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REPORT ON RECODIFICATION AND REVISION
OF MINNESOTA COOPERATIVE LAW

Cooperative Law Recodification Committee

Preface

Since 1870, over a dozen laws have been passed authorizing the organization of Minnesota cooperatives. The general cooperative law in sections 308.05 to 308.15 was originally enacted in 1919. It contained a provision that repealed earlier organizational acts but cooperatives organized under the earlier acts could continue until they expired or amended their articles to comply with the general cooperative law. After that time, other savings clauses were enacted to continue cooperatives about to expire or recently expired. Due to the number of organizational acts and savings clauses in Minnesota Statutes, chapter 308, the cooperative laws are somewhat confusing.

The confusion resulted in repealed laws being amended. A revision of the cooperative law was called for in a 1946 Law Review article. Since that time, cooperative attorneys have noted the need for recodification and revision.

In the summer of 1988, Mr. Dick Magnuson of Doherty, Rumble, and Butler, who had worked on the revision of the Wisconsin cooperative laws, met with Senator Gary DeCramer and Senate Counsel Mark Hanson to discuss the feasibility of recodifying and revising the Minnesota cooperative law. A plan was agreed on to develop a recodification first without substantive changes, and to consider revision as a separate matter. Senator DeCramer and Mark Hanson prepared a first recodification draft. Through the cooperation of Mr. Allen Gerber of the Minnesota Association of Cooperatives, a meeting of cooperative attorneys was set for December 15, 1988, to discuss the recodification and revisions. The recodification draft was presented at the December 15 meeting. Mr. Bert Black expressed additional

concerns of the secretary of state's office. At the meeting, the following persons were present:

Mr. Phil Erickson - Farm Credit Services
Mr. Dave Kettering - Farm Credit Services
Mr. Harvey Kaner - Harvest States Cooperatives
Ms. Debra Thornton - Harvest States Cooperatives
Ms. Mary Mills - Land O'Lakes, Inc.
Mr. Brent Wennberg - Land O'Lakes, Inc.
Mr. Chet Zinn - MSI Insurance
Mr. Lee Sundberg - Minnesota Rural Electric
Association
Mr. Ralph Morris - Doherty, Rumble, and Butler
Mr. Dick Magnuson - Doherty, Rumble, and Butler
Mr. Syd Berde - Doherty, Rumble, and Butler
Mr. Tom Rohricht - Doherty, Rumble, and Butler
Mr. Floyd Grabiell - Universal Cooperatives
Mr. M. D. Zeddies - private attorney
Mr. Michael O'Loughlin - O'Loughlin, Michael J. and
Assoc. P.A.
Mr. Bert Black - Office of Secretary of State
Ms. Kathryn Sedo - Law School, University of Minnesota
Mr. Bill Dosland - American Crystal Sugar
Mr. James Malecki - Farmers Union Marketing and
Processing
Mr. Allen Gerber - Minnesota Association of
Cooperatives
Senator Gary M. DeCramer - Minnesota Senate
Mr. Mark J. Hanson - Senate Counsel

This group voted to proceed with the recodification and revision project. A committee was formed to review the recodification and revision in detail. The following persons attended the committee meeting and contributed to the bill draft:

Mr. Bert Black - Office of Secretary of State
Mr. Bill Dosland - American Crystal Sugar
Mr. Hap LeVander - Minnesota Rural Electric
Association
Mr. Dick Magnuson - Doherty, Rumble, and Butler
Ms. Kathryn Sedo - Law School, University of Minnesota
Mr. Ed Sletton - Minnesota Association of Cooperatives
Consultant
Mr. Jim Strommen - LeFevere, Lefler, Kennedy, O'Brien
and Drawz
Mr. M. D. Zeddies - private attorney

Mr. Robert Leigh - National Telephone Cooperative
Association
Mr. Allen Gerber - Minnesota Association of
Cooperatives
Senator Gary M. DeCramer - Minnesota Senate
Mr. Mark J. Hanson - Senate Counsel

This document is a report of the committee.

Senate Counsel Mark Hanson prepared this report for the committee and was the drafter of the proposed legislation. Ms. Laura Staples, law clerk for the Senate Counsel office, and Ed Slettom, past director of the Minnesota Association of Cooperatives, provided background on previous cooperative laws. Mr. Bert Black, assisted by Ms. Katherine Engler, provided drafts for the dissolution provisions. Other comments and revisions came from a number of cooperative law attorneys.

This report consists of five parts:

- I. Introduction
- II. Organization of Existing Cooperative Law
Minnesota Statutes, Chapter 308
- III. Organization of the Recodified Cooperative Law
With Revision Amendments
- IV. Proposed Bill Draft
- V. Derivation and Disposition Tables

Cooperative Law Recodification Committee

Mr. Allen Gerber, Chair

INTRODUCTION

The first law for general incorporation of cooperatives was enacted in 1870 and provided the tenets of one vote per member and distribution of profits to members and patrons.¹ For 50 years the 1870 law with few amendments was the model for incorporating cooperatives.² In 1919 a more comprehensive general cooperative statute was enacted from which Minnesota Statutes, sections 308.05 to 308.15 are derived.³ By 1922 over 4,500 local cooperatives were organized in Minnesota, including 63 cooperative cheese factories, 644 cooperative creameries, 699 livestock shipping cooperatives, 183 cooperative stores, 149 potato growers cooperatives, 161 township mutual fire insurance cooperatives, and 1,739 farmers rural telephone cooperatives.⁴ Minnesota had the largest percentage of farmers selling products through cooperatives.

¹1870 Minn. Laws, ch. 29, authorized seven or more residents to associate for trade or mechanical manufacturing or agricultural business.

²1870 Minn. Laws, ch. 29, was amended by 1876 Minn. Laws, ch. 33; 1881 Minn. Laws, ch. 13; 1899 Minn. Laws, ch. 217; 1905 Minn. Laws, ch. 276. See Gen. Stat. 1913 §§ 6479 to 6490.

³1919 Minn. Laws, ch. 382.

⁴Ballantine, H.W., Cooperative Marketing Associations, 8 Minn. L.Rev. 2. In 1985 the Minnesota Association of Cooperatives reported that there were 79 cooperative creameries, 78 livestock shipping cooperatives, about 60 cooperative stores, 131 township mutual fire insurance cooperatives, 18 rural telephone cooperatives, 210 farm supply cooperatives, 180 grain cooperatives, 50 rural electric cooperatives, and 40 rural credit unions. In 1985 Minnesota was the leading state in farmer cooperatives with 566 and in memberships with 423,983.

In 1923 the cooperative marketing act was enacted to facilitate large cooperative marketing associations to collectively market farm products.⁵ These provisions provided for producers of agricultural products to enter marketing contracts with the cooperative to produce, sell, and market agricultural products.

The general cooperative law and the cooperative marketing act are only two of the cooperative structures in Minnesota Statutes, chapter 308. The cooperative acts of 1870, 1897, 1905, and others were generally repealed by the general cooperative law of 1919.⁶ However, cooperatives doing business under acts other than the general cooperative act of 1919 were allowed to continue through their period of corporate existence, usually 20 years.⁷ In addition, a number of savings provisions were enacted that allowed the cooperatives organized before 1919 to renew their corporate existence for additional 20-year periods.⁸

⁵1923 Minn. Laws, ch. 264.

⁶1919 Minn. Laws, ch. 383, § 14, repealed 1913 Minnesota General Statutes §§ 6479, 6481, 6482, 6483, 6485, 6488, and 6489 insofar as they conflicted with 1919 Minn. Laws, ch. 383.

