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Referred: Labor & Commerce
and Judiciary

1 IN THE HOUSE

BY KOPONEN

2 HOUSE BILL NO. 581

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act revising the Alaska Cooperative Corporation
7 Act; and amending Alaska Rules of Civil Procedure 4,
8 10, 11, 19, 20, 23.1, 24, 65, 73, and 82, and Alaska
9 Rule of Evidence 803(8)."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 10 is amended by adding a new chapter to read:

12 CHAPTER 16. ALASKA COOPERATIVE CORPORATIONS CODE.

13 ARTICLE 1. COOPERATIVE PURPOSES AND POWERS.

14 Sec. 10.16.005. PURPOSES FOR WHICH COOPERATIVE CORPORATION MAY
15 BE ORGANIZED. A cooperative may be organized under this chapter for a
16 lawful purpose, except for the purpose of banking, insurance, or the
17 furnishing of electric or telephone service.

18 Sec. 10.16.008. DECLARATION OF PUBLIC POLICY THAT COOPERATIVES
19 ARE NOT IN RESTRAINT OF TRADE. It is the public policy of the state
20 to encourage the efficient production and distribution of agricultural
21 and other products derived from the natural resources or labor re-
22 sources of the state. A cooperative that complies with the provisions
23 of this chapter and that does not, during the fiscal year of the
24 cooperative, market products for nonmember patrons in an amount
25 greater in value than the products marketed for the members of the
26 cooperative, is not a conspiracy or combination in restraint of trade,
27 or an illegal monopoly. The contracts of a cooperative authorized by
28 this chapter, whether or not required by the cooperative as a
29 condition of membership or of doing business with the cooperative, are

1 not an unlawful restraint of trade, or a conspiracy or combination to
2 accomplish an improper or illegal purpose or act.

3 Sec. 10.16.010. GENERAL POWERS. Subject to the limitations in
4 the articles of incorporation, the provisions of this chapter, and
5 other applicable law, a cooperative has all the powers of a natural
6 person in carrying out business activities, including, without limita-
7 tion, the power to

8 (1) have perpetual succession by the corporate name;

9 (2) sue and be sued, complain and defend, in the corporate
10 name;

11 (3) adopt a corporate seal and alter it, and use it by
12 having it, or a facsimile of it, impressed, affixed or reproduced;

13 (4) buy, take, receive, lease, take by gift, devise or
14 bequest, or otherwise acquire, own, hold, improve, use and otherwise
15 deal in, real or personal property, wherever situated;

16 (5) sell, convey, mortgage, pledge, lease, exchange, trans-
17 fer and otherwise dispose of its property and assets;

18 (6) buy, take, receive, subscribe for, or otherwise ac-
19 quire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
20 otherwise dispose of, and otherwise use and deal in, shares or other
21 interests in, or obligations of, other domestic or foreign coopera-
22 tives and corporations, partnerships or individuals, or direct or
23 indirect obligations of the United States or of another government,
24 state, territory, or its governmental district or municipality or
25 instrumentality;

26 (7) make contracts and incur liabilities, borrow money at
27 the rates of interest the cooperative determines, issue notes, bonds,
28 certificates of indebtedness and other obligations, issue certificates
29 representing equity interests in its assets, and secure its

1 obligations by mortgage or pledge of its property, franchise and
2 income;

3 (8) lend money for its corporate purposes, invest and
4 reinvest its funds and take and hold real and personal property as
5 security for the payment of funds loaned or invested;

6 (9) conduct business and affairs and have offices and
7 exercise its powers in a state, territory, district or possession of
8 the United States, or in a foreign country;

9 (10) elect or appoint officers and agents, define their
10 duties, and fix their compensation;

11 (11) make and alter bylaws, consistent with its articles
12 and the laws of the state, for the administration and regulation of
13 its affairs;

14 (12) donate for the public welfare or for charitable,
15 scientific, or educational purposes;

16 (13) cease its activities and surrender its franchise;

17 (14) have and exercise all powers necessary or convenient
18 to carry out the purposes for which the cooperative is organized.

