsection (a), the court may order the cooperative to pay the member's inspection and copying expenses; and

(4) The court may grant either party any other remedy provided by law.

(c) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

#### PART IV. OFFICERS AND ELECTIONS

##### § -22 Directors; elections; remuneration; vacancy. (a)

The affairs of a cooperative formed under or subject to this chapter shall be managed by a board of not less than three directors as provided in the articles or bylaws and who are elected by and from the members of the cooperative or designated representatives of members who are not individuals. If authorized by the articles or the bylaws, up to twenty per cent of the board may consist of directors who are neither members



1 nor representatives of members. Directors who are not members  
2 of the cooperative or are representatives of members may be  
3 elected by a vote of two-thirds of the cooperative members  
4 present and voting. Nominations for the position of director  
5 shall be conducted in a manner provided in the bylaws or in a  
6 resolution of the board or of the members.

7 (b) The articles or bylaws may provide that the territory  
8 in which the cooperative has members shall be divided into  
9 districts and that the directors shall be elected according to  
10 those districts, either directly or by district delegates  
11 elected by the members in that district; provided that the  
12 articles or bylaws shall specify the number of directors to be  
13 elected by each district and the manner and method of  
14 reapportioning the directors and of redistricting the territory  
15 covered by the cooperative. The bylaws may provide that primary  
16 elections shall be held in each district to elect the directors  
17 apportioned to those districts and that the result of all  
18 primary elections shall be ratified at the next regular meeting  
19 of the cooperative or be considered final as to the cooperative.

20 (c) A cooperative may provide a reasonable remuneration  
21 for the time actually spent by its officers and directors in its



1 service. No director, during the term of the director's office,  
2 shall be a party to a contract for profit with the cooperative  
3 differing in any way from the business relations accorded  
4 members of the cooperative.

5 (d) The articles or bylaws may limit directors from  
6 occupying any position in the cooperative that is subject to a  
7 regular salary or substantially full-time pay. The articles or  
8 bylaws may provide for an executive committee and may allot to  
9 the committee all the functions and powers of the board, subject  
10 to the general direction and control of the board.

11 (e) When a vacancy on the board occurs other than by  
12 expiration of term, the remaining members of the board, even  
13 though not a quorum, by a majority vote, shall fill the  
14 unexpired term, unless the articles or bylaws provide for an  
15 election of directors by district, in which event, unless the  
16 articles or bylaws provide for a different procedure, the board  
17 shall immediately call a special meeting of the members in the  
18 district to fill the vacancy.

19 **§ -23 Officers; titles; election; duties and authority;**  
20 **removal.** (a) The bylaws shall provide for one or more officers  
21 and the titles of those officers. The officers may include a



1 board chair, one or more vice-chairs, a president, one or more  
2 vice presidents, a secretary, a treasurer, and assistant  
3 officers or other officers. The officers shall be elected by  
4 the board or in any other manner prescribed in the bylaws. At  
5 least one officer shall be an individual at least eighteen years  
6 of age. At least one officer shall be a member of the board.  
7 One individual may simultaneously hold more than one office, but  
8 may not concurrently hold the offices of president and  
9 secretary.

10 (b) The bylaws or board of each cooperative shall  
11 designate one or more officers responsible for preparing and  
12 maintaining the minutes of meetings and all records required to  
13 be kept and for authenticating records.

14 (c) All officers and agents of the cooperative, as between  
15 themselves and the cooperative, shall have the authority and  
16 perform duties in the management of the cooperative as may be  
17 provided in the bylaws, or as may be determined by resolution of  
18 the board of directors not inconsistent with any applicable law,  
19 the articles, and the bylaws.





1 (d) Unless otherwise provided in the articles or bylaws,  
2 the board may remove any officer at any time with or without  
3 cause.

4 § -24 Procedures for meetings of the board of directors.

5 (a) The board shall meet at least annually. The board may  
6 establish a time and place for regular board meetings.

7 (b) Special meetings of the board shall require at least  
8 two days' notice of the date, time, and place. Unless otherwise  
9 provided by the articles or bylaws, the purposes of a special  
10 meeting are not required to be stated in the notice of any  
11 special meeting.

12 (c) A director's attendance at a special meeting  
13 constitutes a waiver of the notice requirement for that meeting  
14 unless the director objects to the lack of or method of notice  
15 and does not thereafter participate in the meeting or if notice  
16 of the purpose of the meeting was required but not given and the  
17 director objects to the transaction of business for that purpose  
18 and does not thereafter participate in the meeting with respect  
19 to that purpose.

20 (d) A director is deemed to have assented to an action of  
21 the board unless:



(1) The director votes against it or abstains and causes the abstention to be recorded in the minutes of the meeting;

(2) The director objects at the beginning of the meeting and does not vote for it later;

(3) The director causes the director's dissent to be recorded in the minutes;

(4) The director does not attend the meeting at which the vote is taken; or

(5) The director gives notice of the director's objection in writing to the secretary within twenty-four hours after the meeting.

(e) Unless otherwise provided by the articles or bylaws:

(1) The board may permit any or all directors to participate in a regular or special meeting through the use of any means of communication by which all directors participating are able to communicate simultaneously with each other during the meeting;

(2) Actions of the board may be taken without a meeting if the action is agreed to by all members of the board and is evidenced by one or more written consents



1 together signed by all directors and filed with the  
2 corporate records reflecting the action taken; and

3 (3) Purposes of a special meeting are not required to be  
4 stated in the notice of any special meeting, but at  
5 least two days' notice of the date, time, and place  
6 shall be given.

