CHAPTER 308B

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308B.001 CITATION.

This chapter may be cited as the "Minnesota Cooperative Associations Act."

History: *2003 c 105 art 1 s 1*

DEFINITIONS

308B.005 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **Address.** "Address" means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which may not be a post office box.

Subd. 3. **Alternative ballot.** "Alternative ballot" means a method of voting on a candidate or issue prescribed by the board of directors in advance of the vote, and may include voting by electronic, telephonic, Internet, or other means that reasonably allow members the opportunity to vote.

Subd. 4. **Articles.** "Articles" means the articles of organization of a cooperative as originally filed and subsequently amended.

Subd. 5. **Association.** "Association" means an organization conducting business on a cooperative plan under the laws of this state or another state that is chartered to conduct business under other laws of this state or another state.

Subd. 6. **Board.** "Board" means the board of directors of a cooperative.

Subd. 7. **Business entity.** "Business entity" means a company, limited liability company, limited liability partnership, or other legal entity, whether domestic or foreign, association, or body vested with the power or function of a legal entity.

Subd. 8. **Chapter.** "Chapter" means sections 308B.001 to 308B.975.

Subd. 9. **Cooperative.** "Cooperative" means an association organized under this chapter conducting business on a cooperative plan as provided under this chapter.

Subd. 10. **Domestic business entity.** "Domestic business entity" means a business entity organized under the laws of this state.

Subd. 11. **Domestic cooperative.** "Domestic cooperative" means a cooperative organized under this chapter or chapter 308A.

Subd. 12. **Filed with the secretary of state.** "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state. The secretary of state shall endorse on the document the word "filed" or a similar word determined by the secretary of state and the month, day, and year of filing, record the document in the Office of the Secretary of State, and return a document to the person or entity who delivered it for filing.

Subd. 13. **Foreign business entity.** "Foreign business entity" means a business entity that is not a domestic business entity.

Subd. 14. **Foreign cooperative.** "Foreign cooperative" means a foreign business entity organized to conduct business on a cooperative plan consistent with this chapter or chapter 308A.

Subd. 15. **Member.** "Member" means a person or entity reflected on the books of the cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.

Subd. 16. **Membership interest.** "Membership interest" means a member's interest in a cooperative consisting of a member's financial rights, a member's right to assign financial rights, a member's governance rights, and a member's right to assign governance rights. Membership interest includes patron membership interests and nonpatron membership interests.

Subd. 17. **Members' meeting.** "Members' meeting" means a regular or special members' meeting.

Subd. 18. **Minnesota limited liability company.** "Minnesota limited liability company" means a limited liability company governed by chapter 322C.

Subd. 19. **Nonpatron membership interest.** "Nonpatron membership interest" means a membership interest that does not require the holder to conduct patronage business for or with the cooperative to receive financial rights or distributions.

Subd. 20. **Patron.** "Patron" means a person or entity who conducts patronage business with the cooperative.

Subd. 21. **Patronage.** "Patronage" means business, transactions, or services done for or with the cooperative as defined by the cooperative.

Subd. 22. **Patron member.** "Patron member" means a member holding a patron membership interest.

Subd. 23. **Patron membership interest.** "Patron membership interest" means the membership interest requiring the holder to conduct patronage business for or with the cooperative, as specified by the cooperative to receive financial rights or distributions.

Subd. 24. **Signed.** "Signed" means that the signature of a person has been written on a document, and with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the directors or the members. A signature on a document may be a facsimile affixed,

engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

History: *2003 c 105 art 1 s 2; 2014 c 157 art 2 s 29; 2016 c 135 art 4 s 12*

308B.007 LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(d) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(e) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 2. **Electronic records and signatures.** For purposes of this chapter:

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) if a provision requires a signature, an electronic signature satisfies the requirement.

History: *2003 c 105 art 1 s 7*

GENERAL PROVISIONS

308B.101 RESERVATION OF RIGHT.

The state reserves the right to amend or repeal the provisions of this chapter by law. A cooperative organized or governed by this chapter is subject to this reserved right.

History: *2003 c 105 art 1 s 3*

308B.111 FILING FEES.

Unless otherwise provided, the filing fee for documents filed under this chapter with the secretary of state is $35.

History: *2003 c 105 art 1 s 4*

308B.115 MS 2008 [Subds 1 to 5 repealed by amendment, 2010 c 250 art 2 s 15]

308B.115 REGISTERED OFFICE AND AGENT.

Every cooperative shall have a registered office, and may have a registered agent and may change its registered office or change its registered agent, and the agent may resign or change its business address or name, in the manner prescribed by section 5.36.

History: *2003 c 105 art 1 s 5; 2010 c 250 art 2 s 15*

308B.121 ANNUAL RENEWAL.

Subdivision 1. **Annual renewal.** Each cooperative governed by this chapter must file an annual renewal with the secretary of state in each calendar year after the calendar year in which the cooperative incorporated. The secretary of state may send annually to each cooperative, using the information provided by the cooperative pursuant to section 5.002 or 5.34 or the articles of organization, a notice announcing the need to file the annual renewal and informing the cooperative that the annual renewal may be filed online and that paper filings may also be made, and informing the cooperative that failing to file the annual renewal will result in an administrative dissolution.

Subd. 2. **Renewal form.** In each calendar year in which a renewal is to be filed, a cooperative must file with the secretary of state by December 31 of that calendar year a renewal containing the items required by section 5.34.

Subd. 3. [Repealed, 2009 c 98 s 36]

Subd. 4. **Penalty; dissolution.** (a) A cooperative that has failed to file a registration under the requirements of this section must be dissolved by the secretary of state as described in paragraph (b).

(b) If the cooperative has not filed the registration by December 31 of that calendar year, the secretary of state must issue a certificate of involuntary dissolution and the certificate must be filed in the Office of the Secretary of State. A cooperative dissolved in this manner is not entitled to the benefits of section 308B.971.

Subd. 5. **Reinstatement.** A cooperative may retroactively reinstate its existence by filing a single annual registration and paying a $25 fee. Filing the annual registration with the secretary of state:

(1) returns the cooperative to active status as of the date of the dissolution;

(2) validates contracts or other acts within the authority of the articles and the cooperative is liable for those contracts or acts; and

(3) restores to the cooperative all assets and rights of the cooperative and its shareholders or members to the extent they were held by the cooperative and its shareholders or members before the dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

History: *2003 c 105 art 1 s 6; 2004 c 251 s 6; 2004 c 254 s 37; 2007 c 148 art 2 s 52; 2009 c 101 art 2 s 77,78*

308B.151 [Repealed, 2008 c 203 s 14]

308B.152 FOREIGN COOPERATIVES; SECTIONS APPLICABLE.

Subdivision 1. **General.** Except for this section, this chapter does not apply to foreign cooperatives.

Subd. 2. **Sections applicable.** (a) Except as provided in paragraph (b), a foreign cooperative is subject to chapter 303. Unless it complies with chapter 303, a foreign cooperative may not transact business in this state.

(b) Sections 303.05, 303.07, and 303.115 do not apply to foreign cooperatives.

History: *2008 c 203 s 8*

ORGANIZATION

308B.201 ORGANIZATIONAL PURPOSE.

A cooperative may be formed and organized on a cooperative plan for any lawful purpose, including:

(1) to market, process, or otherwise change the form or marketability of products, including crops, livestock, and other agricultural products, the manufacturing and further processing of those products, other purposes that are necessary or convenient to facilitate the production or marketing of products by patron members and others, and other purposes that are related to the business of the cooperative;

(2) to provide products, supplies, and services to its members; and

(3) for any other purposes that cooperatives are authorized to perform by law.

History: *2003 c 105 art 1 s 9; 2004 c 228 art 1 s 51*

308B.205 ORGANIZERS.

Subdivision 1. **Qualification.** A cooperative may be organized by one or more organizers who shall be adult natural persons, and who may act for themselves as individuals or as the agents of other entities. The organizers forming the cooperative need not be members of the cooperative.

Subd. 2. **Role of organizers.** If the first board is not named in the articles of organization, the organizers may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until a contribution is accepted, whichever occurs first.

Subd. 3. **Meeting.** After the filing of articles of organization, the organizers or the directors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of the directors named in the articles, or take written action for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the cooperative, including, without limitations, amending the articles, electing directors; adopting bylaws, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials; adopting a fiscal year for the cooperative; contracting to receive and accept contributions; and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or director named, stating the date, time, and place of the meeting. Organizers and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board.

History: *2003 c 105 art 1 s 10*

308B.211 COOPERATIVE NAME.

Subdivision 1. **Distinguished name.** The name of a cooperative shall distinguish the cooperative upon the records in the Office of the Secretary of State from the name of a domestic business entity or a foreign

business entity, on file, authorized or registered to do business in this state at the time of filing, or a name the right to which is, at the time of organization, reserved or provided for by law.

Subd. 2. **Reservation.** The cooperative name shall be reserved for the cooperative during its existence.

History: *2003 c 105 art 1 s 11; 2008 c 203 s 9; 2009 c 98 s 13*

308B.215 ARTICLES OF ORGANIZATION.

Subdivision 1. **Requirements.** (a) The articles of the cooperative shall include:

(1) the name of the cooperative;

(2) the purpose of the cooperative;

(3) the name and address of each organizer;

(4) the period of duration for the cooperative, if the duration is not to be perpetual;

(5) the name of the registered agent, if any; and

(6) the address of the registered office.

(b) The articles may contain any other lawful provision.

(c) The articles shall be signed by the organizers.

Subd. 2. **Filing.** The original articles shall be filed with the secretary of state. The fee for filing the articles with the secretary of state is $60.

Subd. 3. **Effect of filing.** When the articles have been filed with the secretary of state and the required fee has been paid to the secretary of state, it shall be presumed that:

(1) all conditions precedent that are required to be performed by the organizers have been complied with;

(2) the organization of the cooperative has been chartered by the state as a separate legal entity; and

(3) the secretary of state shall issue a certificate of organization to the cooperative.

History: *2003 c 105 art 1 s 12; 2007 c 148 art 2 s 53; 2009 c 98 s 14; 2013 c 110 s 3*

308B.221 AMENDMENT OF ARTICLES.

Subdivision 1. **Procedure.** (a) The articles of a cooperative shall be amended as follows:

(1) the board, by majority vote, shall pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached mail or alternative ballot, if the board has provided for a mail or alternative ballot in the resolution or alternative method approved by the board and stated in the resolution, shall be mailed or otherwise distributed with a regular or special meeting notice to each member. The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on;

(2) if a quorum of the members is registered as being present or represented by alternative vote at the meeting, the proposed amendment is adopted:

(i) if approved by a majority of the votes cast; or

(ii) for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) After an amendment has been adopted by the members, the amendment shall be signed by the chair, vice chair, records officer, or assistant records officer and a copy of the amendment filed in the Office of the Secretary of State.

Subd. 2. **Certificate.** (a) A certificate shall be prepared stating:

(1) the vote and meeting of the board adopting a resolution of the proposed amendment;

(2) the notice given to members of the meeting at which the amendment was adopted;

(3) the quorum registered at the meeting; and

(4) the vote cast adopting the amendment.

(b) The certificate shall be signed by the chair, vice chair, records officer, or financial officer and filed with the records of the cooperative.

Subd. 3. **Amendment by directors.** A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

Subd. 4. **Filing.** An amendment of the articles shall be filed with the secretary of state. The amendment is effective upon filing or the date specified in the resolution adopting the amendment.

History: *2003 c 105 art 1 s 13; 2008 c 203 s 10*

308B.225 AMENDMENT OF ORGANIZATIONAL DOCUMENTS TO BE GOVERNED BY THIS CHAPTER.

Subdivision 1. **Authority.** (a) A cooperative organized under chapter 308A may convert and become subject to this chapter by amending its organizational documents to conform to the requirements of this chapter.