19 Sec. 10.16.015. DEFENSE OF ULTRA VIRES. (a) An act and a
20 transfer of property to or by a cooperative is not invalid because it
21 exceeds the cooperative's power to do the act or make or receive the
22 transfer, except that the lack of power may be asserted in a proceed-
23 ing

24 (1) by a member, or director against the cooperative to
25 enjoin an act or transfer of property to or by the cooperative; if the
26 unauthorized act or transfer sought to be enjoined is being, or is to
27 be, performed or made under a contract to which the cooperative is a
28 party, the court may, if all of the parties to the contract are
29 parties to the proceeding and if the court considers it equitable, set

1 aside and enjoin the performance of the contract, and in so doing may
2 allow the cooperative or the other parties to the contract to receive
3 compensation for the loss or damage sustained by either of them re-
4 sulting from the action of the court in setting aside and enjoining
5 the performance of the contract; the court may not award anticipated
6 profits to be derived from the performance of the contract as a loss
7 or damage sustained;

8 (2) by or for the cooperative to obtain a judgment in its
9 favor against an incumbent or former officer, director, or incorpor-
10 ator of the cooperative for loss or damage due to that individual's
11 unauthorized act;

12 (3) by the commissioner to annul or dissolve the coopera-
13 tive or to enjoin the cooperative from unauthorized business
14 activities.

15 (b) This section applies to contracts and conveyances made by
16 foreign cooperatives in the state and to conveyances by foreign co-
17 operatives of real property situated in the state.

18 Sec. 10.16.017. LIMITATION ON AUTHORITY OF COOPERATIVE AGENT. A
19 limitation of the powers of cooperative members, officers, or direc-
20 tors, or the manner or exercise of their powers, that is contained in
21 or implied by the articles of incorporation, bylaws, or action of the
22 board, by AS 10.16.450 - 10.16.560 or 10.16.605 - 10.16.685, or by an
23 agreement between members of the cooperative, may be asserted between
24 a cooperative, or a member of the cooperative, and a third person,
25 only

26 (1) by a member of the cooperative or by the state to
27 enjoin the doing or continuance of unauthorized business by the co-
28 operative or its officers, or both, where a third party has not
29 acquired rights under AS 10.16.015;

1 (2) to dissolve the cooperative; or

2 (3) by the cooperative or by a member of the cooperative in
3 a representative suit against the officers or directors of the cooper-
4 ative for a violation of their duty.

5 Sec. 10.16.020. CONTRACT OR CONVEYANCE BINDING ON DOMESTIC AND
6 FOREIGN COOPERATIVES. (a) A contract or conveyance made in the name
7 of the cooperative that is authorized by the board, or that is done
8 within the scope of the actual or apparent authority of the
9 cooperative conferred by the board, except when the board's authority
10 is limited by law other than this chapter, or that is within the
11 agency power of the officers executing it, binds the cooperative, and
12 the cooperative acquires rights under the contract or conveyance,
13 whether the contract or conveyance has been executed or is wholly or
14 partly executory.

15 (b) This section applies to contracts and conveyances made by a
16 foreign cooperative in the state and to conveyances by a foreign
17 cooperative of real property situated in the state.

18 ARTICLE 2. NAME AND SERVICE OF PROCESS.

19 Sec. 10.16.025. COOPERATIVE NAME. (a) The name of a coopera-
20 tive must contain the word "cooperative," "association," or an abbre-
21 viation of one of these words. The corporate name may not contain a
22 word or phrase that indicates or implies that the cooperative is
23 organized for a purpose other than the purpose contained in the arti-
24 cles of the cooperative. The name of a cooperative may not be the
25 same as, or deceptively similar to, the name of a domestic corporation
26 existing under the laws of the state or a foreign corporation author-
27 ized to transact business in the state, or a name that has been re-
28 served or registered under this title.

29 (b) The name of a cooperative may not contain the word "city,"

1 "borough," or "village" or otherwise imply that the cooperative is a
2 municipality. The name of a city, borough, or village may be used in
3 the name of a cooperative.

4 (c) A person other than a cooperative incorporated under this
5 chapter or under a former law of the state, or a foreign cooperative
6 authorized to transact business in the state, may not use the term
7 "cooperative," or a variation of the term, in its corporate name,
8 business name, or title. This subsection does not apply to a
9 cooperative organized to generate and transmit electrical energy and
10 power or to furnish electrical or telephone service.

11 (d) A cooperative may enjoin a violation of this section by
12 court action without showing damage to the cooperative.