⁷Id. 1919 Minn. Laws, ch. 383, § 14, authorized cooperatives incorporated and operating under the repealed section to continue until they elected to come under 1919 Minn. Laws, ch. 383.

⁸Cooperatives were allowed to be formed for 20 years. See 1913 Minn. General Statutes §§ 6479 and 6481 ". . . and its duration without renewal shall not exceed twenty years." Savings provisions include 1925 Minn. Laws, ch. 50; 1927 Minn. Laws, ch. 72, 116, 174; 1919 Minn. Laws, ch. 243; 1921 Minn. Laws, ch. 220; 1923 Minn. Laws, ch. 3, 96, 221; 1935 Minn. Laws, ch. 116, § 1.

Of the 37 sections of the cooperative law under Minnesota Statutes, sections 308.01 to 308.43, about one-half of the sections deal with cooperatives organized under laws enacted before 1919 that were originally intended to come under the general cooperative provisions of sections 308.05 to 308.15.⁹ This confusion has resulted in sections being repealed a second time, and sections that were previously repealed being amended. A 1946 law review article pointed out that repealed laws were being amended by later laws and that a revision of the cooperative law was needed.¹⁰ A review of Minnesota Statutes, sections 308.01 to 308.03, and 308.16 to 308.361 exemplifies the confusion created by statutory and nonstatutory repealers and savings clauses enacted to preserve the organizational laws of earlier cooperatives.

Within the general cooperative law, sections 308.05 to 308.15, the organization is based on the original 1919 act.¹¹ The general cooperative law has not been amended many times, but the amendments that have occurred have generally been codified in existing sections. For example, under section 308.14 originally dealing with the amendment of articles to come under the general cooperative statutes, the provisions on voluntary dissolution of a cooperative are also included. In section 308.15, originally relating to the procedure for amending the articles of incorporation, provisions for merger and consolidation of

⁹Minn. Stat. §§ 308.01, 308.02, 308.03, 308.08, 308.16, 308.17, 308.29, 308.30, 308.31, 308.32, 308.34, 308.341, 308.35, 308.36, 308.361, 308.37, and 308.41, generally refer to cooperatives organized before 1919.

¹⁰31 Minn. Law Rev. 42 (1946).

¹¹1919 Minn. Laws, ch. 382.

cooperatives are provided that were added under subdivision 4.

The recodification of the cooperative laws is based on the general cooperative law contained in sections 308.05 to 308.15. These sections are generally broader than the other provisions for organizing a cooperative under chapter 308. The recodified cooperative law contains the provisions of sections 308.05 to 308.15, plus the provisions outside of those sections having current general applicability.¹² Under existing law, the provisions of the cooperative marketing act, specifically the authorization for a general cooperative to utilize marketing contracts, was included under section 308.05, subdivision 4.¹³ The recodification specifically recognizes cooperatives organized and subject to the general cooperative law, Minnesota Statutes, sections 308.05 to 308.15, and the cooperative marketing act, sections 308.53 to 308.85, and deems them to be organized and subject to the recodified cooperative law.

ORGANIZATION OF EXISTING COOPERATIVE LAW
MINNESOTA STATUTES, CHAPTER 308.

Minnesota Statutes, chapter 308, is the cooperative law. Chapter 308 in its current form consists of a number of session laws that authorize the formation of cooperative organizations. The chapter contains the original

¹²The recodification also included Minn. Stat. §§ 308.341, 308.36, 308.37, 308.39, 308.40, 308.43, 308.68, 308.69, 308.78, and 308.80.

¹³Under Minn. Stat. § 308.05, subd. 4, "sections 308.68, 308.69 and 308.78 apply to marketing contracts of associations organized under or subject to sections 308.05 to 308.18."

requirements for cooperative organization enacted in 1870, and succeeding versions enacted until 1907. The chapter also contains general cooperative law, sections 308.05 to 308.15, the cooperative marketing act, sections 308.53 to 308.854, and accounting and reporting provisions for cooperatives, sections 308.901 to 308.92.¹⁴

Sections 308.01 to 308.03. Local Cooperatives Organized Under Laws Before 1919. These provisions are the successors of the original cooperative law of the state, enacted in 1870 which were codified as amended in their current form in the Minnesota Revised Laws of 1905.¹⁵ These sections continued to be effective because of sections 308.16, 308.17, 308.35, and 308.41.¹⁶ Sections 308.16 and 308.17 were enacted in 1919 and provide that those sections pertaining to the incorporation and management of rural telephone companies and cooperative creameries remain in force and are not affected by the

¹⁴ Sections 308.01 to 308.03 are derived from acts before 1905 codified in 1905 Minn. Revised Laws §§ 3073, 3074, 3075, and 3077. Section 308.29 is derived from 1907 Minn. Laws, ch. 297. Section 308.34 is derived from the original cooperative law contained in 1870 Minn. Laws, ch. 29, as amended.

¹⁵ 1905 Minn. Revised Laws §§ 3073, 3074, 3075, and 3077.

¹⁶ Rural telephone companies and creameries organized under section 308.01 are excepted from the repealer in section 308.17. Section 308.17 allows cooperatives under section 308.01 to continue during their corporate period of existence or until they elect to come under sections 308.01 to 308.15. Section 308.35 authorizes cooperatives organized under section 308.01 to renew for a period not exceeding 20 years. Under section 308.41 a cooperative creamery organized under the section is authorized to renew its period of existence for 20 years whenever the majority of the stockholders adopted a resolution at a regular or special meeting.

general cooperative provisions of sections 308.05 to 308.18. Further, that a rural telephone company or cooperative creamery may operate under the earlier provisions until they come under the general cooperative law. Section 308.17, which repeals these sections, contains a savings clause similar to sections 308.35 and 308.41 providing that cooperatives organized under sections 308.01 to 308.03 continue to be governed by those sections until they elect to come under the provisions of the general cooperative law.¹⁷ Section 308.35 appears to be controlling, however, because it states that notwithstanding any other laws, a cooperative under section 308.01 which has not expired may renew its existence for a period not exceeding 20 years.

Cooperatives organized under the cooperative laws organized prior to the general cooperative law should have expired or elected to come under the general cooperative law.¹⁸

Sections 308.01 to 308.03 are not recodified.

Sections 308.05 to 308.15. The General Cooperative Law. The general cooperative law is organized into ten different categories: (1) organization purpose; (2) powers; (3) incorporation, contents of articles, and

¹⁷ Minn. Stat. § 308.17 (1988).

¹⁸ Section 308.35 was enacted in 1935. If a cooperative had just renewed prior to its enactment, its corporate existence would continue until 1955 and with one 20-year renewal, the cooperative's corporate existence would expire in 1975. This section was enacted most recently in sections 308.17 and 308.41. Section 308.35 states that its provisions are notwithstanding other provisions of statute.

filing; (4) corporate existence; (5) capital stock voting rights; (6) selection of directors; (7) members, stockholders, and regular and special meetings; (8) directors and officers; (9) earnings, reserve fund, and distribution; and (10) amendment of articles, consolidation and merger, and voluntary dissolution. These provisions have been amended very few times in the last 70 years and a number of those amendments occurred between 1919 and 1925.

Section 308.08. Election to Come Under Amended General Cooperative Provision. This section was enacted in 1935 to provide that a cooperative organized under cooperative laws prior to April 1, 1933, does not come under the general cooperative laws until it elects to and amends its articles. This section should be read along with section 308.35.