(b) A cooperative organized under chapter 308A that becomes subject to this chapter must provide its members with a disclosure statement of the rights and obligations of the members and the capital structure of the cooperative before becoming subject to this chapter. A cooperative organized under chapter 308A, upon distribution of the disclosure required in this subdivision and approval of its members as necessary for amending its articles under chapter 308A, may amend its articles to comply with this chapter.

(c) A cooperative organized under chapter 308A that is converting to be subject to this chapter must prepare a certificate stating:

(1) the date on which the entity was first organized;

(2) the name of the chapter 308A cooperative and, if the name is changed, the name of the cooperative to be governed under this chapter; and

(3) the future effective date and time, which must be a date and time certain, that it will be governed by this chapter, if the effective date and time is not to be the date and time of filing.

(d) Upon filing with the secretary of state of the articles for compliance with this chapter and the certificate required under paragraph (c), a cooperative organized under chapter 308A is converted and governed by this chapter unless a later date and time is specified in the certificate under paragraph (c).

(e) In connection with a conversion under which a cooperative becomes governed by this chapter, the rights, securities, or interests in the chapter 308A cooperative may be exchanged or converted into rights, property, securities, or interests in the cooperative as governed by this chapter.

Subd. 2. **Effect of being governed by this chapter.** The conversion of a cooperative organized under chapter 308A to a cooperative governed by this chapter does not affect any obligations or liabilities of the cooperative before the conversion or the personal liability of any person incurred before the conversion. When the conversion is effective, the rights, privileges, and powers of the cooperative, real and personal property of the cooperative, debts due to the cooperative, and causes of action belonging to the cooperative, remain vested in the cooperative and are the property of the cooperative as converted and governed by this chapter. Title to real property vested by deed or otherwise in the cooperative organized under chapter 308A does not revert and is not impaired by reason of the cooperative being converted and governed by this chapter. Rights of creditors and liens upon property of the cooperative under chapter 308A are preserved unimpaired, and debts, liabilities, and duties of the cooperative under chapter 308A remain attached to the cooperative as converted and governed by this chapter and may be enforced against the cooperative to the same extent as if the debts, liabilities, and duties had originally been incurred or contracted by the cooperative as organized under this chapter. The rights, privileges, powers, and interests in property of the cooperative under chapter 308A, as well as the debts, liabilities, and duties of the cooperative are not deemed, as a consequence of the conversion, to have been transferred for any purpose of the laws of this state.

History: *2003 c 105 art 1 s 14*

308B.231 CURATIVE FILING.

If the secretary of state determines that a filing has been made in error by the cooperative, the secretary of state may revoke and expunge the erroneous filing and authorize a curative document to be filed. A filing fee of $500 shall be charged for any such revocation or expungement and subsequent curative filing.

History: *2003 c 105 art 1 s 15*

308B.235 EXISTENCE.

Subdivision 1. **Commencement upon filing.** The existence of a cooperative shall commence when the articles are filed with the secretary of state.

Subd. 2. **Duration.** A cooperative shall have a perpetual duration unless the cooperative provides for a limited period of duration in the articles.

History: *2003 c 105 art 1 s 16*

308B.241 BYLAWS.

Subdivision 1. **Required.** A cooperative shall have bylaws governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations, and distributions of membership interests, which are not otherwise provided in the articles or by this chapter.

Subd. 2. **Contents.** (a) If not stated in the articles, the bylaws must state:

(1) the purpose of the cooperative;

(2) the capital structure of the cooperative to the extent not stated in the articles, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue membership interests, which may be designated to be determined by the board;

(3) a provision designating the voting and governance rights, to the extent not stated in the articles, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this chapter;

(4) a statement that patron membership interests with voting power shall be restricted to one vote for each member regardless of the amount of patron membership interests held in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in this chapter;

(5) a statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws; and

(6) if nonpatron membership interests are authorized, a statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interests collectively to the extent not stated in the articles, a statement that net income allocated to a patron membership interest as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and a statement that the records of the cooperative shall include patron membership interests and, if authorized, nonpatron membership interests, which may be further described in the bylaws of any classes and in the reserves.

(b) The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with law or the articles, and shall include the following:

(1) the number of directors and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;

(2) the qualifications of members and any limitations on their number;

(3) the manner of admission, withdrawal, suspensions, and expulsion of members;

(4) generally, the governance rights, financial rights, assignability of governance and financial rights, and other rights, privileges, and obligations of members and their membership interests, which may be further described in member control agreements; and

(5) any provisions required by the articles to be in the bylaws.

Subd. 3. **Adoption.** (a) Bylaws shall be adopted before any distributions to members, but if the articles or bylaws provide that rights of contributors to a class of membership interest will be determined in the bylaws, then the bylaws must be adopted before the acceptance of any contributions to that class.

(b) Subject to subdivisions 4, 5, and 6, the bylaws of a cooperative may be adopted or amended by the directors, or the members may adopt or amend bylaws at a regular or special members' meeting if:

(1) the notice of the regular or special meeting contains a statement that the bylaws or restated bylaws will be voted upon and copies are included with the notice, or copies are available upon request from the cooperative and a summary statement of the proposed bylaws or amendment is included with the notice;

(2) a quorum is registered as being present or represented by mail or alternative voting method if the mail or alternative voting method is authorized by the board; and

(3) the bylaws or amendment is approved by a majority vote cast, or for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of the total members are required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(c) Until the next annual or special members' meeting, the majority of directors may adopt and amend bylaws for the cooperative that are consistent with subdivisions 4 to 6, which may be further amended or repealed by the members at an annual or special members' meeting.

Subd. 4. **Amendment of bylaws by board or members.** (a) The board may amend the bylaws at any time to add, change, or delete a provision, unless:

(1) this chapter, the articles, or the bylaws reserve the power exclusively to the members in whole or in part; or

(2) a particular bylaw expressly prohibits the board from doing so.

(b) Any amendment of the bylaws by the board must be distributed to the members no later than ten days after adoption and the notice of the annual meeting of the members must contain a notice and summary or the actual amendments to the bylaws adopted by the board.

(c) The members may amend the bylaws even though the bylaws may also be amended by the board.

Subd. 5. **Bylaw changing quorum or voting requirement for members.** (a) The members may amend the bylaws to fix a greater quorum or voting requirement for members, or voting groups of members, than is required under this chapter. An amendment to the bylaws to add, change, or delete a greater quorum or voting requirement for members shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under paragraph (a) may not be adopted and shall not be amended by the board.

Subd. 6. **Bylaw changing quorum or voting requirement for directors.** (a) A bylaw that fixes a greater quorum or voting requirement for the board may be amended:

(1) if adopted by the members, only by the members; or

(2) if adopted by the board, either by the members or by the board.

(b) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board may provide that it may be amended only by a specified vote of either the members or the board, but if the bylaw is to be amended by a specified vote of the members, the bylaw must be adopted by the same specified vote of the members.

(c) Action by the board under paragraph (a), clause (2), to adopt or amend a bylaw that changes the quorum or voting requirement for the board shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Subd. 7. **Emergency bylaws.** (a) Unless otherwise provided in the articles or bylaws, the board may adopt bylaws to be effective only in an emergency as defined in paragraph (d). The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the cooperative during the emergency, including:

(1) procedures for calling a meeting of the board;

(2) quorum requirements for the meeting; and

(3) designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(c) Action taken in good faith in accordance with the emergency bylaws:

(1) binds the cooperative; and

(2) may not be the basis for imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not authorized cooperative action.

(d) An emergency exists for the purposes of this section, if a quorum of the directors cannot readily be obtained because of some catastrophic event.

History: *2003 c 105 art 1 s 17*

308B.245 COOPERATIVE RECORDS.

(a) A cooperative shall keep as permanent records minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board.

(b) A cooperative shall maintain appropriate accounting records.

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

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

(1) its articles and other governing instruments;

(2) its bylaws or other similar instruments;

(3) a record of the names and addresses of its members, in a form that allows preparation of an alphabetical list of members with each member's address;

(4) the minutes of members' meetings, and records of all actions taken by members without a meeting by unanimous written consent in lieu of a meeting, for the past three years;

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

(6) a list of the names and business addresses of its current board members and officers;

(7) a copy of its most recent periodic registration delivered to the secretary of state under section 308B.121; and

(8) all financial statements prepared for periods ending during the last fiscal year.

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

History: *2003 c 105 art 1 s 18*

POWERS

308B.301 POWERS.

Subdivision 1. **Generally.** (a) In addition to other powers, a cooperative as an agent or otherwise:

(1) may perform every act necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative;

(2) has other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this chapter; and

(3) has the powers given in section 308A.201 and in this section.

(b) This section does not give a cooperative the power or authority to exercise the powers of a credit union under chapter 52, a bank under chapter 48, or a savings association under chapter 51A.

Subd. 2. **Dealing in products.** A cooperative may buy, sell, or deal in its own products; the products of its individual members, patrons, or nonmembers; the products of another cooperative association or of its members or patrons; or the products of another person or entity. A cooperative may negotiate the price at which its products may be sold.

Subd. 3. **Contracts with members.** A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members.

Subd. 4. **Holding and transactions of real and personal property.** (a) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange, and convey as a legal entity real, personal, and intellectual property, including real estate, buildings, personal property, patents, and copyrights as the business of the cooperative may require, including the sale or other disposition of assets required by the business of the cooperative as determined by the board.

(b) A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative in its articles or bylaws and may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal property.

Subd. 5. **Buildings.** A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

Subd. 6. **Debt instruments.** A cooperative may issue bonds, debentures, or other evidence of indebtedness and may borrow money, may secure any of its obligations by mortgage of or creation of a security interest in or other encumbrances or assignment of all or any of its property, franchises, or income, and may issue guarantees for any legal purpose. The cooperative may form special purpose business entities to secure assets of the cooperative.

Subd. 7. **Advances to patrons.** A cooperative may make advances to its members or patrons on products delivered by the members or patrons to the cooperative.

Subd. 8. **Deposits.** A cooperative may accept donations or deposits of money or real personal property from other cooperatives or associations from which it is constituted.

Subd. 9. **Lending, borrowing, investing.** A cooperative may loan or borrow money to or from individual members, cooperatives, or associations from which it is constituted with security that it considers sufficient. A cooperative may invest and reinvest its funds.

Subd. 10. **Pensions and benefits.** A cooperative may pay pensions, retirement allowances, and compensation for past services to and for the benefit of; and establish, maintain, continue, and carry out, wholly or partially at the expense of the cooperative, employee or incentive benefit plans, trust, and provisions to or for the benefit of any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents; and in the case of a related organization that is a cooperative, members who provide services to the cooperative, and any of their families, dependents, and beneficiaries. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Subd. 11. **Insurance.** A cooperative may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, directors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the cooperative owned by the member.

Subd. 12. **Ownership interests in other entities.** (a) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity or organize business entities whether organized under the laws of this state or another state or the United States and assume all rights, interests, privileges, responsibilities, and obligations arising out of the ownership interests, including a business entity organized:

(1) as a federation of associations;

(2) for the purpose of forming a district, state, or national marketing sales or service agency; or

(3) for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

(b) A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in nonstock capital, and evidences of indebtedness of any domestic business entity or foreign business entity.

Subd. 13. **Fiduciary powers.** A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations, or business entities from which it is constituted.

History: *2003 c 105 art 1 s 19*

308B.305 EMERGENCY POWERS.

(a) In anticipation of or during an emergency defined in paragraph (d), the board may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency as contemplated in paragraph (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board need be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication or radio; and

(2) one or more officers of the cooperative present at a meeting of the board may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Cooperative action taken in good faith during an emergency under this section to further the ordinary business affairs of the cooperative:

(1) binds the cooperative; and

(2) may not be the basis for the imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not an authorized cooperative action.

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

History: *2003 c 105 art 1 s 20*

308B.311 AGRICULTURAL PRODUCT MARKETING CONTRACTS.

Subdivision 1. **Authority.** A cooperative and its patron member or patron may make and execute a marketing contract, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a certain area exclusively to or through the cooperative or facility established by the cooperative.