13 Sec. 10.16.030. RESERVATION OF COOPERATIVE NAME. The exclusive
14 right to the use of the name of a cooperative may be reserved by

15 (1) a person intending to organize a cooperative under this
16 chapter;

17 (2) a domestic cooperative intending to change its name;

18 (3) a foreign cooperative intending to apply for a certifi-
19 cate of authority to transact business in the state;

20 (4) a foreign cooperative authorized to transact business
21 in the state and intending to change its name; or

22 (5) a person intending to organize a foreign cooperative
23 and to have it apply for a certificate of authority to transact busi-
24 ness in the state.

25 Sec. 10.16.033. APPLICATION TO RESERVE COOPERATIVE NAME. Reser-
26 vation of a cooperative name is made by filing an application with the
27 commissioner. If the commissioner finds that the name satisfies the
28 requirements of AS 10.16.025 and is not a reserved or registered
29 business name under AS 10.35, the commissioner shall reserve it for

1 the exclusive use of the applicant for a period of 120 days.

2 Sec. 10.16.037. TRANSFER OF RESERVED NAME. The holder of a
3 reserved cooperative name may transfer the right to the exclusive use
4 of that name to another person by filing a notice of transfer with the
5 commissioner, that is signed by the holder of the reserved corporate
6 name, and that specifies the name and address of the transferee.

7 Sec. 10.16.040. REGISTRATION OF COOPERATIVE NAME. A cooperative
8 organized and existing under the laws of a state or territory of the
9 United States may register its corporate name if the name is not the
10 same as, or deceptively similar to, the name of a domestic corpora-
11 tion, the name of a foreign corporation authorized to transact busi-
12 ness in the state, a corporate name reserved or registered under this
13 chapter, or a business name reserved or registered under AS 10.35.

14 Sec. 10.16.045. USE OF SAME OR DECEPTIVELY SIMILAR NAME. (a)
15 Registration of the name of a cooperative gives the registering co-
16 operative the exclusive right to use the name. The person who has
17 registered the cooperative name may enjoin the use of the same or
18 deceptively similar name and has a cause of action for damages against
19 a person who uses the same name or a deceptively similar name.

20 (b) A cooperative may enjoin a violation of this section by
21 court action without showing damage to the cooperative.

22 Sec. 10.16.050. PROCEDURE FOR REGISTRATION OF COOPERATIVE NAME.
23 Registration of a cooperative name is made by filing with the commis-
24 sioner

25 (1) an application for registration executed by an officer
26 of the cooperative setting out the name of the cooperative, the state
27 or territory where it is incorporated, the date of incorporation, a
28 statement that it is doing business, and a brief statement of its
29 business; and

1 (2) a certificate from an official of the state or territo-
2 ry where the cooperative is organized who has custody of the records
3 of that state pertaining to cooperative corporations and that states
4 that the cooperative is in good standing under the laws of that state
5 or territory.

6 Sec. 10.16.055. FEE FOR AND DURATION OF REGISTERED NAME. (a)
7 The department shall establish by regulation the fee for registration
8 of the name of a cooperative.

9 (b) The registration is effective until the close of the calen-
10 dar year in which the application for registration was filed unless
11 terminated earlier by involuntary dissolution under AS 10.16.450.

12 Sec. 10.16.057. RENEWAL OF REGISTERED NAME. (a) A cooperative
13 that has registered the name of the cooperative may renew the regis-
14 tration each year by

15 (1) filing an application for renewal each year setting out
16 the facts required in an original application for registration;

17 (2) filing a certificate of good standing required for an
18 original registration; and

19 (3) paying the renewal fee established by the department
20 under AS 10.16.055(a).

21 (b) An application for renewal shall be filed between October 1
22 and December 31 each year. A renewal under this section extends the
23 registration of the name of the cooperative through the following
24 calendar year.

25 Sec. 10.16.060. REGISTERED OFFICE AND REGISTERED AGENT. A
26 cooperative shall continuously maintain in the state a registered
27 agent and a registered office. The registered office may be the same
28 as the place of business of the cooperative. The registered agent
29 shall be either a natural person who is a resident of the state whose

1 business office is the same as the registered office, or a domestic or
2 foreign corporation authorized to transact business in the state whose
3 business office is the same as the registered office.

4 Sec. 10.16.065. LISTING AND PUBLICATION OF REGISTERED NAMES.

5 The commissioner shall file a list of the registered names of the
6 domestic and foreign cooperatives authorized to transact business in
7 the state, and the names and addresses of their registered agents with
8 the superior court of each judicial district. The commissioner shall
9 provide to the superior court of each judicial district a weekly
10 update of the list by mechanical or electronic means that can be
11 reduced to legible written copy. The commissioner shall make avail-
12 able to the public on request and for a fee established by the depart-
13 ment by regulation a copy of the list and weekly updates. The commis-
14 sioner shall publish an updated compilation of the entire list at
15 least once each year.