Section 308.08 applies to cooperatives not subject to the general cooperative laws. It was not recodified.

Sections 308.16 and 308.17. Repeal and Savings Clause for Cooperatives Organized Before 1919. These sections extend the authority of cooperatives organized under laws other than the general cooperative law.¹⁹ The cooperatives may continue to operate under laws enacted prior to the 1919 general cooperative law until they elect to come under the provisions of the general cooperative law. Section 308.17 repeals sections 308.01 to 308.03, sections 308.30, 308.31, and 308.34. However, cooperatives organized under those sections (i.e., under laws enacted prior to 1919) may

¹⁹ See notes 16 and 18.

continue under those sections until they elect to come under the provisions of the general cooperative law.²⁰

Section 308.35 appears to supersede these sections.²¹

Sections 308.16 and 308.17 were not recodified.

Sections 308.29 to 308.31. Savings Provision for Early Expired Cooperatives. These sections were enacted in 1907.²² Earlier cooperative laws limited the duration of a cooperative to 20 years.²³ This provision as originally enacted was a savings provision for earlier cooperatives allowing the cooperatives organized under earlier acts to incorporate under this provision for a period of 20 years. These sections appear to be superseded by section 308.35 and were repealed at least in part by section 308.17.

Sections 308.29, 308.30, and 308.31 were not recodified.

Sections 308.32 to 308.341. Early Rural Telephone Company Provisions. Section 308.32 provides special provisions for location of meetings of rural telephone companies. This provision was originally enacted in 1911 and was amended once in 1973.²⁴

²⁰Minn. Stat. § 308.17 (1988).

²¹See note 18.

²²1907 Minn. Laws, ch. 293.

²³See note 8.

²⁴1911 Minn. Laws, ch. 360, § 1; 1973 Minn. Laws, ch. 123, art. 5, § 7.

Section 308.34 was enacted in 1905 under two separate cooperative laws that essentially amended the cooperative law in existence at the time to specifically include rural telephone businesses.²⁵ The provision was not included in Minnesota Revised Laws of 1905.²⁶ It was, however, codified in this chapter indicating the specific authorization for the codification of rural telephone businesses. Section 308.34 is repealed under section 308.17.

Section 308.341 provides that rural telephone companies organized under the Revised Laws of 1905 or under the two separate 1905 cooperative laws could dissolve by voluntary proceedings under the Minnesota business corporations act.²⁷ The early cooperative laws did not have dissolution procedures.

Sections 308.32 and 308.34 were not recodified.

Section 308.35. Savings Provision for Early Unexpired Cooperatives. This section was enacted in 1935, providing that cooperatives organized under laws other than the general cooperative provisions with a corporate existence that had not expired could renew their cooperative existence for a period not exceeding 20 years, notwithstanding other statutory provisions.²⁸ This provision would appear to have limited the extension of

²⁵1905 Minn. Laws, ch. 276, 313.

²⁶See 1905 Minn. Revised Laws §§ 3073-3078.

²⁷The dissolution could occur under voluntary proceedings as provided in Minn. Stat. §§ 302A.721 to 302A.733.

²⁸1935 Minn. Laws, ch. 116, § 1. See note 18.

cooperatives existing in 1935 to their existing period, plus one renewal period of up to 20 years.²⁹ If a cooperative at that time had just renewed its cooperative existence, it would seem that cooperatives organized under provisions other than the general cooperative law would expire by 1975.

Section 308.35 was not recodified.

Sections 308.36 and 308.361. Defectively Organized Cooperatives May Come Under General Cooperative Law. These sections provide cooperatives conducting business under a cooperative plan that are defectively organized may amend their articles to come under the general cooperative provisions of section 308.05 to 308.18. Sections 308.36 and 308.361 were amended in 1947 to allow cooperatives previously organized who had attempted, but failed to come under the general cooperative law, to amend their articles to come under the general cooperative law.³⁰

Section 308.361 was not recodified.

Section 308.37. Purchase and Acquisition of Stock and Other Instruments. This section authorized cooperatives to purchase, own, and hold shares of stock, memberships, interest in nonstock capital, evidences of indebtedness in domestic and foreign corporations, when necessary or incidental, to accomplish their purposes.

²⁹1935 Minn. Laws, ch. 116.

³⁰1947 Minn. Laws, ch. 510, §§ 1-3 and ch. 513, §§ 1-4.

Section 308.39 to 308.40. Condemnation Authority for Creameries. These sections provide that a creamery cooperative may condemn property under the right of eminent domain for sewers and sites for filtration plants to dispose of their sewage and refuse.³¹

Section 308.41. Creamery Cooperatives Authorized to Renew Cooperative Existence. This section provides that a creamery cooperative organized under section 308.01 (Revised Laws of 1905 for cooperatives and its predecessors) may renew its corporate existence for a period not more than 20 years whenever the holders of a majority of stock adopt a resolution to that effect at a regular meeting or special meeting called to extend the cooperative.³² This provision appears to be superseded by section 308.35.³³

Section 308.41 was not recodified.

Section 308.42. Original Definition of Cooperative Association. A cooperative association is defined as a corporation or association of ultimate producers, consumers, or ultimate producers and consumers organized under any law of the state providing for the incorporation of cooperative associations, also any central organization composed wholly or in part of associations.³⁴ The

³¹This section was originally enacted as 1927 Minn. Laws, ch. 129, § 4.

³²This provision was originally enacted as 1933 Minn. Laws, ch. 358, §§ 1, 2.

³³Section 308.35 was enacted after section 308.41 and stated its provisions were notwithstanding other statutes. See note 18.

³⁴Minn. Stat. § 308.42 (1988).

definition was originally enacted as a provision of the general cooperative law.³⁵ This provision was removed from the general cooperative law in subsequent codifications, however, and in 1941 the reference to corporations or associations organized under laws "now existing or hereafter enacted" was changed in 1941 to read "now existing."³⁶ As a definition and not a restriction on cooperative organizations and the restrictions enacted in 1941, the section has little effect on the general cooperative law.

Section 308.42 was not recodified.

³⁵1919 Minn. Laws, ch. 388, § 1.

³⁶1933 Minn. Laws, ch. 148, § 1, amended the general cooperative law to read:

". . . For the purpose of this Act a co-operative association shall be defined as any corporation or association of ultimate producers and/or consumers organized under this Act or any other statute of the state of Minnesota now existing or hereafter enacted providing for the incorporation of co-operative associations" [Emphasis added]

This provision was part of what is now section 308.05. In Minn. Laws 1941, ch. 114, the words "or hereafter enacted" were deleted.

In the revisor's edition of Minnesota Statutes 1941, this definition was removed from the general cooperative law and placed in section 308.42 as subdivision 2 with other definitions from the general cooperative law and livestock marketing cooperative law. Reference was made to the definition of "cooperative association" applying to sections 308.05 to 308.18. Minn. Laws 1943, ch. 304, repealed the livestock marketing provisions and the 1945 edition of Minnesota Statutes, under section 308.42, dropped all of the definitions except the definition for cooperative association. The reference to the sections to which the definition applied was also dropped as well as the words "now existing." The result has been a definition of cooperative association that for over 40 years has not applied to the general cooperative law. Under section 308.06 a cooperative may be organized under sections 308.05 to 308.18, which are not restricted by section 308.42.

Section 308.43. Insurance for Certain Rural Electric Cooperative Losses. Rural electric cooperatives may form a cooperative corporation to provide for sharing of losses due to storms and other natural disasters to their transmission and distribution facilities. These provisions are not subject to the insurance laws.