Subd. 2. **Title to products.** If a sale is contracted to the cooperative, the sale shall transfer title to the product absolutely, except for a recorded lien or security interest against the agricultural products of the patron member or patron in the state central notification system and liens granted against farm products under federal law, to the cooperative on delivery of the product or at another specified time if expressly provided in the contract. The contract may allow the cooperative to sell or resell the product of its patron member or patron with or without taking title to the product, and pay the resale price to the patron member or patron, after deducting all necessary selling, overhead, and other costs and expenses, including other proper reserves and interest.

Subd. 3. **Term of contract.** A single term of a marketing contract shall not exceed ten years, but a marketing contract may be made self-renewing for periods not exceeding five years each, subject to the right of either party to terminate by giving written notice of the termination during a period of the current term as specified in the contract.

Subd. 4. **Damages for breach of contract.** The bylaws or the marketing contract, or both, may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the marketing contract regarding the sale or delivery or withholding of a product and may provide that the member or patron shall pay the costs, premiums for bonds, expenses, and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in the courts of this state. The provisions shall be enforced as liquidated damages and are not considered a penalty.

Subd. 5. **Injunction against breach of contract.** If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

Subd. 6. **Penalties for contract interference and false reports.** Any person who knowingly induces or attempts to induce any patron member or patron of a cooperative organized under this chapter to breach a marketing contract with the cooperative, or who maliciously and knowingly spreads false reports about the cooperative's finances or management, is guilty of a misdemeanor and subject to a fine of not less than $100, and not more than $1,000, for each such offense.

Subd. 7. **Civil damages for contract interference and false reports.** In addition to the penalty provided in subdivision 6, the person may be liable to the cooperative for civil damages for any violation of subdivision 6. Each violation shall constitute a separate offense.

History: *2003 c 105 art 1 s 21; 2004 c 228 art 1 s 52*

BOARD OF DIRECTORS

308B.401 BOARD GOVERNS COOPERATIVE.

A cooperative shall be governed by its board, which shall take all action for and on behalf of the cooperative, except those actions reserved or granted to members. Board action shall be by the affirmative vote of a majority of the directors voting at a duly called meeting unless a greater majority is required by the articles or bylaws. A director individually or collectively with other directors does not have authority to act for or on behalf of the cooperative unless authorized by the board. A director may advocate interests of members or member groups to the board, but the fiduciary duty of each director is to represent the best interests of the cooperative and all members collectively.

History: *2003 c 105 art 1 s 22*

308B.405 NUMBER OF DIRECTORS.

The board shall not have less than five directors, except that a cooperative with 50 or fewer members may have three or more directors as prescribed in the articles or bylaws.

History: *2003 c 105 art 1 s 23*

308B.411 ELECTION OF DIRECTORS.

Subdivision 1. **First board.** The organizers shall elect and obtain the acknowledgment of the first board to serve until directors are elected by members. Until election by members, the first board shall appoint directors to fill any vacancies.

Subd. 2. **Generally.** (a) Directors shall be elected for the term, at the time, and in the manner provided in this section and the bylaws.

(b) A majority of the directors shall be members and a majority of the directors shall be elected exclusively by the members holding patron membership interests unless otherwise provided in the articles or bylaws.

(c) The voting authority of the directors may be allocated according to allocation units or equity classifications of the cooperative provided that at least one-half of the voting power on general matters of the cooperative shall be allocated to the directors elected by members holding patron membership interests, or in the alternative, the directors elected by the members holding patron membership interests shall have an equal or shall not have a minority voting power on general matters of the cooperative.

(d) A director holds office for the term the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

(e) The expiration of a director's term with or without election of a qualified successor does not make the prior or subsequent acts of the director or the board void or voidable.

(f) Subject to any limitation in the articles or bylaws, the board may set the compensation of directors.

(g) Directors may be divided into or designated and elected by class or other distinction as provided in the articles or bylaws.

(h) A director may resign by giving written notice to the chair of the board or the board. The resignation is effective without acceptance when the notice is given to the chair of the board or the board unless a later effective time is specified in the notice.

Subd. 3. **Election at regular meeting.** Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings or special meetings to replace a vacancy, all directors shall be elected at the regular members' meeting. There shall be no cumulative voting for directors except as provided in this chapter and the articles or bylaws.

Subd. 4. **District or local unit election of directors.** For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting, or the annual regular members' meeting.

Subd. 5. **Vote by mail or alternative ballot.** The following shall apply to voting by mail or alternative ballot voting:

(1) a member may not vote for a director other than by being present at a meeting or by mail ballot or alternative ballot authorized by the board;

(2) the ballot shall be in a form prescribed by the board;

(3) the member shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name, or shall vote designating the candidate chosen by alternative ballot in the manner prescribed by the board; and

(4) if the ballot of the member is received by the cooperative on or before the date of the regular members' meeting or as otherwise prescribed for alternative ballots, the ballot shall be accepted and counted as the vote of the absent member.

Subd. 6. **Business entity members may nominate persons for director.** If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one or more natural persons to be eligible for election as a director.

Subd. 7. **Term.** A director holds office for the term the director was elected and until a successor is elected and has qualified, or the earlier death, resignation, removal, or disqualification of the director.

Subd. 8. **Acts not void or voidable.** The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the director void or voidable.

Subd. 9. **Compensation.** Subject to any limitation in the articles or bylaws, the board may fix the compensation of the directors.

Subd. 10. **Classification.** Directors may be divided into classes as provided in the articles or bylaws.

History: *2003 c 105 art 1 s 24*

308B.415 FILLING VACANCIES.

Subdivision 1. **Patron directors.** If a patron member director's position becomes vacant or a new director position is created for a director that was or is to be elected by patron members, the board, in consultation with the directors elected by patron members, shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting. If there are no directors elected by patron members on the board at the time of the vacancy, a special patron members' meeting shall be called to fill the patron member director vacancy.

Subd. 2. **Nonpatron directors.** If the vacating director was not elected by the patron members or a new director position is created, unless otherwise provided in the articles or bylaws, the board shall appoint a director to fill the vacant position by majority vote of the remaining or then serving directors even though less than a quorum. At the next regular or special members' meeting, the members or patron members shall elect a director to fill the unexpired term of the vacant director's position.

History: *2003 c 105 art 1 s 25*

308B.421 REMOVAL OF DIRECTORS.

Subdivision 1. **Modification.** The provisions of this section apply unless modified by the articles or the bylaws.

Subd. 2. **Removal of directors.** A director may be removed at any time, with or without cause, if:

(1) the director was named by the board to fill a vacancy;

(2) the members have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

(3) a majority of the remaining directors present affirmatively vote to remove the director.

Subd. 3. **Removal by members.** Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of membership interests entitled to vote at an election of directors; provided that if a director has been elected solely by the patron members or the holders of a class or series of membership interests as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members for a director elected by the patron members or of all membership interests of that class or series entitled to vote at an election of that director.

Subd. 4. **Election of replacements.** New directors may be elected at a meeting at which directors are removed.

History: *2003 c 105 art 1 s 26*

308B.425 BOARD OF DIRECTORS' MEETINGS.

Subdivision 1. **Time and place.** Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

Subd. 2. **Electronic communications.** (a) A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subdivision 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(b) A director may participate in a board meeting not described in paragraph (a) by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Subd. 3. **Calling meetings and notice.** Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings, at least three days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless this chapter, the articles, or the bylaws require it.

Subd. 4. **Previously scheduled meetings.** If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 5. **Waiver of notice.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

Subd. 6. **Absent directors.** If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the

existence of a quorum, but consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

History: *2003 c 105 art 1 s 27*

308B.431 QUORUM.

A majority, or a larger or smaller portion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion of number otherwise required for a quorum.

History: *2003 c 105 art 1 s 28*

308B.435 ACT OF BOARD OF DIRECTORS.

The board shall take action by the affirmative vote of the greater of (1) a majority of directors present at a duly held meeting at the time the action is taken, or (2) a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles, or bylaws require the affirmative vote of a larger proportion or number. If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, the articles or bylaws control.

History: *2003 c 105 art 1 s 29*

308B.441 ACTION WITHOUT A MEETING.

Subdivision 1. **Method.** An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles or bylaws so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

Subd. 2. **Effective time.** The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

History: *2003 c 105 art 1 s 30*

308B.445 AUDIT COMMITTEE.

The board shall establish an audit committee to review the financial information and accounting report of the cooperative. The cooperative shall have the financial information audited for presentation to the members unless the bylaws allow financial statements that are not audited and the financial statements clearly state that they are not audited and the difference between the financial statements and audited financial statements that are prepared according to generally accepted accounting procedures. The directors shall elect

members to the audit committee. The audit committee shall ensure an independent review of the cooperative's finances and audit.

History: *2003 c 105 art 1 s 31*

308B.451 COMMITTEES.

Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the cooperative only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the cooperative and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

Subd. 2. **Membership.** Committee members must be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.

Subd. 3. **Procedure.** The procedures for meetings of the board apply to committees and members of committees to the same extent as those sections apply to the board and individual directors.

Subd. 4. **Minutes.** Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.

Subd. 5. **Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 308B.455.

Subd. 6. **Committee members considered directors.** Committee members are considered to be directors for purposes of sections 308B.455, 308B.461, and 308B.471.

History: *2003 c 105 art 1 s 32*

308B.455 STANDARD OF CONDUCT.

Subdivision 1. **Standard and liability.** A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the cooperative.

Subd. 2. **Reliance.** (a) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) one or more officers or employees of the cooperative who the director reasonably believes to be liable and competent in the matters presented;

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

(3) a committee of the board upon which the director does not serve, duly established by the board, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Subd. 3. **Presumption of assent and dissent.** A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

(1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the director is not considered to be present at the meeting for any purpose of this chapter;

(2) votes against the action at the meeting; or

(3) is prohibited by a conflict of interest from voting on the action.

Subd. 4. **Considerations.** In discharging the duties of the position of director, a director may, in considering the best interests of the cooperative, consider the interests of the cooperative's employees, customers, suppliers, and creditors, the economy of the state, and long-term as well as short-term interests of the cooperative and its patron members, including the possibility that these interests may be best served by the continued independence of the cooperative.

History: *2003 c 105 art 1 s 33*

308B.461 DIRECTOR CONFLICTS OF INTEREST.

Subdivision 1. **Conflict and procedure when conflict arises.** (a) A contract or other transaction between a cooperative and one or more of its directors, or between a cooperative and a business entity in or of which one or more of its directors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other business entities are parties or because the director or directors are present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the cooperative at the time it was authorized, approved, or ratified and:

(i) the material facts as to the contract or transaction and as to the director's or directors' interest are disclosed or known to the members; and

(ii) the material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors are not counted in determining the presence of a quorum and must not vote; or

(2) the contract or transaction is a distribution, contract, or transaction that is made available to all members or patron members as part of the cooperative's business.

(b) If a committee is elected or appointed to authorize, ratify, or approve a contract or transaction under this section, the members of the committee must not have a conflict of interest and be charged with representing the best interests of the cooperative.

Subd. 2. **Material financial interest.** For purposes of this section:

(1) a resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or agent of the cooperative, is not void or voidable or considered to be a contract or other transaction between a cooperative and one or more of its directors for purposes of this section even

though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other directors voting upon the resolution are also receiving compensation from the cooperative; and

(2) a director has a material financial interest in each organization in which the director or the spouse; parents; children and spouses of children; brothers and sisters and spouses of brothers and sisters; and the brothers and sisters of the spouse of the director or any combination of them have a material financial interest. For purposes of this section, a contract or other transaction between a cooperative and the spouse; parents; children and spouses of children; brothers and sisters and spouses of brothers and sisters; and the brothers and sisters of the spouse of a director or any combination of them, is considered to be a transaction between the cooperative and the director.

History: *2003 c 105 art 1 s 34*

308B.465 LIMITATION OF DIRECTOR'S LIABILITY.

Subdivision 1. **Articles may limit liability.** A director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles or bylaws except as provided in subdivision 2.