7 § -25 Removal of director by the membership or the  
8 board. (a) At a meeting called expressly for that purpose, as  
9 well as any other proper purpose, a director may be removed by  
10 the members in the manner provided in this section upon an  
11 affirmative vote of a majority of the members present and voting  
12 in person or in any other manner authorized by the cooperative  
13 or, if removal of a director is by the board, then by a majority  
14 of the members of the board not subject to removal.

15 (b) The board may remove a director who does not meet the  
16 qualifications for board membership stated in the articles and  
17 bylaws of the cooperative.

18 (c) The members may remove one or more directors only for  
19 cause unless the articles or bylaws allow directors to be  
20 removed without cause.



1           (d) Removal of directors by the vote of the members shall  
2 be initiated by written petition signed by at least ten per cent  
3 of the members stating the alleged causes or reasons for  
4 removing the director. No petition shall seek removal of more  
5 than one director.

6           (e) Within ninety days after receipt of a petition meeting  
7 the requirements of subsection (d), the board shall schedule the  
8 removal vote at a regular or special meeting of the membership  
9 upon determination by the board, if necessary, that cause has  
10 been stated. Any determination of cause shall be made by a  
11 majority of the directors not subject to removal petitions. If  
12 more than a majority of the board is subject to removal  
13 petitions, then the matter shall be promptly referred to an  
14 attorney who has been duly licensed to practice law in the State  
15 for at least five years and who has not previously represented  
16 the cooperative. The attorney's determination of whether cause  
17 has been stated shall be final for the purpose of whether to  
18 schedule a vote on removal.

19           (f) Any director subject to a removal petition under this  
20 section shall be promptly informed in writing by the board and  
21 shall have the opportunity, in person and by counsel, to be



1 heard and present evidence at the meeting called for the vote.

2 The persons seeking removal shall have the same opportunity.

3       **§ -26 Removal of director by judicial proceeding. (a)**

4 A director may be removed by the circuit court of the circuit in  
5 which the street address of the cooperative's principal office  
6 is located or, if the cooperative has no principal office in the  
7 State, by the circuit court of the circuit in which the street  
8 address of its registered agent is located or, if the  
9 cooperative has no registered agent, by the circuit court of the  
10 first circuit in a proceeding commenced either by the  
11 cooperative or by at least ten per cent of the members, if the  
12 court finds that the director engaged in fraudulent or dishonest  
13 conduct or gross abuse of authority or discretion with respect  
14 to the cooperative, and that removal is in the best interests of  
15 the cooperative.

16       (b) If the members commence a proceeding under this  
17 section, they shall make the cooperative a party defendant.

18       (c) A court that removes a director may bar the director  
19 from reelection for a period prescribed by the court.

20       **§ -27 Indemnification and personal liability of**  
21 **directors, officers, employees, and agents. (a) Unless limited**



1 in the cooperative's articles, the cooperative shall have the  
2 same powers, rights, and obligations and shall be subject to the  
3 same limitations with respect to indemnification and personal  
4 liability of directors, officers, employees, and agents as apply  
5 to domestic profit corporations. Cooperative directors,  
6 officers, employees, and agents shall have the same rights as  
7 directors, officers, employees, and agents of domestic profit  
8 corporations. For purposes of this section, any reference to  
9 shareholders having the right to vote under the laws that apply  
10 to domestic profit corporations shall be construed to refer to  
11 members of the cooperative having the right to vote.

12 (b) The articles may eliminate or limit the liability of a  
13 director of the cooperative to the cooperative or its members  
14 for monetary damages for any breach of the duty of care arising  
15 after the date that the articles became effective, including the  
16 effective date of any provision adopted under a prior statute,  
17 except any:

18 (1) Acts or omissions in bad faith or that involve  
19 intentional misconduct or a knowing violation of law;

20 (2) Transaction from which the director derived an  
21 improper personal benefit;



(3) Unlawful liquidating distributions of assets to members;

(4) Unlawful loans to directors, or unlawful guarantees of loans to directors;

(5) Unlawful dividends;

(6) Unlawful stock or other equity repurchases; or

(7) Other unlawful distribution that was voted for or assented to if the director did not act in conformance with the standard of care applicable to directors.

(c) Nothing in subsection (b) shall be construed to eliminate or limit the liability of a director or officer to the cooperative or its members for monetary damages for any act or omission occurring prior to the date when the provision becomes effective.

(d) A distribution of stock or other equity repurchase shall be unlawful if it renders the cooperative unable to pay its debts as they become due in the usual course of business or, unless the articles permit otherwise, causes the assets to be less than the liabilities plus the amount necessary to satisfy the interests of the holders of securities or other equity



1 capital preferential to those receiving the distribution, if  
2 dissolved at the time of the distribution.

3 (e) No director or officer shall be personally liable for  
4 any tort committed by an employee unless the director or officer  
5 was personally involved.

6 § -28 **Persons to be bonded.** At the discretion of the  
7 board of a cooperative, any officer, employee, or agent handling  
8 funds or negotiable instruments or property of or for the  
9 cooperative may be bonded for the faithful performance of the  
10 person's duties and obligations.