Sections 308.51 to 308.85. Cooperative Marketing Act. The cooperative marketing act was enacted in 1923 and enabled five or more persons engaged in the production of agricultural products to organize a cooperative to engage in any activity in connection with the marketing or selling of agricultural products of its members or harvesting, processing, or manufacturing products and byproducts of agricultural products.³⁷ The cooperative marketing act contains provisions for organizing a cooperative and conducting business as a cooperative.

The cooperative marketing act also provides for marketing contracts between members and the cooperative to sell and resell products of the members.³⁸ Provisions are made for enforcing breaches of the contracts and prohibiting the inducement of members or stockholders of a cooperative to violate provisions of a marketing contract.

The general cooperative law allows cooperatives to utilize the marketing contract provisions of the cooperative marketing act.³⁹

³⁷1923 Minn. Laws, ch. 264.

³⁸Minn. Stat. § 308.68 (1988).

³⁹Minn. Stat. § 308.05, subd. 4 (1988).

The cooperative organization provisions of the cooperative marketing act, sections 308.51 to 308.67, 308.70 to 308.77, 308.79, and 308.81 to 308.854, were not recodified, but the provisions relating to marketing contracts, sections 308.68, 308.69, 308.78, and 308.80, were recodified.

Sections 308.901 to 308.905. Cooperative Accounting Systems. The commissioner of agriculture is directed to make inquiries into the requirements of the different types of cooperative associations and formulate systems of accounting for their use. The commissioner has the duty to cause the books and accounts of a cooperative to be examined by a competent accountant. Cooperatives may apply to have accounting services conducted by the commissioner and must pay for the services that are rendered.

By 1975 it had become apparent to the Commissioner of Agriculture that professional accountants were available for cooperatives in the state. In order not to compete with local accountants, the commissioner removed the accounting positions from the department budget. The provisions under sections 308.901 to 308.905 have not been performed since that time.

Sections 308.901, 308.902, 308.903, 308.904, and 308.905 were not recodified.

Section 308.92. Annual Reports. Cooperatives organized under the corporation laws of this state or of another state and doing business in this state that represent themselves to be a cooperative association must file a report with the department of agriculture each year for its last fiscal year. The report must be made within 90 days after the close of the fiscal year and contain the name of the cooperative, the amount of its authorized and

paid-in capital, the names of its officers and directors, a statement of its resources and liabilities, and other information required by the commissioner. This provision was originally enacted in 1919.

When the accounting functions of the department of agriculture were eliminated in 1974-1975, the department did not have the personnel or funding to maintain reports required under this section.

Section 308.92 was not recodified.

ORGANIZATION AND EXPLANATION OF THE RECODIFIED
COOPERATIVE LAW, ARTICLE 1
AMENDMENTS TO ARTICLE 1 AND ARTICLE 3

The recodification and clarification of the cooperative law contains a number of provisions of Minnesota Statutes, chapter 308, that currently affect and control cooperatives. The recodification under Article 1 is primarily drafted from the provisions of Minnesota Statutes, sections 308.05 to 308.15. In addition, certain other provisions of Minnesota Statutes, chapter 308, were included in Article 1 to allow cooperatives operating under the recodified cooperative law to have all the powers and authorities that they had under the existing chapter 308.⁴⁰ The additional provisions included provisions from the cooperative marketing act that allows the use of marketing contracts.

A review of the recodification in Article 1 revealed a number of places where the recodified law was either

⁴⁰ See note 12.

incomplete or where the common practice and procedure was different than what the law stated. Article 3 contains amendments to the recodification in Article 1.

The recodified cooperative law is organized into the following divisions.

- I. General Provisions
 - Definitions
 - Use of Term "Cooperative"
 - Incurring Promotional Fees
- II. Organization
 - Organizational Purpose
 - Incorporators
 - Stock and Nonstock Organizations
 - Articles of Incorporation
 - Procedure to Be Governed By This Chapter
 - Corporate Existence
 - Bylaws
- III. Powers
 - General Powers
 - Marketing Contracts
- IV. Board of Directors
 - Election and Removal
 - Liability
- V. Officers
 - Officers Required
 - Removal
- VI. Stock
 - Capital Stock
 - Securities Requirements
- VII. Members
 - Stockholder Violation
 - Regular Meetings
 - Special Meetings
 - Quorum and Voting
- VIII. Earnings, Reserve, and Distributions
 - Reserves
 - Distribution of Income
 - Distribution of Unclaimed Property
- IX. Merger and Consolidation
 - Authorization

- Plans
- Adoption

- X. Liquidation and Dissolution
 - Liquidation
 - Voluntary Dissolution
 - Court Supervised Dissolution

The following sections summarize the recodified cooperative law contained in Article 1 of the bill draft. Sections amended by Article 3 are indicated with an asterisk.

Section 1. Citation. The recodified cooperative law may be cited as "the Minnesota cooperative law."

Section 2. Definitions. Minnesota Statutes, chapter 308, did not contain definitions. The definitions of "domestic corporation" and "foreign corporation" under chapter 300.02, subdivisions 5 and 6, were stated to apply to Minnesota Statutes, chapter 308, and were included in the definitions section. Other definitions including "articles," "association," "board," "cooperative," "corporation," "members' meeting," and "stockholder" were given meanings to be clear throughout the recodified cooperative law.

The term "member" was given the meaning of a member or stockholder of a cooperative who is entitled to vote. This term is used throughout the recodified cooperative law where the term "stockholder" or "member" was used in Minnesota Statutes, chapter 308. Under Minnesota Statutes, section 308.06, subdivision 2, cooperatives could be incorporated on a membership basis without capital stock and cooperatives organized on a capital stock basis have the same powers and authorities as cooperatives on a membership basis. From this reference, the term "stockholder" or "member" has generally been interpreted to

be interchangeable as it was used throughout Minnesota Statutes, chapter 308, unless specific stock acquisition or stockholding activities were being referred to.

GENERAL PROVISIONS

Section 3. Use of Term "Cooperative" Restricted. The term "cooperative" may not be used as part of a corporate business name or title unless the corporation or association has complied with the recodified chapter or is incorporated under other laws of the state authorizing incorporation of a business on a cooperative plan. A violation of this provision is a misdemeanor.

*Reservation of Right. Article 3, section 1, adds a section providing that the state reserves the right to amend or repeal the provisions of the recodified chapter. A cooperative incorporated or governed by the recodified chapter is subject to the reserved right. This language is implicit in the existing cooperative law and is stated for marketing cooperatives in Minnesota Statutes, section 308.81. The section is similar to a provision in the Minnesota Business Corporations Act, section 302A.041.

Section 4. General Filing Fees. Unless otherwise provided, the filing fee for documents filed with the secretary of state is \$25. See Minn. Stat. § 308.06, subd. 4 (1988).

*Registered Office. Article 3, section 2, adds a section requiring a cooperative to continuously maintain a registered office in this state. A cooperative may designate a registered agent and the cooperative is required to notify the Secretary of State of the registered agent and any change of the name or address of the agent or registered office. The notice is made by filing a

statement with the Secretary of State. The provision for registered office parallels a similar provision in the Minnesota Business Corporations Act under section 302A.121. Currently, many records of the Secretary of State's Office contain very little information on cooperatives. For many cooperatives, all that is provided is the name of the cooperative and the city where the original principal place of business was located. This provision provides that addresses of cooperatives incorporated in this state would be maintained with the Secretary of State for purposes of notification and maintenance of current cooperative records.