Subd. 2. **Restrictions on liability limitation.** The articles or bylaws may not eliminate or limit the liability of a director:

(1) for a breach of the director's duty of loyalty to the cooperative or its members;

(2) for acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law;

(3) for knowing violations of securities laws or for illegal distributions;

(4) for a transaction from which the director derived an improper personal benefit; or

(5) for an act or omission occurring before the date when the provision in the articles or bylaws eliminating or limiting liability becomes effective.

History: *2003 c 105 art 1 s 35; 2006 c 196 art 1 s 52; art 2 s 9*

INDEMNIFICATION

308B.471 INDEMNIFICATION.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Cooperative" includes a domestic or foreign cooperative that was the predecessor of the cooperative referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(c) "Official capacity" means:

(1) with respect to a director, the position of director in a cooperative;

(2) with respect to a person other than a director, the elective or appointive office or position held by the person, member of a committee of the board, the employment relationship undertaken by an employee

of the cooperative, or the scope of the services provided by members of the cooperative who provide services to the cooperative; and

(3) with respect to a director, chief executive officer, member, or employee of the cooperative who, while a member, director, chief executive officer, or employee of the cooperative, is or was serving at the request of the cooperative or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the cooperative.

(e) "Special legal counsel" means counsel who has not represented the cooperative or a related organization, or a director, manager, member of a committee of the board, or employee whose indemnification is in issue.

Subd. 2. **Indemnification.** (a) Subject to the provisions of subdivision 4, a cooperative shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) acted in good faith;

(3) received no improper personal benefit and the person has not committed an act for which liability cannot be eliminated or limited under section 308B.465, subdivision 2;

(4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the cooperative, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the cooperative. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the cooperative if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the cooperative, to payment or

reimbursement by the cooperative of reasonable expenses, including attorney fees and disbursements incurred by the person in advance of the final disposition of the proceeding:

(1) upon receipt by the cooperative of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied, and a written undertaking by the person to repay all amounts paid or reimbursed by the cooperative, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

(2) after a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by clause (1) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Subd. 4. **Prohibition or limit on indemnification or advances.** The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3, including, without limitation, monetary limits on indemnification or advances of expenses if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances of expenses may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances of expenses.

Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the ability of a cooperative to reimburse expenses, including attorney fees and disbursements incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Subd. 6. **Determination of eligibility.** (a) All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 must be made:

(1) by the board by a majority of a quorum, if the directors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) if a quorum under clause (1) cannot be obtained by a majority of a committee of the board consisting solely of two or more directors not at the time parties to the proceeding duly designated to act in the matter by a majority of the full board, including directors who are parties;

(3) if a determination is not made under clause (1) or (2) by special legal counsel selected either by a majority of the board or a committee by vote under clause (1) or (2) or if the requisite quorum of the full board cannot be obtained and the committee cannot be established by a majority of the full board, including directors who are parties;

(4) if a determination is not made under clauses (1) to (3) by the affirmative vote of the members, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum, and are not considered to be present and entitled to vote on the determination; or

(5) if an adverse determination is made under clauses (1) to (4) or paragraph (b), or if no determination is made under clauses (1) to (4) or paragraph (b) within 60 days after (i) the later to occur of the termination

of a proceeding or a written request for indemnification to the cooperative, or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses under this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, chief executive officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the cooperative, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

Subd. 7. **Insurance.** A cooperative may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the cooperative would have been required to indemnify the person against the liability under the provisions of this section.

Subd. 8. **Disclosure.** A cooperative that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the cooperative shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

Subd. 9. **Indemnification of other persons.** Nothing in this section must be construed to limit the power of the cooperative to indemnify persons other than a director, chief executive officer, member, employee, or member of a committee of the board of the cooperative by contract or otherwise.

History: *2003 c 105 art 1 s 36; 2004 c 228 art 1 s 53*

OFFICERS

308B.475 OFFICERS.

Subdivision 1. **Required officers.** (a) The board shall elect:

(1) a chair; and

(2) one or more vice-chairs.

(b) The board shall elect or appoint:

(1) a records officer; and

(2) a financial officer.

(c) The officers, other than the chief executive officer, shall not have the authority to bind the cooperative except as authorized by the board.

Subd. 2. **Additional officers.** The board may elect additional officers as the articles or bylaws authorize or require.

Subd. 3. **Records officer and financial officer may be combined.** The offices of records officer and financial officer may be combined.

Subd. 4. **Officers that must be members.** The chair and first vice-chair shall be directors and members. The financial officer, records officer, and additional officers need not be directors or members.

Subd. 5. **Chief executive officer.** The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative, and if a chief executive officer is employed, the chief executive officer shall have the authority to implement the functions, duties, and obligations of the cooperative except as restricted by the board. The chief executive officer shall not exercise authority reserved to the board or the members under this chapter, the articles, or the bylaws.

History: *2003 c 105 art 1 s 37*

MEMBERS

308B.501 MEMBERS.

Subdivision 1. **Requirement.** A cooperative shall have one or more members.

Subd. 2. **Grouping of members.** (a) A cooperative may group members and patron members in districts, units, or on another basis if and as authorized in its articles or bylaws. The articles or bylaws may include authorization for the board to determine the groupings.

(b) The board may implement the use of districts or units, including setting the time and place and prescribing the rules of conduct for holding meetings by districts or units to elect delegates to members' meetings.

Subd. 3. **Member violations.** (a) A member who knowingly, intentionally, or repeatedly violates a provision of the articles, bylaws, member control agreement, or marketing contract with the cooperative may be required by the board to surrender the member's voting power or the financial rights of membership interest of any class owned by the member, or both.

(b) The cooperative shall refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of the financial right of the membership interest payable in not more than seven years from the date of surrender or the board may transfer all of any patron member's financial rights to a class of financial rights held by members who are not patron members, or to a certificate of interest, which carries liquidation rights on par with membership interests and is redeemed within seven years after the transfer as provided in the certificate.

(c) Membership interests required to be surrendered may be reissued or be retired and canceled by the board.

Subd. 4. **Inspection of cooperative records by member.** (a) A member is entitled to inspect and copy, at the member's expense, during regular business hours at a reasonable location specified by the cooperative, any of the records described in section 308B.245 if the member meets the requirements of paragraph (b) and gives the cooperative written demand at least five business days before the date on which the member wishes to inspect and copy the records. Notwithstanding the provisions of this subdivision or any provisions of section 308B.245, no member shall have the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person, or any personnel records or employment records of any employee.

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

(1) the member has been a member for at least one year immediately preceding the demand to inspect or copy or is a member holding at least five percent of all of the outstanding equity interests in the cooperative as of the date the demand is made;

(2) the demand is made in good faith and for a proper cooperative business purpose;

(3) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

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

(c) The right of inspection granted by this subdivision shall not be abolished or limited by the articles, bylaws, or any actions of the board or the members.

(d) This subdivision does not affect:

(1) the right of a member to inspect records to the same extent as any other litigant 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) Notwithstanding any other provision in this subdivision, if the records to be inspected or copied are in active use or storage and, therefore, not available at the time otherwise provided for inspection or copying, the cooperative shall notify the member and shall set a date and hour within three business days of the date otherwise set in this subdivision for the inspection or copying.

(f) A member's agent or attorney has the same inspection and copying rights as the member. The right to copy records under this subdivision includes, if reasonable, the right to receive copies made by photographic copying, xerographic copying, or other means. 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.

(g) If a cooperative refuses to allow a member, or the member's agent or attorney, who complies with this subdivision to inspect or copy any records that the member is entitled to inspect or copy within a prescribed time limit or, if none, within a reasonable time, the district court of the county in this state where the cooperative's principal office is located or, if it has no principal office in this state, the district court of the county in which its registered office is located may, on application of the member, summarily order the inspection or copying of the records demanded at the cooperative's expense.

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

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

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

(3) if inspection or copying is ordered under this paragraph, the court may order the cooperative to pay the member's inspection and copying expenses;

(4) the court may grant either party any other remedy provided by law; and

(5) the court may impose reasonable restrictions on the use or distribution of the records by the demanding member.

History: *2003 c 105 art 1 s 38*

308B.505 MEMBER NOT LIABLE FOR COOPERATIVE DEBTS.

A member is not, merely on the account of that status, personally liable for the acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative.

History: *2003 c 105 art 1 s 39*

308B.511 REGULAR MEMBERS' MEETINGS.

Subdivision 1. **Annual meeting.** Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

Subd. 2. **Location.** The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board.

Subd. 3. **Business and fiscal reports.** The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

Subd. 4. **Election of directors.** All directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

Subd. 5. **Notice.** (a) The cooperative shall give notice of regular members' meetings by mailing the regular members' meeting notice to each member at the members' last known post office address or by other notification approved by the board and agreed to by the members. The regular members' meeting notice shall be published or otherwise given by approved method at least two weeks before the date of the meeting or mailed at least 15 days before the date of the meeting.

(b) The notice shall contain a summary of any bylaw amendments adopted by the board since the last annual meeting.

Subd. 6. **Waiver and objections.** A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

History: *2003 c 105 art 1 s 40*

308B.515 SPECIAL MEMBERS' MEETINGS.

Subdivision 1. **Calling meeting.** Special members' meetings of the members may be called by:

(1) a majority vote of the board; or

(2) the written petition of at least 20 percent of the patron members and, if authorized, 20 percent of the nonpatron members, 20 percent of all members, or members representing 20 percent of the membership interests collectively are submitted to the chair.

Subd. 2. **Notice.** The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address or an alternative method approved by the board and the member individually or the members generally. For a member that is an entity, notice mailed or delivered by an alternative method shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten days from and after the date of the presentation of a members' petition, and the special members' meeting shall be held within 30 days after the date of the presentation of the members' petition.

Subd. 3. **Waiver and objections.** A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

History: *2003 c 105 art 1 s 41*

308B.521 CERTIFICATION OF MEETING NOTICE.

Subdivision 1. **Certificate of mailing.** After mailing special or regular members' meeting notices or otherwise delivering the notices, the cooperative shall execute a certificate containing the date of mailing or delivery of the notice and a statement that the special or regular members' meeting notices were mailed or delivered as prescribed by law.

Subd. 2. **Matter of record.** The certificate shall be made a part of the record of the meeting.

Subd. 3. **Failure to receive meeting notice.** Failure of a member to receive a special or regular members' meeting notice does not invalidate an action taken by the members at a members' meeting.

History: *2003 c 105 art 1 s 42*

308B.525 QUORUM.

Subdivision 1. **Quorum.** The quorum for a members' meeting to transact business shall be:

(1) ten percent of the total number of members for a cooperative with 500 or fewer members; or

(2) 50 members for cooperatives with more than 500 members.

Subd. 2. **Quorum for voting by mail.** In determining a quorum at a meeting, on a question submitted to a vote by mail or an alternative method, members present in person or represented by mail vote or the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute

a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chair or the records officer of the cooperative and shall be reported in the minutes of the meeting.

Subd. 3. **Meeting action invalid without quorum.** An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

History: *2003 c 105 art 1 s 43*

308B.531 REMOTE COMMUNICATIONS FOR MEMBER MEETINGS.

Subdivision 1. **Construction and application.** This section shall be construed and applied to:

(1) facilitate remote communication consistent with other applicable law; and

(2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

Subd. 2. **Member meetings held solely by means of remote communication.** To the extent authorized in the articles, a member control agreement, or the bylaws and determined by the board, a regular or special meeting of members may be held solely by any combination of means of remote communication through which the members may participate in the meeting, if notice of the meeting is given to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of this chapter for the meeting are met.

Subd. 3. **Participation in member meetings by means of remote communication.** To the extent authorized in the articles or the bylaws and determined by the board, a member not physically present in person or by proxy at a regular or special meeting of members may, by means of remote communication, participate in a meeting of members held at a designated place. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of this chapter for the meeting are met.