11 **PART V. POWERS AND PURPOSES: APPLICATION OF OTHER LAWS**

12 § -29 **Powers.** (a) A cooperative organized under this  
13 chapter shall have the power, except as specifically limited by  
14 this chapter or by its own articles or bylaws, to:

- 15 (1) Have perpetual existence and succession by its  
16 domestic entity name unless limited by the articles;  
17 (2) Sue and be sued and to complain and defend in courts  
18 of law and equity;  
19 (3) Make and use a common seal, alter the same at its  
20 pleasure, and to use the seal or a facsimile thereof,





1 including a rubber stamp, by impressing or affixing it  
2 or by reproducing it in any other manner;

3 (4) Purchase, receive, lease, and otherwise acquire and to  
4 own, hold, improve, use, and otherwise deal with real  
5 or personal property or any legal or equitable  
6 interest in property, wherever located;

7 (5) Sell, convey, mortgage, pledge, lease, exchange, and  
8 otherwise dispose of all or any part of its property;

9 (6) Purchase, receive, subscribe for, and otherwise  
10 acquire shares and other interests in, and obligations  
11 of, any other entity, including any other cooperative,  
12 and to own, hold, vote, use, sell, mortgage, lend,  
13 pledge, and otherwise dispose of and deal in and with,  
14 the same;

15 (7) Make contracts and guarantees; incur liabilities;  
16 borrow money; issue notes, bonds, and other  
17 obligations, which may be convertible into or include  
18 the option to purchase other securities of the  
19 cooperative; and secure any of its obligations by  
20 mortgage or pledge of any of its property, franchises,  
21 or income;



1           (8) Lend money, invest and reinvest its funds, and receive  
2                   and hold real and personal property as security for  
3                   repayment;

4           (9) Be a partner, member, associate, trustee, promoter, or  
5                   manager of, or to hold any similar position with, any  
6                   entity;

7           (10) Conduct its business, locate offices, and exercise the  
8                   powers granted under this chapter within or outside  
9                   the State;

10          (11) Elect directors and officers and appoint employees and  
11                   agents of the cooperative, define their duties, fix  
12                   their compensation, and lend them money and credit;

13          (12) Pay pensions and establish pension plans, pension  
14                   trusts, profit sharing plans, share bonus plans, share  
15                   options and rights plans, and benefit or incentive  
16                   plans for any or all of its current or former  
17                   directors, officers, employees, and agents;

18          (13) Make payments or donations for the public welfare or  
19                   for charitable, scientific, or educational purposes;

20          (14) Regulate and limit the right of members to transfer  
21                   their memberships, stock, or other equity;



- 1       (15) Make and amend its articles and bylaws for the  
2           management of its affairs and to make provisions in  
3           its articles for the terms and limitations of stock  
4           ownership or membership and for the distribution of  
5           its earnings;
- 6       (16) Indemnify its directors, officers, employees, and  
7           agents to the extent provided or permitted in this  
8           chapter and to eliminate or limit the personal  
9           liability of a director, officers, employees, or  
10          agents of the cooperative to the extent permitted by  
11          law;
- 12       (17) Establish in its bylaws procedures for the disposition  
13           of funds when declared payable by the cooperative and  
14           unclaimed by the holder three years after notification  
15           has been mailed to the holder's last-known address of  
16           record on the books of the cooperative, which  
17           disposition may consist of transferring the funds to  
18           the general operating account of the cooperative;
- 19       (18) Establish, secure, own, and develop patents,  
20           trademarks, and copyrights;
- 21       (19) Make advance payments and advances to members;



- 1       (20) Act as the agent or representative of any member for  
2           any lawful purpose or in any lawful transaction of the  
3           cooperative;
- 4       (21) Purchase or otherwise acquire and to hold, own, and  
5           exercise all rights of ownership in, and to sell,  
6           transfer, or pledge or guarantee the payment of  
7           dividends or interest on, or the retirement or  
8           redemption of shares of the stock or bonds of any  
9           person engaged in any lawful activity;
- 10      (22) Allocate earnings and pay patronage dividends;
- 11      (23) Use per unit retains;
- 12      (24) Prohibit or place limitations on amounts or rates of  
13           dividends payable on any class of capital stock or  
14           other equity investment in the cooperative;
- 15      (25) Engage in any activity in connection with the  
16           purchase, hiring, or use by its members or other  
17           patrons of goods, services, products, equipment,  
18           supplies, utilities, telecommunications, housing, or  
19           health care;
- 20      (26) Establish amounts for reasonable and necessary  
21           reserves for bad debts, obsolescence, grain, quality



1 and grade, contingent losses, working capital, debt  
2 retirement, buildings and equipment, and ownership  
3 retirement and to provide that no member or other  
4 person entitled to share in the allocation of the  
5 cooperative's net margins or other funds shall have  
6 any rights except upon dissolution when the entire  
7 reserve funds of the cooperative shall be distributed  
8 in accordance with applicable federal, state, and  
9 local law and the articles and bylaws of the  
10 cooperative;

11 (27) Manufacture, sell, or supply goods, machinery,  
12 equipment, supplies, or services to its members and to  
13 other patrons or persons;

14 (28) Adopt a trade name;

15 (29) Finance one or more of the activities described in  
16 this section; and

17 (30) Perform every other form or type of act that is  
18 necessary or proper for accomplishing any lawful  
19 purpose of the cooperative that is not otherwise  
20 prohibited by law or its articles and bylaws or that



1           is conducive to or expedient for the interest or  
2           benefit of the cooperative.

3           (b) In addition to the powers granted in chapter 421D, and  
4 in subsection (a) of this section, a cooperative incorporated  
5 under this chapter shall have the following powers:

6           (1) To engage in any activity in connection with the  
7           marketing, selling, preserving, raising, harvesting,  
8           drying, processing, manufacturing, canning, packing,  
9           grading, storing, handling, and use of any products,  
10          by-products, or services produced or delivered to the  
11          cooperative by its members or other patrons; and

12          (2) To engage in any activity in connection with  
13          agricultural education and research and to represent  
14          its members' interests in legislative and  
15          administrative forums.