16 Sec. 10.16.070. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A

17 cooperative may change the registered office or agent of the coopera-
18 tive, or both, by filing with the department a verified statement
19 signed by the president or vice-president of the cooperative that
20 states

21 (1) the name of the cooperative;

22 (2) the address of the registered office of the coopera-
23 tive;

24 (3) the address of the new registered office of the cooper-
25 ative if the registered office is to be changed;

26 (4) the name of the registered agent of the cooperative;

27 (5) the name of the new registered agent of the coopera-
28 tive, if the registered agent is to be changed; and

29 (6) a statement that the change is authorized by resolution

1 of the board of directors of the cooperative.

2 (b) If the verified statement complies with this chapter, the
3 commissioner shall file it in the commissioner's office. The change
4 becomes effective when the statement is filed by the commissioner.

5 Sec. 10.16.075. CHANGE OR RESIGNATION OF REGISTERED AGENT. (a)

6 A registered agent of a domestic or foreign cooperative may change the
7 location of the agent's office from one address to another in the
8 state. The agent may change the registered office of the cooperative
9 for which the person is acting as registered agent by filing in the
10 office of the commissioner a statement setting out (1) the name of
11 the agent; (2) the address of the agent's office before the change;
12 (3) the new address of the office; and (4) a list of corporations
13 for which the person is the registered agent. The statement shall be
14 executed by the registered agent in the individual name of the agent,
15 or if the agent is a corporation, the statement shall be executed and
16 verified by the president or vice-president of the corporation. The
17 statement shall be delivered to the commissioner and if the statement
18 complies with this chapter, the commissioner shall file the statement
19 in the commissioner's office. The change becomes effective when the
20 statement is filed by the commissioner.

21 (b) A registered agent may resign by filing a written notice and
22 an exact copy of the notice with the commissioner. The written notice
23 of resignation must include the latest address of the principal office
24 of the cooperative and the names, addresses, and titles of the most
25 recent officers of the cooperative known by the agent. The commis-
26 sioner shall immediately mail a copy of the notice to the cooperative
27 at the principal office of the cooperative. The resignation becomes
28 effective 30 days after the filing of the written notice, unless the
29 cooperative corporation earlier appoints a successor registered agent

1 under AS 10.16.070.

2 Sec. 10.16.077. SERVICE OF PROCESS ON COOPERATIVE. (a) A
3 process, notice, or demand required or permitted by law to be served
4 on a cooperative may be served on its registered agent.

5 (b) If a cooperative fails to appoint or maintain a registered
6 agent in the state, or if the cooperative's registered agent cannot,
7 with reasonable diligence, be found at the registered office, a pro-
8 cess, notice, or demand may be served on the commissioner. A person
9 may serve the commissioner under this subsection by

10 (1) serving on the commissioner or the designee of the
11 commissioner a copy of the process, notice, or demand, the papers
12 required by law to be delivered with the service, and paying a fee
13 established by the department by regulation;

14 (2) sending by certified mail to the cooperative being
15 served a notice that service has been made on the commissioner under
16 this subsection and a copy of the process, notice, or demand and
17 accompanying papers; notice to the cooperative shall be sent to

18 (A) the address of the last registered office of the
19 cooperative as shown by the records on file in the office of the
20 commissioner; and

21 (B) the address that the person initiating the pro-
22 ceedings knows or, on the basis of reasonable inquiry, has reason
23 to believe, is most likely to result in actual notice; and

24 (3) filing with the appropriate court or other body, as
25 part of the return of service, the return receipt of mailing and an
26 affidavit of the person initiating the proceedings that this
27 subsection has been complied with.

28 (c) The commissioner shall keep a record of the processes,
29 notices, and demands served on the commissioner under this section.

1 (d) This section does not affect the right to serve process,
2 notice, or demand required or permitted by law to be served on a
3 corporation in another manner permitted by law.

4 ARTICLE 3. FORMATION OF COOPERATIVES.

5 Sec. 10.16.080. INCORPORATORS. One or more natural persons who
6 are 18 years of age or older may incorporate a cooperative corporation
7 by signing, verifying, and delivering to the commissioner an original
8 and an exact copy of the articles of incorporation for the coopera-
9 tive.