Subd. 4. **Requirements for meetings held solely by means of remote communication and for participation by means of remote communication.** In any meeting of members held solely by means of remote communication under subdivision 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision 3:

(1) the cooperative shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and

(2) the cooperative shall implement reasonable measures to provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(i) read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(ii) if allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(iii) if otherwise entitled, vote on matters submitted to the members.

Subd. 5. **Notice to members.** (a) Any notice to members given by the cooperative under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given, is effective when given. The notice is deemed given:

(1) if by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;

(2) if by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;

(3) if by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:

(i) the posting; and

(ii) the giving of the separate notice; and

(4) if by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.

(b) An affidavit of the secretary, other authorized officer, or authorized agent of the cooperative that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(c) Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The cooperative is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the cooperative of revocation of the consent.

Subd. 6. **Revocation.** Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a director or the chief executive officer of the cooperative at or before the meeting or before an action without a meeting is effective.

Subd. 7. **Waiver.** Waiver of notice by a member of a meeting by means of authenticated electronic communication may be given in the manner provided for the regular or special meeting. Participation in a meeting by means of remote communication described in subdivisions 2 and 3 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

History: *2003 c 105 art 1 s 44*

308B.535 ACT OF MEMBERS.

Subdivision 1. **Action by affirmative vote of members.** (a) The members shall take action by the affirmative vote of the members of the greater of:

(1) a majority of the voting power of the membership interests present and entitled to vote on that item of business; or

(2) a majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles or bylaws, or a member control agreement require a larger proportion.

(b) If the articles, bylaws, or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles, bylaws, or the member control agreement shall have control over the provisions of this chapter.

Subd. 2. **Class or series of membership interests.** In any case where a class or series of membership interests is entitled by this chapter, the articles, bylaws, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series; or of the total outstanding membership interests of that class or series, as the proportion required under subdivision 1, unless the articles, bylaws, or the member control agreement require a larger proportion. Unless otherwise stated in the articles, bylaws, or a member control agreement, in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 308B.525.

Subd. 3. **Greater quorum or voting requirements.** (a) The articles or bylaws adopted by the members may provide for a greater quorum or voting requirement for members or voting groups than is provided for by this chapter.

(b) An amendment to the articles or bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

History: *2003 c 105 art 1 s 45*

308B.541 ACTION WITHOUT A MEETING.

Subdivision 1. **Method.** An action required or permitted to be taken at a meeting of the members may be taken by written action signed, or consented to by authenticated electronic communication, by all of the members. If the articles, bylaws, or a member control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

Subd. 2. **Effective time.** The written action is effective when signed or consented to by authenticated electronic communication by the required members, unless a different effective time is provided in the written action.

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

History: *2003 c 105 art 1 s 46*

308B.545 MEMBER VOTING RIGHTS.

Subdivision 1. **Member has one vote; or patronage voting.** A patron member of a cooperative is only entitled to one vote on an issue to be voted upon by members holding patron membership interests, except that if authorized in the articles or bylaws a patron member may be entitled to additional votes based on patronage criteria in section 308B.551. On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue and the collective vote of the patron members shall be a majority of the vote cast unless otherwise provided in the bylaws. The bylaws may not reduce the collective patron member vote to less than 15 percent of the total vote on matters of the cooperative. A nonpatron member has the voting rights in accordance to his nonpatron membership interests as granted in the bylaws, subject to the provisions of this chapter.

Subd. 2. **Right to vote at meeting.** A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

Subd. 3. **Voting method.** A member's vote at a members' meeting shall be in person or by mail if a mail vote is authorized by the board or by alternative method if authorized by the board and not by proxy, except as provided in subdivision 4.

Subd. 4. **Members represented by delegates.** (a) The provisions of this subdivision apply to members represented by delegates.

(b) A cooperative may provide in the articles or bylaws that units or districts of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit or district. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws.

(c) If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate.

(d) Patron members may be represented by the proxy of other patron members.

(e) Nonpatron members may be represented by proxy if authorized in the bylaws.

Subd. 5. **Absentee ballots.** (a) The provisions of this subdivision apply to absentee ballots.

(b) A member who is or will be absent from a members' meeting may vote by mail or by an approved alternative method on the ballot prescribed in this subdivision on any motion, resolution, or amendment that the board submits for vote by mail or alternative method to the members.

(c) The ballot shall be in the form prescribed by the board and contain:

(1) the exact text of the proposed motion, resolution, or amendment to be acted on at the meeting; and

(2) the text of the motion, resolution, or amendment for which the member may indicate an affirmative or negative vote.

(d) The member shall express a choice by marking an appropriate choice on the ballot and mail, deliver, or otherwise submit the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name or by an alternative method approved by the board.

(e) A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

History: *2003 c 105 art 1 s 47*

308B.551 PATRON MEMBER VOTING BASED ON PATRONAGE.

Subdivision 1. **Patron members may have additional vote.** A cooperative may authorize by the articles or the bylaws for patron members to have an additional vote for:

(1) a stipulated amount of business transacted between the patron member and cooperative;

(2) a stipulated number of patron members in a member cooperative;

(3) a certain stipulated amount of equity allocated to or held by a patron member cooperative in the cooperative's central organization; or

(4) a combination of methods in clauses (1) to (3).

Subd. 2. **Delegates elected by patrons may have additional vote.** A cooperative that is organized into units or districts of patron members may, by the articles or the bylaws, authorize the delegates elected by its patron members or have an additional vote for:

(1) a stipulated amount of business transacted between the patron members in the units or districts and the cooperative;

(2) a certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative; or

(3) a combination of methods in clauses (1) and (2).

History: *2003 c 105 art 1 s 48*

308B.555 VOTING RIGHTS.

Subdivision 1. **Determination.** The board may fix a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

Subd. 2. **Voting power.** Unless otherwise provided in the articles, bylaws, or a member control agreement, members have voting power as provided in section 308B.545.

Subd. 3. **Nonmembers.** The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote on patron membership interests under this section.

Subd. 4. **Jointly owned membership interests.** Membership interests owned by two or more members may be voted by any one of them unless the cooperative receives written notice from any one of them denying the authority of that person to vote those membership interests.

Subd. 5. **Manner of voting and presumption.** Except as provided in subdivision 4, an owner of a nonpatron membership interest or a patron membership interest with more than one vote that is entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes

without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

History: *2003 c 105 art 1 s 49*

308B.561 VOTING BY ORGANIZATIONS AND LEGAL REPRESENTATIVES.

Subdivision 1. **Membership interests held by another organization.** Membership interests of a cooperative reflected in the required records as being owned by another domestic or foreign business entity may be voted by the chair, chief executive officer, or another legal representative of that organization.

Subd. 2. **Membership interests held by subsidiary.** Except as provided in subdivision 3, membership interests of a cooperative reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

Subd. 3. **Membership interests controlled in a fiduciary capacity.** Membership interests of a cooperative in the name of, or under the control of, the cooperative or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the cooperative or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the membership interests.

Subd. 4. **Voting by certain representatives.** Subject to section 308B.545, membership interests under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

Subd. 5. **Voting by trustees in bankruptcy or receiver.** Membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed. The right to vote of trustees in bankruptcy and receivers is subject to section 308B.545.

Subd. 6. **Membership interests held by other organizations.** Membership interests reflected in the required records in the name of a business entity not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that business entity.

Subd. 7. **Grant of security interest.** The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote.

History: *2003 c 105 art 1 s 50*

308B.565 PROXIES.

Subdivision 1. **Authorization.** (a) A patron member may only grant a proxy to vote to another patron member.

(b) A member may cast or authorize the casting of a vote by:

(1) filing a written appointment of a proxy with the board at or before the meeting at which the appointment is to be effective; or

(2) telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the member, of an appointment of a proxy with the cooperative or the cooperative's duly authorized agent at or before the meeting at which the appointment is to be effective.

(c) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment was authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination. A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication under section 308B.531, to the extent the member appointing the proxy would have been entitled to participate by remote communication if the member did not appoint the proxy.

(d) A copy, facsimile, telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

(e) An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or consented to by authenticated electronic communication, by any one of them, unless the cooperative receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

Subd. 2. **Duration.** The appointment of a proxy is valid for 11 months unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests or the cooperative.

Subd. 3. **Termination.** An appointment may be terminated at will unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with a manager of the cooperative or by filing a new written appointment of a proxy with a manager of the cooperative. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the cooperative.

Subd. 4. **Revocation by death or incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the cooperative before the proxy exercises the authority under that appointment.

Subd. 5. **Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

(1) any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and

(2) if no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determines. If the proxies are equally divided, the membership interests must not be voted.

Subd. 6. **Vote of proxy accepted and liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the cooperative may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy

is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

Subd. 7. **Limited authority.** If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

History: *2003 c 105 art 1 s 51*

308B.571 SALE OF PROPERTY AND ASSETS.

Subdivision 1. **Member approval not required.** A cooperative may, by affirmative vote of a majority of the board present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient and without member approval:

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets not in the usual and regular course of its business if:

(i) the cooperative's accountant has given an opinion that the cooperative cannot continue as an ongoing business and the cooperative is under financial duress;

(ii) the cooperative has given notice to the members of the impending or potential disposition prior to the disposition; and

(iii) the board has determined that failure to proceed with the disposition would be adverse to the interests of the members and the cooperative;

(3) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;

(4) transfer any or all of its property to a business entity all the ownership interests of which are owned by the cooperative; or

(5) for purposes of debt financing, transfer any or all of its property to a special purpose entity owned or controlled by the cooperative for an asset securitization.

Subd. 2. **Member approval required.** Except as provided in subdivision 1, a cooperative, by affirmative vote of a majority of the board present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.

Subd. 3. **Confirmatory documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current chair of the board or authorized agents.

Subd. 4. **Liability of transferee.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by law.

History: *2003 c 105 art 1 s 52*

308B.575 VOTE OF OWNERSHIP INTERESTS HELD BY COOPERATIVE.

A cooperative that holds ownership interests of another business entity may, by direction of the cooperative's board, elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative's vote at the business entity's meeting.

History: *2003 c 105 art 1 s 53*

MEMBERSHIP INTERESTS

308B.601 MEMBERSHIP INTERESTS.

Subdivision 1. **Amounts and divisions of membership interests.** The authorized amount and divisions of patron membership interests and, if authorized, nonpatron membership interests may be increased, decreased, established, or altered, in accordance with the restrictions in this chapter by amending the articles or bylaws at a regular members' meeting or at a special members' meeting called for the purpose of the amendment.

Subd. 2. **Issuance of membership interests.** Authorized membership interests may be issued on terms and conditions prescribed in the articles, bylaws, or if authorized in the articles or bylaws as determined by the board. The cooperative shall disclose to any person or entity acquiring membership interests to be issued by the cooperative, the organization, capital structure, and known business prospects and risks of the cooperative, the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative shall notify all members of the membership interests being issued by the cooperative. A membership interest may not be issued until the subscription price of the membership interest has been paid for in money or property with the value of the property to be contributed approved by the board.

Subd. 3. **Patron membership interests.** The patron membership interests collectively shall have not less than 60 percent of the cooperative's financial rights to profit allocations and distributions. If authorized in the original articles as filed, or articles or bylaws adopted by an affirmative vote of the patron members, or the articles or bylaws are amended by the affirmative vote of patron members, then the cooperative's financial rights to profit allocations and distributions to patron members collectively may be not less than 15 percent.

Subd. 4. **Transferring or selling membership interests.** After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred with the approval of the board. The board may adopt resolutions prescribing procedures to prospectively approve transfers.

Subd. 5. **Nonpatron membership interests.** If authorized by the articles, the cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed

in the articles, bylaws, or by separate disclosure to the members. Each member acquiring nonpatron membership interests shall sign a member control agreement or agree to the conditions of the bylaws, either of which shall describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocations of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the articles or bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles and bylaws, subject to the provisions of this chapter. If not otherwise provided in the articles or bylaws, distributions shall be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests to the extent the contributions have been accepted by the cooperative.