16          (c) In addition to the powers specifically authorized in  
17 this chapter, a cooperative shall have all powers, rights, and  
18 privileges granted by the law of the State to domestic profit  
19 corporations or domestic nonprofit corporations that are not  
20 inconsistent with this chapter.



(d) The powers enumerated in this chapter shall vest in each cooperative in this State formed under this chapter or that has elected to be subject to this chapter, regardless of whether reference is made to those powers in its charter or in its articles.

**§ -30 Marketing or purchasing contracts.** Cooperatives that limit membership to agricultural producers may make and execute marketing or purchasing contracts that require the members to sell or purchase, for any period of time not over ten years, all or any specified part of their agricultural products or specified commodities, goods, services, or input supplies exclusively to or through the cooperative or any facilities used or to be created by the cooperative. If a producer contracts to sell to the cooperative, it shall be conclusively presumed that title to the products passes absolutely and unreservedly, except for recorded liens, to the cooperative upon delivery or at any other specified time if expressly and definitely agreed to in the contract. The contract may provide, among other things, that the cooperative may sell or resell the products delivered by its members with or without taking title to the products and pay over to its members the resale price, after deducting all



1 necessary selling, overhead, and other costs and expenses,  
2 including interest or dividends on stock, which shall not exceed  
3 eight per cent per annum, and reserves for proper purposes.

4       **§ -31 Remedies for breach of marketing or purchasing**  
5 **contract.** (a) The bylaws or the marketing or purchasing  
6 contracts of an agricultural cooperative may fix as liquidated  
7 damages specific sums to be paid by a member to the cooperative  
8 upon the breach by the member of any provision of the marketing  
9 or purchasing contract regarding the sale, purchase, receipt, or  
10 delivery or withholding of products or other goods and may  
11 further provide that the member will pay all costs, premiums for  
12 bonds, expenses, and fees if any action is brought upon the  
13 contract by the cooperative. All provisions shall be valid and  
14 enforceable in the courts of this State, and clauses providing  
15 for liquidated damages shall be enforceable and shall not be  
16 regarded as penalties.

17       (b) If a member breaches or threatens to breach a  
18 marketing or purchasing contract, the cooperative shall be  
19 entitled to an injunction to prevent the further breach of the  
20 contract and to a decree of specific performance of the  
21 contract. Pending the adjudication of the action and upon





1 filing a bond and verified complaint showing the breach or  
2 threatened breach, the cooperative shall be entitled to a  
3 temporary restraining order and preliminary injunction against  
4 the member.

5 (c) In any action upon a marketing contract, it shall be  
6 conclusively presumed that a landowner, landlord, or lessor is  
7 able to control the delivery of products or other goods produced  
8 on the landowner's, landlord's, or lessor's land by tenants or  
9 others whose tenancy or possession or work on the land or the  
10 terms of whose tenancy or possession or labor on the land was  
11 created or changed after execution by the landowner, landlord,  
12 or lessor of the marketing contract. The remedies provided in  
13 this section for non-delivery or breach shall lie and be  
14 enforceable against the landowner, landlord, or lessor in any  
15 action upon a marketing contract.

16 **§ -32 Inducing breach of marketing or purchasing**  
17 **contract.** Any person who knowingly induces any member of an  
18 agricultural cooperative formed under this chapter, or under  
19 similar statutes of another jurisdiction with similar  
20 restrictions and rights and operating in the State, to break the  
21 member's marketing or purchasing contract or agreement with the



1 cooperative shall be subject to all available civil remedies  
2 including injunctive relief.

3       **§ -33 Purchases of property or other interests.** If a  
4 cooperative with preferred stock or preferred equity purchases  
5 or otherwise acquires any interest in any property, stock, or  
6 interest in another entity, it may, with the consent of the  
7 person or persons from whom the property or interests are being  
8 acquired, discharge the obligations incurred in the purchase or  
9 other acquisition, wholly or in part, by exchanging for the  
10 acquired property, stock, or interest shares or amounts of its  
11 preferred stock or preferred equity an amount that, at par or  
12 stated value, would equal the value of the property, stock, or  
13 interest so purchased, as determined by the board. A transfer  
14 to the cooperative of the property, stock, or interest purchased  
15 or otherwise acquired shall be equivalent to payment in cash for  
16 the shares or amounts of preferred stock or preferred equity  
17 issued by the cooperative.

18       **§ -34 Warehouse receipts; interest in warehouse**  
19 **entities.** If a cooperative formed under or that has elected to  
20 be subject to this chapter organizes, forms, operates, owns,  
21 controls, has an interest in, owns stock of, or is a member of



1 any commodities warehouse, the warehouse may issue legal  
2 warehouse receipts to the cooperative against the commodities  
3 delivered by it or to any other person, and any legal warehouse  
4 receipt shall be considered as adequate collateral to the extent  
5 of the usual and current value of the commodity represented by  
6 the receipt. If the warehouse is licensed or licensed and  
7 bonded under the law of this State, any other state, or the  
8 United States, its warehouse receipt delivered to the  
9 cooperative on commodities of the cooperative or its members or  
10 delivered by the cooperative or its members shall not be  
11 challenged or discriminated against because of ownership or  
12 control, wholly or in part, by the cooperative.