10 Sec. 10.16.085. ARTICLES OF INCORPORATION. The articles of
11 incorporation must include

12 (1) the name of the cooperative and that it is a coopera-
13 tive;

14 (2) the purposes for which the cooperative is organized;

15 (3) whether the cooperative is organized with or without
16 membership stock, the amount of the membership fee, and the limita-
17 tions, if any, on the transfer of a membership;

18 (4) the basis for distributing the assets of the coopera-
19 tive in the event of dissolution or liquidation;

20 (5) the address of the initial registered office and the
21 name of the initial registered agent at that address;

22 (6) the number, which must be three or more, constituting
23 the initial board of directors and the names and addresses of the
24 persons who are to serve as directors until the first annual meeting
25 of the members or until their successors are elected and take office;
26 and

27 (7) the name and address of each incorporator.

28 Sec. 10.16.090. OPTIONAL PROVISIONS IN ARTICLES OF
29 INCORPORATION. The articles of incorporation may include

1 (1) one or more of the following provisions, which are not
2 effective unless expressly stated in the articles:

3 (A) a provision granting, with or without limitation,
4 the power to levy assessments on members;

5 (B) special qualifications for members;

6 (C) a provision limiting the duration of the corpo-
7 ration's existence to a specified period of time;

8 (D) a provision restricting or eliminating the power
9 of the board or of the members to adopt, amend, or repeal pro-
10 visions of the bylaws under AS 10.16.115;

11 (E) a provision requiring for corporate action, except
12 corporate action under AS 10.16.255 and 10.16.450, the affirma-
13 tive vote of a larger proportion of the members, or the affirma-
14 tive vote or quorum of a larger proportion of the directors, than
15 is otherwise required by this chapter;

16 (F) a provision limiting or restricting the business
17 that the cooperative may engage in or the powers that the cooper-
18 ative may exercise;

19 (G) a provision requiring approval of the members not
20 otherwise required by this chapter for an action of the
21 cooperative;

22 (H) a provision empowering the board to submit by mail
23 ballot a question to be voted on at a member meeting, and whether
24 that power extends to the election of directors;

25 (I) a provision for the formation of districts, the
26 holding of member meetings by districts, and the holding of
27 elections of directors at district meetings;

28 (J) a provision for electing delegates at district
29 meetings to represent their districts in annual and special

1 meetings of the members; notice of district meetings shall be
2 given in the manner provided for member meetings under
3 AS 10.16.205;

4 (K) a provision that one or more directors may be
5 appointed by the other directors under AS 10.16.235 or by a
6 public official or commission authorized by the laws of the
7 state;

8 (L) a provision that the board of directors shall be
9 classified as provided in AS 10.16.248;

10 (M) a provision allowed by AS 10.16.228 waiving the
11 requirement that an annual report be sent to members;

12 (2) other provisions not in conflict with this chapter for
13 the management of the business and for the conduct of the affairs of
14 the cooperative, including a provision that this chapter requires or
15 permits to be stated in the bylaws.

16 Sec. 10.16.093. FILING OF ARTICLES OF INCORPORATION. An origi-
17 nal and an exact copy of the articles of incorporation shall be de-
18 livered to the commissioner for processing under AS 10.16.805 and for
19 issuance of a certificate of incorporation.

20 Sec. 10.16.095. DISCLOSURE OF COOPERATIVE PURPOSES. An incor-
21 porator presenting articles of incorporation under AS 10.16.080 shall
22 deliver, with the articles, a separate statement of the codes, select-
23 ed from the identification codes established under AS 10.16.790, that
24 most closely describe the initial activities of the cooperative.

25 Sec. 10.16.100. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPO-
26 RATION. The corporate existence begins when the commissioner issues
27 the certificate of incorporation. The certificate of incorporation is
28 conclusive evidence that all precedent conditions required for
29 incorporation to be performed by the incorporators have been satisfied

1 and that the cooperative has been incorporated. Issuance does not
2 affect the right of the state to bring a proceeding to cancel or
3 revoke the certificate or for involuntary dissolution of the
4 cooperative. The doctrines of de jure compliance, de facto
5 corporations, and corporation by estoppel are abolished.