Subd. 6. **Cooperative first right to purchase membership interests.** The articles or bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of membership interests offered for sale. The first privilege to purchase membership interests may be satisfied by notice to other members that the membership interests are for sale and a procedure by which members may proceed to attempt to purchase and acquire the membership interests. A membership interest acquired by the cooperative may be held to be reissued or may be retired and canceled.

Subd. 7. **Payment for nonpatron membership interests.** Subject to the provisions in the articles and bylaws, a member may dissent from and obtain payment for the fair value of the member's nonpatron membership interests in the cooperative if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences of the nonpatron membership interests of the dissenting member. The dissenting member shall file a notice of intent to demand fair value of the membership interest with the records officer of the cooperative within 30 days after the amendment of the bylaws and notice of the amendment to members, otherwise the right of the dissenting member to demand payment of fair value for the membership interest is waived. If a proposed amendment of the articles or bylaws must be approved by the members, a member who is entitled to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of the membership interest with the records officer of the cooperative before the vote on the proposed action and shall not vote in favor of the proposed action, otherwise the right to demand fair value for the membership interest by the dissenting member is waived. After receipt of the dissenting member's demand notice and approval of the amendment, the cooperative has 60 days to rescind the amendment or otherwise the cooperative shall remit the fair value for the member's interest to the dissenting member by 180 days after receipt of the notice. Upon receipt of the fair value for the membership interest, the member has no further member rights in the cooperative.

History: *2003 c 105 art 1 s 54*

308B.605 ASSIGNMENT OF FINANCIAL RIGHTS.

Subdivision 1. **Assignment of financial rights permitted.** Except as provided in subdivision 3, a member's financial rights are transferable in whole or in part.

Subd. 2. **Effect of assignment of financial rights.** An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not

dissolve the cooperative and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the cooperative, or to cause dissolution. The assignment shall not allow the assignee to control the member's exercise of governance or voting rights.

Subd. 3. **Restrictions of assignment of financial rights.** (a) A restriction on the assignment of financial rights may be imposed in the articles, in the bylaws, in a member control agreement, by a resolution adopted by the members, by an agreement among or other written action by the members, or by an agreement among or other written action by the members and the cooperative. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

(b) Subject to paragraph (c), a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

(c) With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the cooperative under section 308B.611. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.

(d) Notwithstanding any provision of law, articles, bylaws, member control agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with chapter 336, without the consent or approval of the member whose financial rights are subject to the security interest.

History: *2003 c 105 art 1 s 55*

308B.611 NATURE OF A MEMBERSHIP INTEREST AND STATEMENT OF INTEREST OWNED.

Subdivision 1. **Generally.** A membership interest is personal property. A member has no interest in specific cooperative property. All property of the cooperative is property of the cooperative itself.

Subd. 2. **Statement of membership interest.** At the request of any member, the cooperative shall state in writing the particular membership interest owned by that member as of the date the cooperative makes the statement. The statement must describe the member's rights to vote, if any, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under section 308B.605, subdivision 3, or voting rights under section 308B.555 then in effect, as well as any assignment of the member's rights then in effect other than a security interest.

Subd. 3. **Terms of membership interests.** All the membership interests of a cooperative must:

(1) be of one class, without series, unless the articles or bylaws establish or authorize the board to establish more than one class or series within classes;

(2) be ordinary patron membership interests and if authorized nonpatron membership interest subject to this chapter entitled to vote as provided in section 308B.555, and have equal rights and preferences in all matters not otherwise provided for by the board and to the extent that the articles or bylaws have fixed the relative rights and preferences of different classes and series; and

(3) share profits and losses and are entitled to distributions as provided in sections 308B.721 and 308B.725.

Subd. 4. **Rights of judgment creditor.** On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 308B.605. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

Subd. 5. **Procedure for fixing terms.** (a) Subject to any restrictions in the articles or bylaws, the power granted in this subdivision may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles, bylaws, or by resolution of the board:

(1) may be made dependent upon facts ascertainable outside the articles or bylaws or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or bylaws or in the resolution or resolutions establishing the class or series; and

(2) may include by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the cooperative in connection with the establishment of the class or series if the cooperative retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions will be included by reference.

(b) A statement setting forth the name of the cooperative and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be given to the members before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles or bylaws. Where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles or bylaws before the acceptance of the contributions with respect to the membership interests, the statement may be filed any time within one year after the acceptance of the contributions. The resolution is effective three days after delivery to the members is deemed effective by the board, or, if the statement is not required to be given to the members before the acceptance of contributions, on the date of its adoption by the directors.

Subd. 6. **Specific terms.** Without limiting the authority granted in this section, a cooperative may have membership interests of a class or series:

(1) subject to the right of the cooperative to redeem any of those membership interests at the price fixed for their redemption by the articles or bylaws or by the board;

(2) entitling the members to cumulative, partially cumulative, or noncumulative distributions;

(3) having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

(4) convertible into membership interests of any other class or any series of the same or another class; or

(5) having full, partial, or no voting rights, except as provided in section 308B.555.

Subd. 7. **Grant of a security interest.** For the purpose of any law relating to security interests, membership interests, governance or voting rights, and financial rights are each to be characterized as provided in section 336.8-103, paragraph (c).

Subd. 8. **Powers of estate of a deceased or incompetent member.** (a) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a business entity, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

(b) If an event referred to in paragraph (a) causes the termination of a member's membership interest and the termination does not result in dissolution, then subject to the articles and bylaws:

(1) as provided in section 308B.605, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

(2) the rights to be exercised by the legal representative of the terminated member will be limited accordingly.

Subd. 9. **Liability of subscribers and members with respect to membership interests.** A subscriber for membership interests or a member of a cooperative is under no obligation to the cooperative or its creditors with respect to the membership interests subscribed for or owned, except to pay to the cooperative the full consideration for which the membership interests are issued or to be issued.

History: *2003 c 105 art 1 s 56*

308B.615 CERTIFICATED MEMBERSHIP INTERESTS.

Subdivision 1. **Certificated; uncertificated.** The membership interests of a cooperative shall be either certificated or uncertificated. Each holder of certificated membership interests issued is entitled to a certificate of membership interest.

Subd. 2. **Signature required.** Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by the chair or records officer of the cooperative.

Subd. 3. **Signature valid.** If a person signs or has a facsimile signature placed upon a certificate while the chair, an officer, transfer agent, or records officer of a cooperative, the certificate may be issued by the cooperative, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

Subd. 4. **Form of certificate.** A certificate representing membership interests of a cooperative shall contain on its face:

(1) the name of the cooperative;

(2) a statement that the cooperative is organized under the laws of this state and this chapter;

(3) the name of the person to whom the certificate is issued;

(4) the number and class of membership interests, and the designation of the series, if any, that the certificate represents;

(5) a statement that the membership interests in the cooperative are subject to the articles and bylaws of the cooperative; and

(6) any restrictions on transfer, including approval of the board, if applicable, first rights of purchase by the cooperative, and other restrictions on transfer, which may be stated by reference to the back of the certificate or to another document.

Subd. 5. **Limitations set forth.** A certificate representing membership interest issued by a cooperative authorized to issue membership interests of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the cooperative will furnish to any member upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the membership interests of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

Subd. 6. **Prima facie evidence.** A certificate signed as provided in subdivision 2 is prima facie evidence of the ownership of the membership interests referred to in the certificate.

Subd. 7. **Uncertificated membership interests.** Unless uncertificated membership interests are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its membership interests will be uncertificated membership interests. The resolution does not apply to membership interests represented by a certificate until the certificate is surrendered to the cooperative. Within a reasonable time after the issuance or transfer of uncertificated membership interests, the cooperative shall send to the new member the information required by this section to be stated on certificates. This information is not required to be sent to the new holder by a publicly held cooperative that has adopted a system of issuance, recordation, and transfer of its membership interests by electronic or other means not involving an issuance of certificates if the system complies with section 17A of the Securities Exchange Act of 1934. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated membership interests of the same class and series are identical.

History: *2003 c 105 art 1 s 57*

308B.621 LOST CERTIFICATES; REPLACEMENT.

Subdivision 1. **Issuance.** A new membership interest certificate may be issued under section 336.8-405 in place of one that is alleged to have been lost, stolen, or destroyed.

Subd. 2. **Not overissue.** The issuance of a new certificate under this section does not constitute an overissue of the membership interests it represents.

History: *2003 c 105 art 1 s 58*

308B.625 RESTRICTION ON TRANSFER OR REGISTRATION OF MEMBERSHIP INTERESTS.

Subdivision 1. **How imposed.** A restriction on the transfer or registration of transfer of membership interests of a cooperative may be imposed in the articles, in the bylaws, by a resolution adopted by the members, or by an agreement among or other written action by a number of members or holders of other membership interests or among them and the cooperative. A restriction is not binding with respect to

membership interests issued prior to the adoption of the restriction, unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction.

Subd. 2. **Restrictions permitted.** A written restriction on the transfer or registration of transfer of membership interests of a cooperative that is not manifestly unreasonable under the circumstances may be enforced against the holder of the restricted membership interests or a successor or transferee of the holder, including a pledgee or a legal representative, if the restriction is either:

(1) noted conspicuously on the face or back of the certificate;

(2) included in this chapter or the articles or bylaws; or

(3) included in information sent to the holders of uncertificated membership interests.

Unless a restriction is in this chapter, the articles, bylaws, noted conspicuously on the face or back of the certificate, or included in information sent to the holders of uncertificated membership interests, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

History: *2003 c 105 art 1 s 59*

308B.627 MEMBER CONTROL AGREEMENTS.

Subdivision 1. **Authorization.** A written agreement among persons who are then members, including a sole member, or who have signed subscription or contribution agreements, relating to the control of any phase of the business and affairs of the cooperative, its liquidation, dissolution and termination, or the relations among members or persons who have signed subscription or contribution agreements is valid as provided in subdivision 2. Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles or bylaws, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section.

Subd. 2. **Valid execution.** Other than patron member voting control under section 308B.545 and patron member allocation and distribution provisions under sections 308B.721 and 308B.725, a written agreement among persons described in subdivision 1 that relates to the control of or the liquidation, dissolution, and termination of the cooperative; the relations among them; or any phase of the business and affairs of the cooperative, including, without limitation, the management of its business; the declaration and payment of distributions; the sharing of profits and losses; the election of directors; the employment of members by the cooperative; or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the cooperative, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power.

Subd. 3. **Other agreements not affected.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described.

History: *2003 c 105 art 1 s 66*

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

308B.701 AUTHORIZATION, FORM, AND ACCEPTANCE OF CONTRIBUTIONS.

Subdivision 1. **Board of directors may authorize.** Subject to any restrictions in this chapter regarding patron and nonpatron membership interests or in the articles or bylaws, and only when authorized by the board, a cooperative may accept contributions, which may be patron or nonpatron membership contributions as determined by the board under subdivisions 2 and 3, make contribution agreements under section 308B.711, and make contribution allowance agreements under section 308B.715.

Subd. 2. **Permissible forms.** A person may make a contribution to a cooperative:

(1) by paying money or transferring the ownership of an interest in property to the cooperative or rendering services to or for the benefit of the cooperative; or

(2) through a written obligation signed by the person to pay money or transfer ownership of an interest in property to the cooperative or to perform services to or for the benefit of the cooperative.

Subd. 3. **Acceptance of contributions.** No purported contribution is to be treated or considered as a contribution, unless:

(1) the board accepts the contribution on behalf of the cooperative and in that acceptance describes the contribution, including terms of future performance, if any, and states the value being accorded to the contribution; and

(2) the fact of contribution and the contribution's accorded value are both reflected in the required records of the cooperative.

Subd. 4. **Valuation.** The determinations of the board as to the amount or fair value or the fairness to the cooperative of the contribution accepted or to be accepted by the cooperative or the terms of payment or performance, including under a contribution agreement in section 308B.711, and a contribution allowance agreement in section 308B.715, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the cooperative, or overvalue property or services received or to be received by the cooperative as a contribution, are jointly and severally liable to the cooperative for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A director against whom a claim is asserted under this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors who are liable under this subdivision.