Section 5. Promotional Expense Not to be Incurred. A cooperative may not spend money, issue or pledge capital stock of the cooperative, or incur indebtedness for the payment of promotion of the cooperative or promotional expenses, except that an amount not more than ten percent of the par value of the capital stock sold may be used by officers or committees elected by the stockholders to hire solicitors to sell or solicit the sale of stock. See Minnesota Statutes, section 308.13.

ORGANIZATION

Section 6. Organizational Purpose. A cooperative may be formed and incorporated on a cooperative plan for the purpose of conducting agricultural, dairy, marketing, transportation, warehousing, commission, contracting, building, mining, telephone, manufacturing, or any mechanical, mercantile, or electrical heat, light or power business, or for any combination of these purposes or any other lawful purpose. Although a cooperative may be formed for any lawful purpose, the traditional types of cooperatives were listed as provided in existing law. See Minn. Stat. § 308.05, subd. 1 (1988). Electric

cooperatives may be formed for the purposes of generation, transmission, and distribution of electrical energy and related activities. See Minn. Stat. § 308.05, subd. 5 (1988).

Section 7. Incorporators. A cooperative may be organized by one or more incorporators. See Minn. Stat. § 308.06, subd. 1 (1988).

Section 8. Cooperative Name. The name of a cooperative must distinguish the cooperative from other entities doing business in the state and the cooperative name shall be reserved for the cooperative during its corporate existence. See Minn. Stat. § 308.06, subd. 1 (1988).

Section 9. Stock and Nonstock Organization. Cooperatives may be organized on a capital stock or nonstock basis. Regardless of the type of organization, the cooperatives have the same powers and authorities. A member of a cooperative organized on a membership basis may not have more than one vote. A membership is transferrable only with the consent and approval of the board. See Minn. Stat. § 308.06, subd. 2 (1988).

Section 10. Articles of Incorporation. The incorporators must prepare the articles, which must include the name, purpose, and principal place of business of the cooperative; period of duration if the duration is not perpetual; information regarding shares if organized on a capital stock basis; the names and addresses of the first board of directors; and a statement that net income in excess of dividends in addition to reserves shall be distributed on the basis of patronage. The articles must be signed by the incorporators and filed with the secretary of state and a copy filed in the office of the county

recorder. The fee for filing the articles with the secretary of state is \$60. See Minn. Stat. § 308.06, subs. 2 and 4 (1988).

*Filing of Articles - Deletion of County Recorder Filing. Article 3, section 3, amends section 10 to delete the requirement that the original articles of incorporation be filed with the County Recorder of the cooperative's place of business. The Secretary of State's Office maintains a computerized data base of all corporate filings including cooperatives and their articles. In addition, counties will be able to have access to the computerized corporate data base and it will be more efficient to have one location for all filings.

*Presumption in Filing Articles. Article 3, section 4, amends section 10 to provide that if the articles of incorporation have been filed with the Secretary of State and the required fee has been paid, it is presumed that the conditions required to be performed by the incorporators have been complied with, the cooperative has been incorporated, and the Secretary of State will issue a certificate of incorporation to the cooperative. This provision parallels the Minnesota Business Corporations Act under section 302A.155. The section creates a presumption that requirements of incorporation have been met and that the cooperative can proceed as a corporation.

Section 11. Amendment of Articles. To amend articles of a cooperative, the board by majority vote must pass a resolution stating the text of the proposed amendment. Proper notice must be given and if a quorum of the members is registered as being present, the amendment is adopted if a majority of the votes are cast. After an amendment has been adopted, a certificate stating the amendment and manner of adoption shall be signed by an officer and filed

with the secretary of state and county recorder where the cooperative is located. See Minn. Stat. § 308.15, subd. 1 (1988).

*Amendment of Articles. Article 3, section 5, amends the procedure for amending articles in section 11:

1. An amendment to the articles is approved at a members' meeting, if approved by a majority of the votes cast. For a cooperative with articles or bylaws requiring more than a majority for approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or the number of total members required by the articles or bylaws. The conditions for approval in the articles and bylaws must have been satisfied. This provision allows a cooperative to require more restrictive conditions for amendment of articles if the members desire.
2. The requirement for filing an article amendment in the County Recorder's Office was deleted for the same reasons as deletion of the requirement under section 10. Section 10 provides that the original articles of incorporation are to be filed in the County Recorder's Office of the principal place of business of the cooperative.
3. In current law and as recodified under Article 1, a cooperative must have prepared certificates stating the amendment in the manner of adoption. The certificate must have been filed with the Secretary of State. The certificate stating the manner of adoption of an article amendment is more properly kept in the records of the cooperative itself. The Article 3 amendment specifies the required information to be included in the certificate and provides that the

certificate be signed by the chair, vice chair, or officer of the cooperative and filed with the records of the cooperative.

4. A provision was added that allows a majority of directors to amend the articles if the cooperative does not have any members or stockholders with voting rights. This situation would occur after the original articles for a cooperative are filed, but before the cooperative is organized to the extent of having members or stockholders with voting rights. The provision will allow a majority of directors to make amendments to the articles before stockholders or members are solicited to correct any errors or concerns that prospective members or stockholders may have with the articles. This provision parallels a provision in the Minnesota Business Corporations Act, section 302A.133.

Section 12. Amendment of Articles to be Governed by Recodified Chapter. A corporation or business conducting business on a cooperative plan may become subject to the recodified chapter by amending its articles to conform to the requirements of this chapter. After filing the amended articles, the corporation or association is a cooperative in this state and subject to the provisions of this chapter. See Minnesota Statutes, section 308.14, subdivision 1. Cooperatives organized under the general cooperative law, sections 308.05 to 308.15, or the cooperative marketing act, sections 308.53 to 308.85, are deemed to be organized under and subject to this act under Article 3, section 47.

Section 13. Amendment of Articles to Incorporate Defectively Organized Cooperative. An association or corporation organized defectively under other Minnesota law

that has conducted its business on a cooperative plan and has carried on and transacted business in good faith may amend its articles in their entirety to be governed by this chapter. After filing and recording the amended articles, the corporation is a legal corporation under this chapter.

*Deletion of County Recorder Filing. Article 3, section 6, amends section 13 to delete the requirement that the amended articles are filed in the Office of the County Recorder where the principal place of business of the cooperative is located.

Section 14. Amendment of Articles to Renew Expired Corporate Existence. If the period of corporate existence of a corporation organized under any law of this state conducting its business on a cooperative plan has expired, the corporation may amend its articles to comply with this chapter. See Minn. Stat. § 308.062 (1988).

Section 15. Corporate Existence. Cooperatives have a perpetual duration unless the cooperative provides for a limited period of duration in its articles. See Minn. Stat. §§ 308.061 and 308.15, subd. 1 (1988). A cooperative may commence business when ten percent of the authorized capital stock has been subscribed and paid in. See Minn. Stat. § 308.07, subd. 2 (1988).

*Commencement of Corporate Existence. Article 3, sections 7 and 8, amend section 15 to provide that the corporate existence of a cooperative begins when the articles are filed with the Secretary of State. A number of previous cooperative laws had a similar provision that a corporate existence began upon filing. The existing recodified cooperative law, however, does not contain a similar provision. The Minnesota Business Corporations Act

provides that corporate existence begins upon filing of the articles under section 302A.153.

Section 16. Bylaws. The bylaws of a cooperative may be amended at a regular or special members' meeting with the proper notice, a quorum, and approval by a majority of the votes cast.