6 Sec. 10.16.105. OPERATING AS COOPERATIVE WITHOUT INCORPORATING
7 UNDER THIS CHAPTER. (a) Except as provided in (b) of this section, a
8 person who operates as a cooperative that has not been issued a
9 certificate of incorporation under this chapter is liable for the
10 debts and liabilities incurred or arising out of that action.

11 (b) A third party and a person acting on behalf of a cooperative
12 that has not been issued a certificate of incorporation under this
13 chapter may modify or preclude by written agreement the liability
14 created by this section.

15 Sec. 10.16.110. ORGANIZATIONAL MEETING. After the commencement
16 of corporate existence by the issuance of a certificate of
17 incorporation, the incorporators or the board of directors named in
18 the articles of incorporation shall hold an organizational meeting,
19 either inside or outside the state, at the call of a majority of the
20 incorporators or directors named in the articles of incorporation, to
21 adopt bylaws, elect directors if none have been named in the articles,
22 elect officers, and transact other business. Those calling the
23 meeting shall give at least 20 days' notice of the meeting by mail to
24 each incorporator or director named in the articles of incorporation.
25 The notice must state the time and place of the meeting.

26 Sec. 10.16.113. POWER OF INCORPORATORS BEFORE DIRECTORS' ELEC-
27 TION. If initial directors have not been named in the articles of
28 incorporation, the incorporator or incorporators may do whatever is
29 necessary and proper to perfect the organization of the cooperative

1 until the directors are elected, including the adoption and amendment
2 of bylaws and the election of directors.

3 Sec. 10.16.115. ADOPTION OF BYLAWS. Bylaws may be adopted,
4 amended, or repealed either by approval of the members or by approval
5 of the board. The articles of incorporation may restrict or eliminate
6 the power of either the board or the members to adopt, amend, or
7 repeal bylaws.

8 Sec.10.16.120. CONTENT OF BYLAWS. (a) Unless already stated in
9 the articles, the bylaws must state the number of directors of the
10 cooperative or state that the board or the members shall establish in
11 the manner provided by the bylaws the exact number of directors within
12 a specified numerical limit. The stated maximum number of directors
13 may not be greater than two times the stated minimum number minus one
14 and the minimum number of directors may not be less than three. If
15 the articles establish the number of directors, the number of direc-
16 tors may only be changed by an amendment to the articles.

17 (b) After the admission of members, the outstanding members
18 shall adopt a bylaw

19 (1) to establish or change the fixed number of directors or
20 the maximum or minimum number of directors; or

21 (2) to change the board from a fixed number to a variable
22 number or vice versa.

23 (c) The bylaws may contain provisions that do not conflict with
24 law or the articles of incorporation for the management of the
25 business of the cooperative and for the conduct of the affairs of the
26 cooperative, including

27 (1) the time, place, and manner of calling, conducting and
28 giving notice of meetings of members, directors, and committees;

29 (2) the qualifications, duties, compensation and time of

1 the election of directors;

2 (3) the requirements for a quorum for directors' and com-
3 mittee meetings;

4 (4) the appointment and authority of committees of the
5 board;

6 (5) the appointment, duties, compensation, and tenure of
7 officers; and

8 (6) the making of annual reports and financial statements
9 to the members.

10 Sec. 10.16.125. BYLAWS TO BE KEPT AT OFFICE; INSPECTION BY
11 MEMBERS. A cooperative shall keep at its principal executive office
12 in the state or, if its principal executive office is not in the
13 state, at its principal business office in the state, the original or
14 a copy of its current bylaws. The cooperative shall make the bylaws
15 available for inspection by the members at all reasonable times during
16 office hours. If the principal executive office of the corporation is
17 outside the state and the cooperative has no principal business office
18 in the state, the cooperative shall furnish a copy of the current
19 bylaws to a member who requests the copy in writing.

20 ARTICLE 4. COOPERATIVE FINANCES.

21 Sec. 10.16.130. MEMBERSHIP STOCK. The articles may require that
22 members own one or more shares of membership stock, and may limit the
23 issuance and transferability of the stock.