History: *2003 c 105 art 1 s 60*

308B.705 RESTATEMENT OF VALUE OF PREVIOUS CONTRIBUTIONS.

Subdivision 1. **Definition.** As used in this section, an "old contribution" is a contribution reflected in the required records of a cooperative before the time the cooperative accepts a new contribution.

Subd. 2. **Restatement required.** Whenever a cooperative accepts a new contribution, the board shall restate, as required by this section, the value of all old contributions.

Subd. 3. **Restatement as to particular series or class to which new contribution pertains.** (a) Unless otherwise provided in the articles or bylaws, this subdivision sets forth the method of restating the value of

old contributions that pertain to the same series or class to which the new contribution pertains. To restate the value:

(1) state the value the cooperative has accorded to the new contribution under section 308B.701, subdivision 3, clause (1);

(2) determine what percentage the value stated under clause (1) will constitute, after the restatement required by this subdivision, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

(3) divide the value stated under clause (1) by the percentage determined under clause (2), yielding the total value, after the restatement required by this subdivision, of all contributions pertaining to the particular series or class;

(4) subtract the value stated under clause (1) from the value determined under clause (3), yielding the total value, after the restatement required by this subdivision, of all the old contributions pertaining to the particular series or class;

(5) subtract the value, as reflected in the required records before the restatement required by this subdivision, of the old contributions from the value determined under clause (4), yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

(6) allocate the value determined under clause (5) proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

(b) The values determined under paragraph (a), clause (5), and allocated and added under paragraph (a), clause (6), may be positive, negative, or zero.

Subd. 4. **Restatement method for other series or class.** Unless otherwise provided in the articles or bylaws, this subdivision sets forth the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains. To restate the value:

(1) determine the percentage by which the restatement under subdivision 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and

(2) as to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under clause (1). The percentage determined under clause (1) may be positive, negative, or zero.

Subd. 5. **New contributions may be aggregated.** If a cooperative accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section, the cooperative may consider all the new contributions a single contribution.

History: *2003 c 105 art 1 s 61*

308B.711 CONTRIBUTION AGREEMENTS.

Subdivision 1. **Signed writing.** A contribution agreement, whether made before or after the formation of the cooperative, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

Subd. 2. **Irrevocable period.** Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the cooperative, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months.

Subd. 3. **Current and deferred payment.** A contribution agreement, whether made before or after the formation of a cooperative, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board, but a call made by the board for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

Subd. 4. **Failure to pay remedies.** (a) Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the cooperative may proceed to collect the amount due in the same manner as a debt due the cooperative. If a would-be contributor does not make a required contribution of property or services, the cooperative shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the cooperative required records, of the contribution that has not been made.

(b) If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the cooperative for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale.

If the membership interests that were subject to the contribution agreement are sold according to this paragraph, the cooperative shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's legal representative the lesser of:

(1) the excess of net proceeds realized by the cooperative over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale, less any penalty stated in the contribution agreement, which may include forfeiture of the partial contribution; and

(2) the amount actually paid by the delinquent would-be contributor.

If the membership interests that were subject to the contribution agreement are not sold according to this paragraph, the cooperative may collect the amount due in the same manner as a debt due the cooperative or cancel the contribution agreement according to paragraph (c).

(c) If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the defaulted contribution agreement have not been sold according to paragraph (b), the cooperative may cancel the contribution agreement, the cooperative may retain any portion of the contribution agreement price actually paid as provided in the contribution agreement, and the cooperative shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives any portion of the contribution agreement price as provided in the contribution agreement.

Subd. 5. **Restrictions on assignment.** Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person

who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

History: *2003 c 105 art 1 s 62*

308B.715 CONTRIBUTION RIGHTS AGREEMENTS.

Subdivision 1. **Agreements permitted.** Subject to any restrictions in the articles or bylaws, a cooperative may enter into contribution rights agreements under the terms, provisions, and conditions fixed by the board.

Subd. 2. **Writing required and terms to be stated.** Any contribution rights agreement must be in writing and the writing must state in full, summarize, or include by reference all the agreement's terms, provisions, and conditions of the rights to make contributions.

Subd. 3. **Restrictions on assignment.** Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution rights agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

History: *2003 c 105 art 1 s 63*

308B.721 ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS.

Subdivision 1. **Allocation of profits and losses.** The bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and any other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than 50 percent of the total profits in any fiscal year, except that if authorized in the original articles as filed or in articles or bylaws that are adopted by an affirmative vote of the patron members or the articles or bylaws are amended by the affirmative vote of the patron members, the allocation of profits to the patron membership interests collectively may not be less than 15 percent of the total profits in any fiscal year.

Subd. 2. **Distribution of cash or other assets.** The bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative, by the patron membership interests collectively, and other membership interests. The distributions to patron membership interests collectively shall not be less than 50 percent of the total distributions in any fiscal year, except that if authorized in the articles or bylaws adopted by the affirmative vote of the patron members, or the articles or bylaws are amended by the affirmative vote of the patron members, the distributions to patron membership interests collectively shall not be less than 15 percent of the total distributions in any year.

History: *2003 c 105 art 1 s 64*

308B.725 ALLOCATIONS AND DISTRIBUTIONS TO PATRON MEMBERS.

Subdivision 1. **Distribution of net income.** A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

Subd. 2. **Reserves.** In addition to a capital reserve, the board may, for patron membership interests:

(1) set aside an amount not to exceed five percent of the annual net income of the cooperative for promoting and encouraging cooperative organization; and

(2) establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

Subd. 3. **Patronage distributions.** Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may establish allocation units, whether the units are functional, divisional, departmental, geographic, or otherwise and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements.

Subd. 4. **Frequency of distribution.** Distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

Subd. 5. **Form of distribution.** A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

Subd. 6. **Eligible nonmember patrons.** The cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

Subd. 7. **Patronage credits for ineligible members.** If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate of interest, the patron may participate in the distribution of income on the same basis as a patron member.

History: *2003 c 105 art 1 s 65*

308B.735 DISTRIBUTION OF UNCLAIMED PROPERTY.

Subdivision 1. **Alternate procedure to disburse property.** A cooperative may, in lieu of paying or delivering to the state the unclaimed property specified in its report of unclaimed property, distribute the unclaimed property to a business entity or organization that is exempt from taxation.

Subd. 2. [Repealed, 2005 c 109 s 8]

Subd. 3. **Owner's right extinguished on disbursement.** The right of an owner to unclaimed property held by a cooperative is extinguished when the property is disbursed by the cooperative to a tax exempt organization if: (1) notice that the payment is available has been mailed to the last known address of the person shown by the records to be entitled to the property; or (2) the address is unknown, notice is published in an official publication of the cooperative.

History: *2003 c 105 art 1 s 67; 2004 c 228 art 1 s 54; 2005 c 109 s 3,4*

MERGER AND CONSOLIDATION

308B.801 MERGER AND CONSOLIDATION.

Subdivision 1. **Authorization.** Unless otherwise prohibited, cooperatives organized under the laws of this state, including cooperatives organized under this chapter or chapter 308A, may merge or consolidate with each other, a Minnesota limited liability company under the provisions of sections 322C.1001 to 322C.1015, or other business entities organized under the laws of another state by complying with the provisions of this section and the law of the state where the surviving or new business entity will exist. A cooperative may not merge or consolidate with a business entity organized under the laws of this state, other than a cooperative organized under chapter 308A, unless the law governing the business entity expressly authorizes merger or consolidation with a cooperative. This subdivision does not authorize a foreign business entity to do any act not authorized by the law governing the foreign business entity.

Subd. 2. **Plan.** To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state:

(1) the names of the constituent domestic cooperatives, the name of any Minnesota limited liability company that is a party to the merger, to the extent authorized under sections 322C.1001 to 322C.1005 and 322C.1015, and any foreign business entities;

(2) the name of the surviving or new domestic cooperative, Minnesota limited liability company as required by section 322C.1002, or other foreign business entity;

(3) the manner and basis of converting membership or ownership interests of the constituent domestic cooperatives, the surviving Minnesota limited liability company as provided in section 322C.1002, or foreign business entities into membership or ownership interests in the surviving or new domestic cooperative, the surviving Minnesota limited liability company as authorized in section 322C.1002, or foreign business entity;

(4) the terms of the merger or consolidation;

(5) the proposed effect of the consolidation or merger on the members and patron members of each constituent domestic cooperative; and

(6) for a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized or, if the surviving organization is a Minnesota limited liability company, the articles of organization.

Subd. 3. **Notice.** The following shall apply to notice:

(1) the board shall mail or otherwise transmit or deliver notice of the merger or consolidation to each member. The notice shall contain the full text of the plan, and the time and place of the meeting at which the plan will be considered; and

(2) a cooperative with more than 200 members may provide the notice in the same manner as a regular members' meeting notice.

Subd. 4. **Adoption of plan.** (a) A plan of merger or consolidation shall be adopted by a domestic cooperative as provided in this subdivision.

(b) A plan of merger or consolidation is adopted if:

(1) a quorum of the members eligible to vote is registered as being present or represented by mail vote or alternative ballot at the meeting; and

(2) the plan is approved by the patron members, or if otherwise provided in the articles or bylaws is approved by a majority of the votes cast in each class of votes cast, or for a domestic cooperative with articles or bylaws requiring more than a majority of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(c) After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this subdivision shall be signed by the chair, vice chair, records officer, or documents officer of each cooperative merging or consolidating.

(d) The articles of merger or consolidation shall be filed in the Office of the Secretary of State.

(e) For a merger, the articles of the surviving domestic cooperative subject to this chapter are deemed amended to the extent provided in the articles of merger.

(f) Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary of state or the appropriate office of another jurisdiction.

(g) The secretary of state shall issue a certificate of organization of the merged or consolidated cooperative.

Subd. 5. **Effect of merger.** For a merger that does not involve a Minnesota limited liability company, the following shall apply to the effect of a merger:

(a) After the effective date, the domestic cooperative, Minnesota limited liability company, if party to the plan, and any foreign business entity that is a party to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new domestic cooperative, the Minnesota limited liability company, if any, and any foreign business entity is the business entity provided for in the plan. Except for the surviving or new domestic cooperative, Minnesota limited liability company, or foreign business entity, the separate existence of each merged or consolidated domestic or foreign business entity that is a party to the plan ceases on the effective date of the merger or consolidation.

(b) The surviving or new domestic cooperative, Minnesota limited liability company, or foreign business entity possesses all of the rights and property of each of the merged or consolidated business entities and is responsible for all their obligations. The title to property of the merged or consolidated domestic cooperative or foreign business entity is vested in the surviving or new domestic cooperative, Minnesota limited liability company, or foreign business entity without reversion or impairment of the title caused by the merger or consolidation.

(c) If a merger involves a Minnesota limited liability company, this subdivision is subject to the provisions of section 322C.1002.

History: *2003 c 105 art 1 s 68; 2014 c 157 art 2 s 19-21,29,31*

308B.805 MERGER OF SUBSIDIARY.

Subdivision 1. **When authorized; contents of plan.** (a) For purposes of this section, "subsidiary" means a domestic cooperative, a Minnesota limited liability company, or a foreign cooperative, and "cooperative" means a domestic cooperative. A Minnesota limited liability company may only participate in a merger

under this section to the extent authorized under section 322C.1002. A parent domestic cooperative or a subsidiary that is a domestic cooperative may complete the merger of a subsidiary as provided in this section, provided however, if either the parent or the subsidiary is a business entity organized under the laws of this state, the merger of the subsidiary is not authorized under this section unless the law governing the business entity expressly authorizes merger with a cooperative. A parent cooperative owning at least 90 percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding ownership interests of each class and series of which is owned by the parent cooperative directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the members of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent cooperative present shall set forth a plan of merger that contains:

(1) the name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving cooperative;

(2) the manner and basis of converting the membership interests of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another cooperative or, in the whole or in part, into money or other property;

(3) if the parent is a constituent cooperative but is not the surviving cooperative in the merger, a provision for the pro rata issuance of membership interests of the surviving cooperative to the holders of membership interests of the parent on surrender of any certificates for shares of the parent; and

(4) if the surviving cooperative is a subsidiary, a statement of any amendments to the articles of the surviving cooperative that will be part of the merger.