13       **§ -35 Application of other law.** (a) If a matter is not  
14 addressed in this chapter, then chapter 414 shall apply to the  
15 cooperatives formed under or subject to this chapter; provided  
16 that a cooperative may elect to have chapter 414D or chapter  
17 420D apply to it if the cooperative makes the election in its  
18 articles or by a resolution of its members that is delivered to  
19 the director of the department of commerce and consumer affairs  
20 for filing that states that the cooperative elects to have  
21 chapter 414D or chapter 420D apply to it. A cooperative may



1    revoke the election by amending its articles or by delivering to  
2    the director of the department of commerce and consumer affairs  
3    a statement of change that states that the cooperative revokes  
4    its election to have chapter 414D or chapter 420D apply to it  
5    and that the revocation of the election has been approved by  
6    resolution of its members.

7            (b)    Any exemptions under any existing law applying to  
8    goods or agricultural products in the possession or under the  
9    control of an individual producer shall apply similarly and  
10   completely to the goods or products when delivered by its  
11   members to, and in the possession or under the control of, the  
12   cooperative.

13            §    -36    **Cooperatives not in restraint of trade.**    No  
14   cooperative formed under or subject to this chapter shall solely  
15   by its organization and existence be deemed to be a conspiracy  
16   or a combination in restraint of trade, an illegal monopoly, or  
17   an attempt to lessen competition or to fix prices arbitrarily,  
18   nor shall the marketing or purchasing contracts and agreements  
19   between any cooperative and its members or any agreements  
20   authorized under this chapter be considered illegal, in unlawful



restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

PART VI. PROPERTY ENCUMBRANCES, BUSINESS COMBINATIONS, AND  
PROPERTY SALES

§ -37 Encumbering property. The board of a cooperative has full power and authority, without approval of its members, to mortgage, pledge, encumber, dedicate to the repayment of indebtedness, whether with or without recourse or otherwise encumber any or all of the cooperative's property, whether or not in the usual and regular course of business, and to execute and deliver mortgages, deeds of trust, security agreements, or other instruments for those purposes.

§ -38 **Merger.** The applicable laws relating to the merger of domestic profit corporations shall apply to cooperatives formed under this chapter.

A worker cooperative that has not revoked its election to be governed as a worker cooperative shall not consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may merge or consolidate in a manner consistent with this chapter.



1           §   -39 Consolidation or share or equity capital exchange  
2 with foreign entity. (a) One or more domestic cooperatives may  
3 consolidate or enter into a share or equity capital exchange  
4 with one or more foreign entities if:

5           (1) In a consolidation, the consolidation is permitted by  
6 the law of the jurisdiction under which each foreign  
7 entity is formed and each foreign entity complies with  
8 that law in effecting the consolidation;

9           (2) In a share or equity capital exchange, the cooperative  
10 whose shares or equity will be acquired is a domestic  
11 or foreign cooperative, and if a share or equity  
12 capital exchange is permitted by the law of the  
13 jurisdiction under the law of which the acquiring  
14 entity is formed;

15          (3) The foreign entity complies with the provisions of  
16 this chapter if it is the surviving or new entity in a  
17 consolidation or acquiring entity in a share or equity  
18 capital exchange; and

19          (4) The foreign entity is the surviving entity in the  
20 consolidation or the acquiring entity of the share or



1 equity capital exchange and it complies with this  
2 chapter.

3 (b) Upon the consolidation or share or equity capital  
4 exchange taking effect, the surviving foreign entity of a  
5 consolidation and the acquiring foreign entity of a share or  
6 equity capital exchange shall either:

7 (1) Appoint a registered agent if the foreign entity has  
8 no registered agent and maintain a registered pursuant  
9 to this chapter, whether or not the foreign entity is  
10 otherwise subject, to accept service in any proceeding  
11 based on a cause of action arising with respect to any  
12 domestic entity that is merged into the foreign entity  
13 or the ownership interests of which are acquired in a  
14 share or equity capital exchange; or

15 (2) Be deemed to have authorized service of process or in  
16 it connection with any such proceeding by mailing in  
17 accordance with this chapter.

18 (c) Subsection (b) does not prescribe the only means, or  
19 necessarily the required means, of serving a surviving foreign  
20 entity in a consolidation or an acquiring foreign entity in a  
21 share or equity capital exchange.



1           (d) This section does not limit the power of a foreign  
2 entity to acquire all or part of the shares of one or more  
3 classes or series of a domestic cooperative through a voluntary  
4 exchange of shares or otherwise.

5           § -40 Dissenters' rights. (a) If the board of a  
6 cooperative subject to this chapter submits to the members of  
7 the cooperative for approval a plan of merger, conversion,  
8 consolidation, or share or equity capital exchange and if  
9 following the merger, conversion, consolidation, or share or  
10 equity capital exchange and if following the merger, conversion,  
11 consolidation, or share or equity capital exchange there will be  
12 members of any cooperative involved in the proposed transaction  
13 who would no longer be eligible for membership or other voting  
14 interest in the surviving or resulting entity, the ineligible  
15 members shall be entitled to repayment of their equity interests  
16 in the cooperative in accordance with this section.

17           (b) If the board of a cooperative subject to this chapter  
18 submits to the members of the cooperative for approval a plan to  
19 sell all or substantially all of the cooperative's assets and  
20 not dissolve following the sale, the members of the cooperative





1 shall be entitled to repayment of their equity interests in the  
2 cooperative in accordance with this section.

3 (c) A cooperative that proposes to be a party to a merger,  
4 conversion, consolidation, share or equity capital exchange, or  
5 a sale of assets, as described in subsection (a) or (b) of this  
6 section, shall include in the notice of the membership meeting  
7 at which the vote of the members is taken thereon an explanation  
8 of the right to dissent and the requirement to give written  
9 notice of intent to demand payment by a member having the right  
10 to do so under this section.