24 Sec. 10.16.133. DISTRIBUTIONS. (a) A cooperative or a subsid-
25 iary of a cooperative may not make a distribution to the members
26 unless

27 (1) the amount of the retained earnings of the cooperative
28 immediately before the distribution equals or exceeds the amount of
29 the proposed distribution; or

(2) immediately after making the distribution

(A) the sum of the assets of the cooperative, exclusive of goodwill, capitalized research and development expenses, evidences of debts owing from directors or officers, and deferred charges, would be at least equal to one and one-fourth times the liabilities of the cooperative, excluding deferred taxes, deferred income, and other deferred credits; and

(B) the current assets of the cooperative would be

(i) at least equal to its current liabilities; or

(ii) if the average of the earnings of the cooperative before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense of the cooperative for those fiscal years, at least equal to one and one-fourth its current liabilities.

(b) For the purposes of this section,

(1) in determining the amount of the assets of the cooperative, the cooperative may not include profits derived from an exchange of assets unless the assets received are currently realizable in cash;

(2) "current assets" include net amounts that the board has determined in good faith may reasonably be expected to be received from customers during the 12-month period used in calculating current liabilities under existing contractual relationships obligating the customers to make fixed or periodic payments during the term of the contracts, after in each case deducting future costs not then included in current liabilities but reasonably expected to be incurred by the cooperative in performing each contract;

(3) the cooperative shall base the amount of a distribution payable in property on the value that is listed for the property on

1 the financial statements of the cooperative in accordance with
2 generally accepted accounting principles.

3 (c) A cooperative that does not classify the assets of the
4 cooperative as current assets and fixed assets under generally accept-
5 ed accounting principles is exempt from (a)(2)(B) of this section.

6 Sec. 10.16.135. APPORTIONMENT AND DISTRIBUTION OF NET PROCEEDS OR
7 SAVINGS OR NET LOSSES. Subject to AS 10.16.133, a cooperative shall
8 apportion, distribute, and pay periodically the net proceeds or sav-
9 ings of a cooperative to the persons entitled to receive them at the
10 times and in the manner provided in the bylaws, except that a coopera-
11 tive shall apportion and distribute the net proceeds or savings from
12 patronage of the cooperative by its members among these members in
13 accordance with the ratio that each member's patronage during the
14 period involved bears to the total patronage of all the members during
15 that period. The bylaws may contain reasonable provisions for the
16 apportionment and charging of net losses. In this section "patronage"
17 includes work performed as a member of a workers' cooperative.

18 Sec. 10.16.140. MANNER OF PAYMENT. A cooperative may apportion,
19 distribute and pay net proceeds or savings required by AS 10.16.135 in
20 cash, credits, certificates of interest, revolving fund certificates,
21 letters of advice or other securities or certificates issued by the
22 cooperative or by an affiliated domestic or foreign cooperative asso-
23 ciation whether or not incorporated under this chapter.

24 Sec. 10.16.145. MANNER OF APPORTIONMENT AND DISTRIBUTION. (a)
25 Apportionment and distribution of net proceeds or savings or net
26 losses may be separately determined for, and be based on, patronage of
27 single or multiple pools, particular departments of the cooperative,
28 particular commodities, supplies, or services, or on the type of
29 patronage.

1 (b) A cooperative may provide in its bylaws the minimum amount
2 of a single patronage transaction to be taken into account for the
3 purpose of participation in allocation and distribution of net pro-
4 ceeds or savings or net losses under AS 10.16.135 - 10.16.150.

5 Sec. 10.16.150. DETERMINATION OF NET PROCEEDS, SAVINGS OR LOSS-
6 ES. A cooperative shall compute net proceeds or savings or net losses
7 under AS 10.16.135 - 10.16.150 in accordance with generally accepted
8 accounting principles applicable to cooperatives after deducting
9 dividends paid on capital stock from gross proceeds or savings.

10 Sec. 10.16.153. PROHIBITED DISTRIBUTION. A cooperative or
11 subsidiary of a cooperative may not make a distribution to the members
12 if the cooperative or the subsidiary making the distribution is, or as
13 a result of the distribution would be, likely to be unable to meet its
14 liabilities as they mature.

15 Sec. 10.16.155. ADDITIONAL RESTRICTIONS. A cooperative may make
16 additional restrictions for distributions to members in the articles,
17 bylaws or agreements of the cooperative.

18 Sec. 10.16.160. IDENTIFICATION OF DISTRIBUTION IN NOTICE TO
19 MEMBERS. A cooperative shall inform members in a notice that a dis-
20 tribution other than one chargeable to retained earnings is made from
21 a source other than retained earnings, and shall include a statement
22 of the accounting treatment of the distribution. The cooperative
23 shall give the notice with the distribution or within three months
24 after the end of the fiscal year in which the cooperative pays the
25 distribution.