*Bylaws. Article 3, section 9, amends section 16 and makes three changes in the provisions relating to bylaws.

1. A cooperative may, but need not have, bylaws. This provision clarifies that there is no provision in the recodified cooperative law that requires a cooperative to have bylaws. This provision parallels a similar provision in the Minnesota Business Corporations Act, section 302A.181, subdivision 1.
2. Bylaws of a cooperative may be adopted or amended at regular or special members' meetings if approved by a majority of the votes cast, or for a cooperative with articles or bylaws requiring more than a majority for approval or other conditions for approval, amendments to the bylaws are approved by a proportion of the votes cast or by a number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied. This change allows a cooperative to require a greater number than a majority to approve certain bylaw amendments.
3. Bylaws may contain any provision relating to management or regulation of the affairs of the cooperative that are not inconsistent with the law or articles. A list of suggested items are included that may be provided for in the bylaws.

POWERS

Section 17. Cooperative Powers. In addition to other powers, a cooperative as agent or otherwise may perform everything necessary or proper to the conduct of the cooperative business or accomplishment of the purposes of the cooperative. A cooperative has the rights, powers, and privileges granted by the laws of this state to other corporations, except those that are inconsistent with the express provisions of a cooperative law. A cooperative may deal in its own products and the products of the cooperative's members or patrons, enter contracts and agreements, acquire and convey real and personal property, construct buildings and other facilities, issue bonds and evidence of indebtedness, make advances to the cooperative's members or patrons, accept deposits from other cooperatives or associations, loan and borrow money to and from cooperatives or associations from which it is constituted, purchase and dispose of stock, and exercise fiduciary powers in relations with cooperatives or other associations from which it is constituted. An electric cooperative may acquire funds through negotiated financing or public sale, invest its resources, and enter agreements to share losses and risk of losses to their transmission and distribution lines and other facilities as a result of storms. A cooperative engaged in electrical heat, light, power, or telephone utilities may exercise the power of eminent domain. A creamery cooperative may exercise the power of eminent domain to obtain easements for sewers and sites for filtering plants. See Minn. Stat. §§ 308.05, 308.07, subd. 3, 308.37, 308.39, 308.40, and 308.43 (1988).

*Cooperative Powers - Lending and Borrowing Money. Article 3, section 10, amends cooperative powers under section 17, subdivision 9, to provide that a cooperative may loan or borrow money to or from individual members as

well as cooperatives and other associations. In addition, the cooperative marketing act allowed a cooperative to extend credit to individual members of the cooperative.

*Cooperative Powers - Acquisition and Disposal of Stock. Article 3, section 11, amends section 17, subdivision 10, to delete the requirement that board approval was required for cooperative acquisition and dispositions of stock. The existing provision of law seemed to conflict with accepted procedure that the boards of some cooperatives would delegate the authority to particular officers of a cooperative. This provision removes the requirement for the board to meet and approve each stock acquisition and disposition.

*Cooperative Powers - Fiduciary Powers. Article 3, section 12, amends section 17, subdivision 11, to authorize a cooperative to exercise any and all fiduciary powers in relations with members as well as other cooperatives or associations from which it is constituted. In addition, a cooperative may take, receive, and hold real and personal property, including principal and interest of money or other funds and rights in a contract, and trust for any purpose not inconsistent with the purposes of the cooperative, in exercising fiduciary powers in relation to taking, receiving, and holding that property.

Section 18. Agricultural Marketing Contract. A cooperative and its members or patrons may make and execute marketing contracts requiring the members or patrons to sell a specified portion of their agricultural products or specified commodities exclusively to or through the cooperative or facilities established by the cooperative. Contract requirements are specified and penalties are stated for breach of the contract. A cooperative exercising marketing contracts is not a combination in

restraint of trade or an illegal monopoly. See Minn. Stat. §§ 308.05, subd. 4, 308.68, 308.69, 308.78, and 308.80 (1988).

*Products Under a Marketing Contract. Article 3, section 13, amends section 18, subdivision 2, to clarify the conditions for title to products under a marketing contract include that the resale price is paid to the patron.

*Damages for Breach of Contract. Article 3, section 14, amends section 18, subdivision 4, to clarify conditions constituting damages for breach of contract.

BOARD OF DIRECTORS

Section 19. Board Governs Cooperative. A cooperative is governed by its board. See Minn. Stat. § 308.11 (1988).

Section 20. Number of Directors. A board of a cooperative must have at least five directors. An exception is made for cooperative apartment corporations which must have at least three directors who are members of the association. See Minn. Stat. § 308.11 (1988).

Section 21. Election of Directors. Directors shall be elected for the term and at the time and manner provided by this section and the bylaws. Directors must be elected at the regular members' meeting for the terms of office prescribed in the bylaws unless the directors are elected at district meetings. Mail voting may be authorized by the directors or bylaws. A member of a cooperative that is not an individual may specify individuals to be eligible for election as a director. See Minn. Stat. §§ 308.07, subd. 6, 308.071, subds. 2 and 3, 308.09, subd. 1, and 308.11 (1988).

*Mail Vote for Directors. Article 3, section 15, amends section 21, subdivision 4, to provide that a member may not vote by mail for a director unless mail voting is authorized for election of directors in the articles or bylaws. This provision clarifies that the mail vote for a director should be specifically authorized in the articles or bylaws.

Section 22. Removal of Directors. Members may remove a director for cause and fill the vacancy caused by the removal at the regular or special members' meeting. See Minn. Stat. § 308.11 (1988).

*Removal of Directors for Cause. Article 3, section 17, amends section 22 to provide that members may remove a director at the members' meeting for cause related to the duties of the position of director and to fill the vacancy caused by the removal. The requirement that the cause be related to the duties of the position of director was added to eliminate putting a director on trial at a cooperative meeting for personal acts that were not related to the position of director.

*Filling Director Vacancies. Article 3, section 16, adds a section authorizing the board to appoint a member of the cooperative to fill the director's position until the next regular special members' meeting. At the next regular special members' meeting, the members must select a director to fill the unexpired term of the vacant director's position. A similar provision was not provided in the existing law for filling vacant directors positions. This position parallels the provision in the Minnesota Business Corporations Act, section 302A.225.

Section 23. Limitation of Director's Liability. A director's personal liability to the cooperative or members

for monetary damages for breach of fiduciary duty may be eliminated or limited in the articles under certain circumstances. See Minn. Stat. § 308.111 (1988).

Section 24. Officers. The board must select a president, one or more vice presidents, a secretary, and a treasurer. Additional officers may be authorized and the offices of secretary and treasurer may be combined. The bylaws may authorize the board to elect directors as a chair and one or more vice chairs of the cooperative. Certain officers must be stockholders. Members may remove an officer at a members' meeting for cause and fill the vacancy caused by the removal. See Minn. Stat. § 308.11 (1988).

*Removal of Officers for Cause. Article 3, section 18, amends section 24, subdivision 5, authorizing members to remove an officer at a members' meeting for cause related to the duties of the position of the officer to fill the vacancy caused by the removal. This provision requires that the cause be related to the duties of the position of the officer for the same reason as was stated for removal of directors for cause.

STOCK

Section 25. Capital Stock. The amount, number of shares, and par value of the authorized capital stock may be increased or decreased in classes established by amending the articles at members' meetings. A share of stock may not be issued until at least the par value of the share has been paid for in cash or cash equivalent. Stock in a cooperative may only be sold or transferred with the approval of the board. The bylaws must provide that the cooperative has the first privilege of purchasing stock

offered for sale by a stockholder. See Minn. Stat. § 308.07, subds. 1, 2, and 9 (1988).