11 (d) A member who may be entitled to repayment of the  
12 member's equity interests in the cooperative in accordance with  
13 this section shall give written notice of intent to demand  
14 payment by a member having the right to do so under this  
15 section.

16 (e) If the merger, conversion, consolidation, share or  
17 equity capital exchange, or sale of assets described in  
18 subsection (a) or (b) of this section is approved by the members  
19 of the cooperative in the manner applicable to any other entity  
20 that is a party to the transaction, the surviving, resulting, or  
21 new entity, including a cooperative that is to sell all or



1 substantially all of its assets, shall be required to make the  
2 payments provided in this section. The surviving, resulting, or  
3 new entity shall give written notice to all dissenters that have  
4 given notice to dissent pursuant to this section. The notice  
5 shall include the address at which the surviving, resulting, or  
6 new entity will receive payment demands, the requirement to  
7 submit stock or membership certificates or certification of the  
8 loss or destruction thereof, the period in which demands will be  
9 received that shall be not less than thirty days from the date  
10 of the notice, and where applicable, a statement of  
11 qualifications for membership or other voting interest in the  
12 surviving or new entity.

13 (f) Within the period stated in the notice described in  
14 subsection (e), a dissenter may deliver a written demand for  
15 payment to the surviving, resulting, or new entity, or in the  
16 case of a sale of assets subject to this section, to the  
17 cooperative selling its assets, stating the address to which  
18 payment is to be made and, where applicable, a statement as to  
19 the reasons why the dissenter no longer qualifies for membership  
20 or a voting interest in the surviving, resulting, or new entity.



1           (g) Within thirty days after receipt of a demand for  
2 payment, the surviving, resulting, or new entity or, in the case  
3 of a sale of assets subject to this section, the cooperative  
4 selling its assets shall pay to the dissenter the stated value  
5 of:

- 6           (1) The initial investment of the dissenter in stock or  
7 membership fees in the cooperative as recorded in the  
8 records of the cooperative made to qualify the  
9 dissenter to be a member of the cooperative; and
- 10          (2) All other equity capital of the dissenter in the  
11 cooperative as recorded in the records of the  
12 surviving, resulting, or new entity, or in the case of  
13 a sale of assets subject to this section, of the  
14 cooperative selling its assets; except that, in the  
15 case of any merger, conversion, consolidation, or  
16 share or equity capital exchange, if the surviving,  
17 resulting, or new entity has, by written agreement or  
18 operation of law other than this section, become  
19 liable to repay the other equity capital of the  
20 dissenter, the repayment of other equity capital shall  
21 be made by the surviving, resulting, or new entity



1 under the same conditions and time frame, but not more  
2 than fifteen years, that would have applied if the  
3 member or equity holder had withdrawn or been  
4 terminated from the cooperative that is not the  
5 surviving, resulting, or new entity immediately prior  
6 to the effective date of the merger, conversion,  
7 consolidation, or share or equity capital exchange if  
8 payment is not made on the date required by this  
9 subsection, the recipient shall be entitled to  
10 interest from the date the payment should have been  
11 made until the date payment is actually made.

12 (h) Notwithstanding any provisions of law to the contrary,  
13 holders of equity capital who are not members of the cooperative  
14 shall under no circumstances be entitled to dissenter's rights.

15 (i) For the purposes of this section:

16 "Dissenter" means a member eligible to vote who exercises  
17 the right to dissent provided in this section at the time and in  
18 the manner required by this section.

19 "Interest" means interest required to be paid pursuant to  
20 this section at the average rate currently paid by the  
21 cooperative subject to this section on its principal bank loans.



1 "Stated value" means the original cost paid by a person for  
2 capital stock or membership fees, as recorded in the records of  
3 the cooperative, to qualify for membership and the right to vote  
4 in the cooperative and for other equity capital the amount  
5 stated in the records of the cooperative that is required to  
6 make a payment under this section.

7 § -41 Sale or other disposition of property without  
8 member approval. (a) A cooperative may, on the terms and  
9 conditions and for the consideration determined by the board:

10 (1) Sell, lease, exchange or otherwise dispose of any of  
11 its property in the usual and regular course of  
12 business; except that a sale, lease, exchange, or  
13 other disposition of all, or substantially all, of its  
14 property shall never be considered to be in the usual  
15 and regular course of business; or

16 (2) Transfer to itself any or all the property of a  
17 domestic or foreign entity when all the voting rights  
18 of the transferor are owned, directly or indirectly,  
19 by the transferee cooperative.



1 (b) Unless otherwise provided in the articles or bylaws,  
2 approval by the members of a transaction described in subsection  
3 (a) is not required.

4 § -42 Sale or other disposition of property requiring  
5 member approval. (a) A cooperative may sell, lease, exchange,  
6 or otherwise dispose of all, or substantially all, of its  
7 property, with or without its good will, only on the terms and  
8 conditions and for the consideration determined by the board and  
9 if the board proposes or submits and the members approve the  
10 transaction. A sale, lease, exchange, or other disposition of  
11 all, or substantially all, of the property of a cooperative,  
12 with or without its good will, in connection with its  
13 dissolution, other than pursuant to a court order, shall be  
14 subject to the requirements of this section; but a sale, lease,  
15 exchange, or other disposition of all, or substantially all, of  
16 the property of a cooperative, with or without its good will,  
17 pursuant to a court order shall not be subject to the  
18 requirements of this section. If a resolution to dissolve the  
19 cooperative that is adopted by the members of a cooperative  
20 contemplates the sale of all or substantially all of the  
21 cooperative's property in connection with the dissolution, the



1 adoption of that resolution by the members shall also be an  
2 authorization to sell all or substantially all of the  
3 cooperative property pursuant to this section.