(b) If the parent is a constituent cooperative and the surviving cooperative in the merger, it may change its cooperative name, without a vote of its members, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent present. Upon the effective date of the merger, the name of the parent shall be changed.

(c) If the parent is a constituent cooperative but is not the surviving cooperative in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting if the parent is a cooperative, or in accordance with the laws under which it is organized if the parent is a foreign business entity or cooperative.

Subd. 2. **Notice to members of subsidiary.** Notice of the action, including a copy of the plan of merger, shall be given to each member, other than the parent and any subsidiary of each subsidiary that is a constituent cooperative in the merger before, or within ten days after, the effective date of the merger.

Subd. 3. **Articles of merger; contents of articles.** Articles of merger shall be prepared that contain:

(1) the plan of merger;

(2) the number of outstanding membership interests of each series and class of each subsidiary that is a constituent cooperative in the merger, other than the series or classes that, absent this section, would otherwise not be entitled to vote on the merger, and the number of membership interests of each series and

class of the subsidiary or subsidiaries, other than series or classes that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly, or indirectly through related organizations; and

(3) a statement that the plan of merger has been approved by the parent under this section.

Subd. 4. **Articles signed, filed.** The articles of merger shall be signed on behalf of the parent and filed with the secretary of state.

Subd. 5. **Certificate.** The secretary of state shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent cooperative but is not the surviving cooperative in the merger, to the surviving cooperative or its legal representative.

Subd. 6. **Nonexclusivity.** A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under section 308B.801 instead of this section, in which case this section does not apply.

History: *2003 c 105 art 1 s 69; 2014 c 157 art 2 s 22,29,31*

308B.835 ABANDONMENT.

Subdivision 1. **Abandonment by members before plan effective date.** After a plan of merger has been approved by the members entitled to vote on the approval of the plan and before the effective date of the plan, the plan may be abandoned by the same vote that approved the plan.

Subd. 2. **Generally.** (a) A merger may be abandoned:

(1) if the members of each of the constituent domestic cooperatives entitled to vote on the approval of the plan have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the membership interests entitled to vote; if the merger is with a domestic cooperative and a Minnesota limited liability company or foreign business entity, if abandonment is approved in such manner as may be required by section 322C.1003 for the involvement of a Minnesota limited liability company, or for a foreign business entity by the laws of the state under which the foreign business entity is organized; and the members of a constituent domestic cooperative are not entitled to vote on the approval of the plan, the board of the constituent domestic cooperative has approved the abandonment by the affirmative vote of a majority of the directors present;

(2) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(3) under paragraph (b).

(b) A plan of merger may be abandoned before the effective date of the plan by a resolution of the board of any constituent domestic cooperative abandoning the plan of merger approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If a plan of merger is with a domestic or foreign business entity, the plan of merger may be abandoned before the effective date of the plan by a resolution of the foreign business entity adopted according to the laws of the state under which the foreign business entity is organized, subject to the contract rights of any other person under the plan. If the plan of merger is with a Minnesota limited liability company, the plan of merger may be abandoned by the Minnesota limited liability company as provided in section 322C.1003, subject to the contractual rights of any other person under the plan.

(c) If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under paragraph (a), clause (1), the constituent organizations or any one of them, in the case of abandonment under paragraph (a), clause (2), or the abandoning organization in the case of abandonment under paragraph (b), shall file with the secretary of state articles of abandonment that contain:

(1) the names of the constituent organizations;

(2) the provisions of this section under which the plan is abandoned; and

(3) if the plan is abandoned under paragraph (b), the text of the resolution abandoning the plan.

History: *2003 c 105 art 1 s 70; 2014 c 157 art 2 s 23,29,31*

DISSOLUTION

308B.901 METHODS OF DISSOLUTION.

A cooperative may be dissolved by the members or by order of the court.

History: *2003 c 105 art 1 s 71*

308B.903 NOTICE OF INTENT TO DISSOLVE.

Before a cooperative begins dissolution, a notice of intent to dissolve must be filed with the secretary of state. The notice must contain:

(1) the name of the cooperative;

(2) the date and place of the members' meeting at which the resolution was approved; and

(3) a statement that the requisite vote of the members approved the proposed dissolution.

History: *2007 c 148 art 2 s 54*

308B.905 WINDING UP.

Subdivision 1. **Collection and payment of debts.** After the notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board shall proceed as soon as possible:

(1) to collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for shares; and

(2) to pay or make provision for the payment of all debts, obligations, and liabilities of the cooperative according to their priorities.

Subd. 2. **Transfer of assets.** After the notice of intent to dissolve has been filed with the secretary of state, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

Subd. 3. **Distribution to members.** Tangible and intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the cooperative shall be distributed to the members and former members as provided in the articles or bylaws, unless otherwise provided by law. If previously

authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

History: *2003 c 105 art 1 s 72*

308B.911 REVOCATION OF DISSOLUTION PROCEEDINGS.

Subdivision 1. **Authority to revoke.** Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary of state.

Subd. 2. **Revocation by members.** The chair may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

Subd. 3. **Filing with secretary of state.** Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state. After the notice is filed, the cooperative may resume business.

History: *2003 c 105 art 1 s 73*

308B.915 STATUTE OF LIMITATIONS.

The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative, or arbitration proceedings concerning the claim by two years after the date the notice of intent to dissolve is filed with the secretary of state.

History: *2003 c 105 art 1 s 74*

308B.921 ARTICLES OF DISSOLUTION.

Subdivision 1. **Conditions to file.** Articles of dissolution of a cooperative shall be filed with the secretary of state after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state:

(1) that all debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding;

(2) that the remaining property, assets, and claims of the cooperative have been distributed among the members or under a liquidation authorized by the members; and

(3) that legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against the cooperative in a pending proceeding.

Subd. 2. **Dissolution effective on filing.** The cooperative is dissolved when the articles of dissolution have been filed with the secretary of state.

Subd. 3. **Certificate.** The secretary of state shall issue to the dissolved cooperative or its legal representative a certificate of dissolution that contains:

(1) the name of the dissolved cooperative;

(2) the date the articles of dissolution were filed with the secretary of state; and

(3) a statement that the cooperative is dissolved.

History: *2003 c 105 art 1 s 75*

308B.925 APPLICATION FOR COURT-SUPERVISED VOLUNTARY DISSOLUTION.

After a notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court.

History: *2003 c 105 art 1 s 76*

308B.931 COURT-ORDERED REMEDIES OR DISSOLUTION.

Subdivision 1. **Conditions for relief.** A court may grant equitable relief that it deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business:

(1) in a supervised voluntary dissolution that is applied for by the cooperative;

(2) in an action by a member when it is established that:

(i) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock;

(ii) the directors or those in control of the cooperative have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;

(iii) the members of the cooperative are so divided in voting power that, for a period that includes the time when two consecutive regular members' meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(iv) the cooperative assets are being misapplied or wasted; or

(v) the period of duration as provided in the articles has expired and has not been extended as provided in this chapter; and

(3) in an action by a creditor when:

(i) the claim of the creditor against the cooperative has been reduced to judgment and an execution on the judgment has been returned unsatisfied;

(ii) the cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business; or

(iii) in an action by the attorney general to dissolve the cooperative in accordance with this chapter when it is established that a decree of dissolution is appropriate.

Subd. 2. **Condition of cooperative or association.** In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative but may not

refuse to order equitable relief or dissolution solely on the grounds that the cooperative has accumulated operating net income or current operating net income.

Subd. 3. **Dissolution as remedy.** In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (2), item (ii) or (iii). Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

Subd. 4. **Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award reasonable expenses, including attorney fees and disbursements to any of the other parties.

Subd. 5. **Venue.** Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

Subd. 6. **Parties.** It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

History: *2003 c 105 art 1 s 77*

308B.935 PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED VOLUNTARY DISSOLUTION.

Subdivision 1. **Action before hearing.** In dissolution proceedings before a hearing can be completed the court may:

(1) issue injunctions;

(2) appoint receivers with all powers and duties that the court directs;

(3) take actions required to preserve the cooperative's assets wherever located; and

(4) carry on the business of the cooperative.

Subd. 2. **Action after hearing.** After a hearing is completed, upon notice to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

Subd. 3. **Discharge of obligations.** The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the order of priority set forth in section 576.51.

Subd. 4. **Remainder to members.** After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed under an approved liquidation plan.

History: *2003 c 105 art 1 s 78; 2012 c 143 art 3 s 11,12*

308B.941 RECEIVER QUALIFICATIONS AND POWERS.

Subdivision 1. **Qualifications.** Any person qualified under section 576.26 may be appointed as a receiver. A receiver shall give a bond as required by section 576.27.

Subd. 2. **Powers.** A receiver may sue and defend all actions as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction over the cooperative, the receiver, and all receivership property pursuant to section 576.23.

History: *2003 c 105 art 1 s 79; 2012 c 143 art 3 s 13*

308B.945 DISSOLUTION ACTION BY ATTORNEY GENERAL; ADMINISTRATIVE DISSOLUTION.

Subdivision 1. **Conditions to begin action.** A cooperative may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general if it is established that:

(1) the articles and certificate of organization were procured through fraud;

(2) the cooperative was organized for a purpose not permitted by this chapter or prohibited by state law;

(3) the cooperative has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or

(4) the cooperative has acted, or failed to act, in a manner that constitutes surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

Subd. 2. **Notice to cooperative.** An action may not be commenced under subdivision 1 until 30 days after notice to the cooperative by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the cooperative has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the cooperative 30 additional days to make the correction before filing the action.

History: *2003 c 105 art 1 s 80*

308B.951 FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION PROCEEDINGS.

Subdivision 1. **Filing under oath.** In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims pursuant to section 576.49. The receiver or any party in interest may object to any claim pursuant to section 576.50.

Subd. 2. [Repealed, 2012 c 143 art 3 s 39]

Subd. 3. [Repealed, 2012 c 143 art 3 s 39]

History: *2003 c 105 art 1 s 81; 2012 c 143 art 3 s 14*

308B.955 DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION PROCEEDINGS.

The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets and to file a final report pursuant to section 576.38, subdivision 3.

History: *2003 c 105 art 1 s 82; 2012 c 143 art 3 s 15*

308B.961 COURT-SUPERVISED DISSOLUTION ORDER.

Subdivision 1. **Conditions for dissolution order.** In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities, the court shall enter an order dissolving the cooperative.

Subd. 2. **Dissolution effective on filing order.** When the order dissolving the cooperative or association has been entered, the cooperative or association is dissolved.

History: *2003 c 105 art 1 s 83*

308B.965 FILING COURT'S DISSOLUTION ORDER.

After the court enters an order dissolving a cooperative, the court administrator shall cause a certified copy of the dissolution order to be filed with the secretary of state. The secretary of state may not charge a fee for filing the dissolution order.

History: *2003 c 105 art 1 s 84*

308B.971 BARRING OF CLAIMS.

Subdivision 1. **Claims barred.** A person who is or becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

Subd. 2. **Certain unfiled claims allowed.** Within one year after articles of dissolution have been filed with the secretary of state under this chapter or a dissolution order has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(1) against the cooperative to the extent of undistributed assets; or

(2) if the undistributed assets are not sufficient to satisfy the claim, the claim may be allowed against a member to the extent of the distributions to members in dissolution received by the member.

Subd. 3. **Omitted claims allowed.** Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the offenders, directors, or members of the cooperative before the expiration of the applicable statute of limitations. This subdivision does not apply to dissolution under the supervision or order of a court.

History: *2003 c 105 art 1 s 85*

308B.975 RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.

After a cooperative has been dissolved, any of its former officers, directors, or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

History: *2003 c 105 art 1 s 86*