Section 26. Cooperative Stock Subject to Security Laws. Cooperatives are subject to the provisions of Minnesota Statutes, chapter 80A, except as specifically provided in section 80A.15. See Minn. Stat. § 308.06, subd. 3 (1988).

MEMBERS

Section 27. Grouping of Members. A cooperative may group members in district, local units, or another basis. The board may implement the use of districts or local units including setting the time and place for meetings and procedures to collect delegates. See Minn. Stat. § 308.07, subds. 5 and 8 (1988).

Section 28. Stockholder Violations. A stockholder who knowingly or intentionally or repeatedly violates provisions of the bylaws may be required by the board to surrender stock. See Minn. Stat. § 308.07, subd. 9 (1988).

*Member and Stockholder Violations. Article 3, section 19, amends section 28 to provide in addition to stockholders being required to surrender stock for violation of the bylaws, a member who knowingly, intentionally, or repeatedly violates a provision of the bylaws may be required by the board to surrender membership in the cooperative. This provision was added to allow the board to have a remedy to require a member to surrender membership if the member repeatedly has a number of violations of the bylaws.

Section 29. Regular Members' Meetings. Regular members' meetings must be held annually at a time

determined by the board unless otherwise provided in the articles or bylaws. The meetings must be held at the principal place of business of the cooperative, or at another place conveniently located within the area served by the cooperative. Requirements for giving notice of the meeting, business and fiscal reports to be submitted, and the election of directors are prescribed. See Minn. Stat. § 308.09, subd. 1 (1988).

*Location of Regular Members' Meetings. Article 3, section 20, amends section 29, subdivision 20, to provide that the regular members' meetings 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. This provision gives the authority for the board or bylaws to designate a place that is adequate to hold the regular members' meetings. In some rural communities where cooperatives have consolidated, there are no places within the area served by the cooperative that are adequate to hold regular members' meetings.

Section 30. Special Members' Meetings. Special members' meetings may be called by majority vote of the board or the written petition of at least 20 percent of the members submitted to the president. Requirements for notice of the special members' meeting are prescribed. See Minn. Stat. § 308.09, subd. 2 (1988).

*Notice of Special Members' Meetings. Article 3, section 21, amends section 30, subdivision 2, to prescribe the requirements for publishing notice of special members' meetings to be similar to that of regular members' meetings.

Section 31. Certification of Mail Meeting Notice.

After mailing a special or regular members' meeting notice, the secretary must execute a certificate of providing the notice. The certificate must be made part of the record of the meeting. See Minn. Stat. § 308.09, subd. 2 (1988).

*Certification of Mail Meeting Notice. Article 3, section 22, amends section 31 to provide that after mailing special or regular members' meeting notices, the secretary must execute a certificate containing a correct copy of the mailed or published meeting notices, stating information on the copy of the mail or published meeting notices. This provision provides that the meeting notices may be mailed or published.

Section 32. Failure to Receive Meeting Notice.

Failure of a member to receive a special or regular members' meeting notice does not invalidate the action as taken by the members at the meeting. See Minn. Stat. § 308.09, subd. 2 (1988).

Section 33. Quorum.

A quorum for a meeting to transact business is ten percent of the total number of members for a cooperative with 500 or less members or 50 members for cooperatives with more than 500 members. Quorum requirements apply except for larger quorums in articles filed by a cooperative after March 26, 1949, or for larger quorums provided by amending the articles or bylaws after May 1, 1959. At a meeting where voting by mail is authorized, attendance of a sufficient number of members to constitute a quorum shall be established by registering the members of the cooperative present at the meeting or represented by mail vote. Action at a meeting is invalid without a quorum at the meeting. See Minn. Stat. § 308.10 (1988).

Section 34. Member Voting Rights. A member of a cooperative is only entitled to one vote. If a vote of members is taken on any matter, a spouse of the member may vote on behalf of the member unless the member has indicated otherwise. A member or delegate may exercise voting rights on any matter that is before members from the time the member arrives at the meeting unless the articles or bylaws specify an earlier and specific time for proposing the right to vote. A member's vote must be in person or by mail and not by proxy except as provided for spouses voting and members represented by delegates. Voting by delegates is authorized for local units of members that are entitled to be represented by delegates.

A member who is absent from a meeting may vote by mail on a ballot in the form prescribed by the board. A properly executed ballot must be accepted by the board and counted as a vote of the absent member at the meeting. See Minn. Stat. § 308.07, subs. 3 and 10 (1988), 308.105, and 308.107, subdivision 7 (1988).

*Voting Method at a Member's Meeting. Article 3, section 23, amends section 34, subdivision 4, to provide that a member's vote at a members' meeting must be in person, or by mail if authorized by the board. This provision clarifies that the vote at a members' meeting may be made by mail only if the mail vote is authorized by the board.

*Absentee Ballots. Article 3, section 24, amends section 34, subdivision 6, to provide that a member who is absent from a members' meeting may vote by mail on the prescribed ballot on any motion, resolution, or amendment that the board submits for vote by mail to the members. This provision adds the requirement that an absent member

may only vote by mail if the board submits the question to the members for vote by mail.

Section 35. Vote of Cooperative Constituted of Other Cooperatives. A cooperative that is constituted entirely or partially of other cooperatives or associations may authorize in the articles or bylaws for the affiliated cooperative members to have an additional vote for a stipulated amount of business transacted between the member cooperative and the cooperative central organization or a stipulated number of members in the member cooperative.

Section 36. Vote of Corporate Stock Held by Cooperative. A cooperative that holds stock in another corporation may, by direction of the cooperative board or members, elect or appoint a representative to attend the meeting of the corporation. See Minn. Stat. § 308.07, subd. 3 (1988).

EARNINGS, RESERVE, AND DISTRIBUTIONS

Section 37. Reserves. A cooperative may set aside a portion of income as the board determines to create or maintain capital reserve. The board may also set aside an amount not to exceed five percent of the annual net income for promoting and encouraging cooperative organization interest, establish and accumulate reserves for buildings, machinery, equipment, and other purposes. See Minn. Stat. § 308.12, subd. 1 (1988).

Section 38. Distribution of Income. The net income in excess of dividends on capital stock in addition to reserves must be distributed on the basis of patronage. Distribution of net income must be made at least annually and the cooperative with income from trucking operations may only distribute net income annually. Dividends may be

paid on a capital stock only if net income of the cooperative for the previous fiscal year is sufficient. The dividends are not cumulative. A cooperative may distribute net income as cash credits revolving from certificates of its own or other securities. The members may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of income on equal terms with member patrons. If a nonmember patron has credits equal to the value of a share of common stock that entitles the stockholder to vote or a membership, a share of stock for membership shall be issued to the nonmember patron. If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund may be credited to the patron's individual account or the board may issue a share of preferred stock or a certificate of interest. See Minn. Stat. § 308.12, subd. 1 (1988).

*Form of Distribution of Net Income. Article 3, section 25, amends section 38, subdivision 4, to provide a cooperative may distribute net income in cash, capital stock credits, allocated patronage equities, revolving fund certificates, or its own or other securities. This provision adds that capital stock credits and allocated patronage equities may be part of the distribution of net income.

Section 39. Distribution of Unclaimed Property. A procedure to distribute unclaimed property in lieu of the provisions of Minnesota Statutes, section 345.43, is provided. See Minn. Stat. § 308.12, subd. 5 (1988).