4 (b) If a cooperative is entitled to vote or otherwise  
5 consent, other than in the usual and regular course of its  
6 business, with respect to the sale, lease, exchange, or other  
7 disposition of all, or substantially all, of its property with  
8 or without the good will of another entity that it controls, and  
9 if the shares or other interests held by the cooperative in such  
10 other entity constitute all, or substantially all, of the  
11 property of the cooperative, then the cooperative shall consent  
12 to such transaction only if its board proposes and its members  
13 approve the giving of consent.

14 (c) For the transaction described in subsection (a) or a  
15 consent described in subsection (b) to be approved by the  
16 members:

17 (1) The board, by a two-thirds majority vote of all its  
18 members, shall recommend the transaction or the  
19 consent to the members unless the board determines  
20 that, because of a conflict of interest or other  
21 special circumstances, it should make no



1            recommendation and communicates the basis for its  
2            determination to the members with the submission of  
3            the transaction of the consent; and

4            (2) The members entitled to vote on the transaction or the  
5            consent shall approve the transaction or the consent  
6            as provided in subsection (f).

7            (d) The board may condition the effectiveness of the  
8            transaction or the consent on any basis.

9            (e) The cooperative shall give proper notice of the  
10           meeting that a transaction or consent described in subsection  
11           (a) or subsection (b) is to be voted on to each member entitled  
12           to vote on the transaction or consent. The notice shall:

13           (1) State the purpose, or one of the purposes, of the  
14           meeting is to consider:

15           (A) In the case of action pursuant to subsection (a),  
16           the sale, lease, exchange, or other disposition  
17           of all, or substantially all, of the property of  
18           the cooperative; or

19           (B) In the case of action pursuant to subsection (b),  
20           the cooperative's consent to the sale, lease,  
21           exchange, or other disposition of all, or





1 substantially all, of the property of another  
2 entity, which entity shall be identified in the  
3 notice, shares, or other interests of which are  
4 held by the cooperative and constitute all, or  
5 substantially all, of the property of the  
6 cooperative; and

7 (2) Contain or be accompanied by a description of the  
8 transaction, in the case of action pursuant to  
9 subsection (a), or by a description of the transaction  
10 underlying the consent, in the case of action pursuant  
11 to subsection (b).

12 (f) Member approval of a transaction or consent described  
13 in subsections (a) and (b) shall require an affirmative vote of  
14 two-thirds majority of the members present voting in person or  
15 in any other manner authorized by the cooperative; but the two-  
16 thirds voting requirement may be reduced to not less than a  
17 majority of the members present and voting in person or in any  
18 other manner authorized by the cooperative, or may be increased  
19 to up to two-thirds of all members entitled to vote, by a  
20 provision contained in the articles or bylaws of the  
21 cooperative. The cooperative may also provide in its articles



1 or bylaws for different voting requirements with respect to a  
2 transaction between one or more cooperatives subject to this  
3 article or similar law of other states and between the  
4 cooperative and one or more entities formed under or subject to  
5 different law of this or other states. A cooperative may not  
6 permit proportional voting to apply to a vote of members with  
7 respect to the sale of all or substantially all the property of  
8 the cooperative pursuant to this section.

9 (g) After a transaction or consent described in subsection  
10 (a) or subsection (b) is authorized, the transaction may be  
11 abandoned or the consent withheld or revoked, subject to any  
12 contractual rights or other limitations on such abandonment,  
13 withholding, or revocation, by a unanimous vote of the board or  
14 the vote of two-thirds of all the members.

15 (h) If the members do not approve of a transaction or  
16 consent as described in subsections (a) and (b), the board may  
17 prohibit the consideration and submittal of a similar proposal  
18 to the members for a period of two years following the members'  
19 vote.

20 **PART VII. DISSOLUTION**



1           §    -43   Voluntary Dissolution.   (a)   For voluntary  
2   dissolutions of cooperatives formed under this chapter, chapter  
3   414, or chapter 414D, as the case may be; provided that the  
4   dissolution shall be approved at a meeting duly called and held  
5   for the purpose by not less than two-thirds of the voting power  
6   voting on the matter.   Upon dissolution of a worker cooperative,  
7   the majority of the unallocated capital account shall be  
8   distributed to members on the basis of any of the following, as  
9   specified in the articles of incorporation or bylaws of the  
10   cooperative:

- 11           (1)   Patronage;  
12           (2)   Capital contributions; and  
13           (3)   A combination of patronage and capital contributions.

14           (b)   A worker cooperative is authorized to include  
15   patronage provided by past and current members in its  
16   distribution of the unallocated capital account.

17           (c)   Subsection (a) shall not apply to any amounts in the  
18   indivisible reserve account.   Any amount in the indivisible  
19   reserve account, upon dissolution, shall be allocated to a  
20   cooperative development organization designated in the articles  
21   of incorporation or the bylaws.



1           §   -44   Grounds for judicial dissolution.   (a)   A

2   cooperative may be dissolved in a proceeding brought in court by  
3   the attorney general if it is established that:

4           (1)   The cooperative obtained its organization through  
5                fraud; or

6           (2)   The cooperative has exceeded or abused the authority  
7                conferred upon it by law.