MERGER AND CONSOLIDATION

Section 40. Merger and Consolidation. Unless otherwise prohibited, cooperatives or associations organized in this state may merge or consolidate with each

other or associations incorporated under the laws of other states. The plan of merger or consolidation must be prepared by the board or a committee selected by the board. The board must mail a merger or consolidation notice to each member. The notice must contain a full text of the plan and the time and place of the meeting for the plan to be considered. The plan of merger or consolidation may be adopted if two-thirds of the members present at the meeting approve the plan. The plan must be approved by the attorney general and the articles of merger or consolidation must be filed in the office of the secretary of state and recorded in the office of the county recorder of each county where the merging or consolidating cooperative or association has its principal place of business. After the effective date of the merger, the parties to the plan become a single association. The surviving or new association possesses all of the rights and property of each of the merged or consolidated cooperatives or associations and is responsible for all of their obligations. The right of a creditor may not be impaired by a merger or consolidation without the creditor's consent. The fee to be paid to the secretary of state for filing articles of merger is \$50. See Minn. Stat. §§ 308.06, subd. 4, and 308.15, subd. 4 (1988).

*Merger and Consolidation Plan. Article 3, section 27, amends section 40, subdivision 2, to provide that the plan for initiation of a merger or consolidation must state: (1) the names of the constituent cooperatives; (2) the names of the surviving or new cooperative; (3) the manner and basis of converting stock or membership; (4) the terms of the merger or consolidation; (5) the proposed effect of the consolidation or merger; and (6) for a consolidation, the plan must contain the articles of the new association. The first three items were included to provide information for the filing with the Secretary of

State as to the names of the former and new cooperatives and the basis of converting stock or membership.

*Merger or Consolidation Adoption Procedure. Article 3, section 27, amends section 40, subdivision 4, to change the merger and consolidation adoption procedure.

- (1) A plan of merger or consolidation is adopted if the plan is approved by two-thirds of the votes cast, or for a cooperative with articles or bylaws requiring more than two-thirds of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or the number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied. This change allows a cooperative to provide in its articles and bylaws that a greater number than two-thirds of the votes cast are required for the approval of merger or consolidation of the cooperative.
- (2) The approval of the Attorney General for a plan of merger or consolidation is deleted.
- (3) The articles of a merger or consolidation are to be filed only in the Office of the Secretary of State. The requirement of filing in the Office of the County Recorder is deleted.
- (4) The Secretary of State is directed to issue a certificate of the merged or consolidated cooperative or association. This provision was added so that the merged or consolidated cooperative or association has a certificate as evidence of the merger or consolidation.

*Filing Fee for Merger or Consolidation. Article 3, section 28, amends section 40, subdivision 6, to provide that the fee to be paid to the secretary of state for filing articles of merger or consolidation is \$50. This provision adds a filing fee of \$50 for filing articles of consolidation.

LIQUIDATION

Section 41. Liquidation. Liquidations authorized by the members of the board may dispose of all or substantially all of the property of the cooperative on the terms and conditions determined by the board. Members may authorize liquidation by adopting a resolution at a members' meeting. See Minn. Stat. § 308.05, subd. 6 (1988).

*Resolution for Liquidation. Article 3, section 29, amends section 41, subdivision 2, to provide that a resolution for liquidation must be approved by two-thirds of the votes cast, or for a cooperative with articles or bylaws requiring more than two-thirds for approval or other conditions for approval, the resolution is approved by the 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. This provision allows a cooperative to provide a greater number than two-thirds for approval of a liquidation resolution and provide other conditions for the approval.

Section 42. Dissolution of Cooperative. Voluntary proceedings for dissolution of a cooperative may be initiated by resolution for dissolution adopted by a two-thirds vote by the members. The resolution may provide that the affairs of the cooperative may be wound up out of court and designate a trustee to conduct the winding up.

The resolution may also provide that the affairs of the cooperative will be wound up under the supervision of the court. The duties for trustees are prescribed. Undistributed property after discharging debts and liabilities of the cooperative may be distributed by the trustees to a tax exempt organization or to a unit of state or local government. The dissolution order or certificate of dissolution must be filed for record in the same manner as a certificate for dissolution. Title to assets omitted from the winding up vest in the trustees or receivers for the benefit of persons entitled to the assets. See Minn. Stat. § 308.14, subds. 2, 3, 3b, 4, 5, and 6 (1988).

*Replaced Dissolution Procedure. Article 3, sections 30 to 46, replace the dissolution procedure in sections 42 and 43 with a procedure that is similar to the procedure for dissolution in the Minnesota Business Corporations Act, sections 302A.701, 302A.721, subdivisions 1 and 2, 302A.723, subdivisions 2 and 3, 302A.725, subdivisions 1, 2, and 3, and 302A.731, subdivisions 1 and 2. The dissolution procedure provides for voluntary dissolution on approval at a members' meeting, authority to revoke the dissolution proceedings, and filing of articles of dissolution with an issuance of a certificate of dissolution when the cooperative is dissolved. After notice of intent to dissolve has been filed with the Secretary of State, a member or creditor may apply to a court for court supervision of the dissolution. A court may grant the equitable relief that it deems just and reasonable under the circumstances or the court may dissolve a cooperative and liquidate its assets and business under certain prescribed conditions. Procedures are prescribed for hearings in the authority of court in an involuntary or court supervised voluntary dissolution. Qualifications are specified for a receiver.

A cooperative may be dissolved voluntarily by decree of a court in an action filed by the Attorney General, if the Attorney General establishes certain fraudulent conditions or other violations.

Provisions are made for filing claims that are not included in the winding up of a cooperative. In general, a person who is or becomes a creditor 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, and has not initiated a legal, administrative, or arbitration proceeding before the commencement of dissolution proceedings, is barred from suing on the claim or enforcing the claim unless good cause is shown or a claim was admitted by the cooperative.

Section 43. Dissolution of Certain Rural Telephone Cooperatives. A rural cooperative telephone company organized under Minnesota Revised Statutes of 1905, chapter 58, or the General Laws of Minnesota 1905, chapters 276 and 313, may dissolve voluntarily under the Minnesota Business Corporation Act after a resolution for dissolution is adopted by a majority of the voting power of the voting members. See Minn. Stat. § 308.341 (1988).

*Article 3, section 49, repeals this section. See dissolution procedure above.

*Certain Existing Cooperatives Deem to be Organized Under the Recodified Act. Article 3, section 47, adds an uncodified section providing that a cooperative organized under the general cooperative provision, Minnesota Statutes 1988, sections 308.05 to 308.18, or the cooperative marketing act, Minnesota Statutes, sections 308.53 to 308.85, is deemed to be organized under and subject to the

recodified cooperative law act and has the power to perform every act necessary and proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative and has other rights, powers, or privileges granted by the laws of the state to other cooperations except those that are inconsistent with the expressed provisions of the recodified cooperative law act. This provision grandfathers in certain existing cooperatives under Minnesota Statutes, chapter 308, to be deemed organized and subject to the recodified cooperative law act.

Section 44. Repealer. Minnesota Statutes 1988, chapter 308, is repealed.

Correction of Cross-References, Article 2. Article 2 makes correction of cross-references in Minnesota Statutes, section 47.20, subdivision 2; 117.232, subdivision 1; 216B.027, subdivision 5; 237.075, subdivision 9; 273.124, subdivisions 3 and 6; 273.132, subdivision 5; and 363.01, subdivision 32.

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