8           (b)   A cooperative may be dissolved in a proceeding brought  
9   in court by not less than ten per cent of the total number of  
10  members if it is established that:

11          (1)   The directors are deadlocked in the management of the  
12                cooperative's affairs, the members are unable to break  
13                the deadlock, and irreparable injury to the  
14                cooperative is threatened or suffered; or the business  
15                and affairs of the cooperative can no longer be  
16                conducted to the advantage of the members generally;

17          (2)   The directors or those in control of the cooperative  
18                have acted, are acting, or will act in a manner that  
19                is illegal, oppressive, or fraudulent; or

20          (3)   The members are deadlocked in voting power and have  
21                failed for a period that includes at least two



1 consecutive annual meeting dates to elect successors  
2 to directors whose terms have expired or would have  
3 expired upon the election of their successors.

4 (c) A cooperative may be dissolved in a proceeding brought  
5 in court by a creditor if it is established that:

6 (1) A creditor's claim has been reduced to judgment, the  
7 execution on the judgment has been returned  
8 unsatisfied, and the cooperative is insolvent; or

9 (2) The cooperative is insolvent and the cooperative has  
10 admitted in writing that a creditor's claim is due and  
11 owing.

12 § -45 Procedure for judicial dissolution. (a) A  
13 proceeding to dissolve a cooperative brought by the attorney  
14 general shall be brought in the circuit court of the circuit in  
15 which the street address of the cooperative's principal office  
16 is located or, if the cooperative has no principal office in the  
17 State, in the circuit court of the circuit in which the street  
18 address of its registered agent is located or, if the  
19 cooperative has no registered agent, in the circuit court of the  
20 first circuit.



1           (b) A court in a proceeding brought to dissolve a  
2 cooperative may issue injunctions, appoint a receiver or  
3 custodian pendente lite with all powers and duties the court  
4 directs, take other action required to preserve the  
5 cooperative's assets, wherever located, and carry on the  
6 business of the cooperative until a full hearing can be held.

7           **§ -46 Receivership or custodianship.** (a) A court in a  
8 proceeding to dissolve a cooperative may appoint one or more  
9 receivers to wind up and liquidate, or one or more custodians to  
10 manage the business and affairs, of the cooperative. The court  
11 shall hold a hearing, after giving notice to all parties to the  
12 proceeding and any interested persons designated by the court,  
13 before appointing a receiver or custodian pursuant to this  
14 section. The court appointing a receiver or custodian has  
15 exclusive jurisdiction over the cooperative and all of its  
16 property, wherever located.

17           (b) The court may appoint an individual, a domestic  
18 entity, or a foreign entity or other entity authorized to  
19 transact business or conduct activities in this State as a  
20 receiver or custodian. The court may require the receiver or



1    custodian to post bond, with or without sureties, in an amount  
2    the court directs.

3           (c)   The court shall describe the powers and duties of the  
4    receiver or custodian in its appointing order, which may be  
5    amended from time to time.  Among other powers, the receiver  
6    may:

7           (1)   Dispose of all or any part of the property of the  
8                  cooperative, wherever located, at a public or private  
9                  sale, if authorized by the court; and

10          (2)   Sue and defend in the receiver's own name as receiver  
11                  of the cooperative in all courts.

12          (d)   The custodian may exercise all of the powers of the  
13    cooperative, through or in place of its board or officers, to  
14    the extent necessary to manage the affairs of the cooperative in  
15    the best interests of its members and creditors.

16          (e)   The court, during a receivership, may redesignate the  
17    receiver as custodian, and during a custodianship may  
18    redesignate the custodian as receiver if doing so is in the best  
19    interests of the cooperative and its members and creditors.

20          (f)   The court from time to time during the receivership or  
21    custodianship may order compensation paid and expense



1 disbursements or reimbursements made to the receiver or  
2 custodian and the person's counsel from the assets of the  
3 cooperative or proceeds from the sale of the assets.

4       **§ -47 Decree of dissolution.** (a) If, after a hearing,  
5 the court determines that one or more grounds for judicial  
6 dissolution exist, it may enter a decree dissolving the  
7 cooperative and stating the effective date of the dissolution,  
8 and the clerk of the court shall deliver a certified copy of the  
9 decree to the director of the department of commerce and  
10 consumer affairs.

11       (b) After entering the decree of dissolution, the court  
12 shall direct the winding up and liquidation of the cooperative's  
13 business and activities and the giving of notice to the  
14 cooperative's registered agent, or to the director of department  
15 of commerce and consumer affairs if it has no registered agent.

16               **PART VIII. SECURITIES REGISTRATION; EXEMPTIONS**

17       **§ -48 Exemption of voting stock from registration.**  
18 Membership stock or membership certificates issued by a  
19 cooperative or patronage equity in any form and preferred stock  
20 or equity or notes issued to members of any cooperative





1 organized under this chapter shall be included as exempt  
2 securities pursuant and subject to section 485A-201(8).

3 **PART IX. FOREIGN COOPERATIVES**

4 **§ -49 Authority to transact business or conduct**  
5 **activities required.** This section, providing for the  
6 transaction of business or the conduct of activities by foreign  
7 entities, applies to foreign cooperatives.

8 **PART X. TRANSITION PROVISIONS**

9 **§ -50 Application to existing cooperatives.** An existing  
10 cooperative may elect to be governed by this chapter by  
11 complying with this chapter."

12 **SECTION 3.** This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15 **SECTION 4.** This Act shall take effect upon its approval.

16  
INTRODUCED BY:



# S.B. NO. 498

**Report Title:**

General Cooperatives; Worker Cooperatives

**Description:**

Authorizes entities having a common interest and purpose to organize as general cooperatives.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