26 Sec. 10.16.165. UNCLAIMED DISTRIBUTION, REDEMPTION, OR PAYMENT.
27 The board may declare that a distribution of net margins by a coopera-
28 tive or a redemption of or payment based on a security, that remains
29 unclaimed for six years after the date authorized for payment,

1 redemption or retirement is forfeited. The amount forfeited may
2 revert to the cooperative, if, at least six months before the declared
3 date of forfeiture, the cooperative has mailed a notice that the
4 payment is available to the last known address of the person shown by
5 the cooperative's records to be entitled to the payment or, if the
6 address is unknown, the cooperative publishes the notice as provided
7 by law for the publication of a summons.

8 Sec. 10.16.170. MISSING SECURITIES OR OWNERSHIP RECORDS ON
9 PROPOSED REDEMPTION. (a) When a certificate for a security issued by
10 a cooperative is missing, the cooperative shall issue a duplicate
11 certificate on the request of the owner if the owner furnishes the
12 indemnity required by the cooperative.

13 (b) When records showing ownership of securities, records used
14 to determine the apportionment of securities, or information necessary
15 to make a proposed redemption of the securities is missing, the co-
16 operative may give notice and redeem the securities as follows:

17 (1) the cooperative shall set aside an amount equal to the
18 value of the securities to be redeemed;

19 (2) the cooperative shall give notice of the redemption to
20 all known owners of the securities;

21 (3) if the ownership of a security is unknown, the coopera-
22 tive shall publish notice of the redemption at least once a month for
23 four months in a newspaper of general circulation in the judicial
24 district where the registered office of the cooperative is located;

25 (4) after publication of the notice of redemption, the
26 cooperative may terminate unclaimed outstanding securities represented
27 by the missing records in accordance with the provisions of
28 AS 10.16.165.

29 Sec. 10.16.173. LIABILITY OF MEMBERS RECEIVING PROHIBITED

1 DISTRIBUTIONS. (a) A member who receives a distribution prohibited
2 by this chapter with knowledge of facts indicating the impropriety of
3 the distribution is liable to the cooperative for the benefit of all
4 of the creditors or members entitled to institute an action under (b)
5 of this section for the amount received by the member plus interest at
6 the legal rate on judgments until paid. The liability of a member
7 under this subsection may not exceed the liability of the cooperative
8 to nonconsenting creditors at the time of the violation and the injury
9 suffered by nonconsenting members.

10 (b) Suit may be brought in the name of the cooperative to en-
11 force the liability

12 (1) to creditors arising under (a) of this section for a
13 violation of AS 10.16.133 or 10.16.153, against liable members by a
14 creditor of the cooperative whose debts or claims arose before the
15 time of the distribution to members and who has not consented to the
16 distribution, whether or not the creditor has reduced its claims to
17 judgment; or

18 (2) to members arising under (a) of this section for a
19 violation of AS 10.16.135 against a liable member by a member at the
20 time of the distribution who was omitted from and did not consent to
21 the challenged distribution, without regard to the provisions of
22 AS 10.16.230.

23 (c) A member sued under this section may implead all other
24 members liable under this section and may compel contribution, either
25 in that action or in an independent action against members not joined
26 in that action.

27 (d) This section does not affect the liability of a member under
28 other applicable law.

29 Sec. 10.16.175. LIMITATION OF LIABILITY OF MEMBERS. Except for

1 a debt lawfully contracted for between a member and the cooperative, a
2 member is not liable for the debts of the cooperative in an amount
3 exceeding the sum remaining unpaid on the member's subscription for
4 shares of the cooperative, or the sum remaining unpaid on the member's
5 membership fee if a fee is required by the cooperative.

6 Sec. 10.16.180. INAPPLICABILITY TO WINDING UP AND INVOLUNTARY OR
7 VOLUNTARY DISSOLUTIONS. AS 10.16.133 - 10.16.175 do not apply to a
8 proceeding for winding up and dissolution under AS 10.16.450 - 10.16.-
9 560.

10 ARTICLE 5. MEMBERS.

11 Sec. 10.16.185. MEMBERSHIP. Membership in a cooperative is
12 conditioned on ownership of a share of membership stock or payment of
13 a membership fee as set out in the articles. The bylaws of a coopera-
14 tive may authorize membership by payment of part of the membership fee
15 or stock subscription and compliance with an agreement to pay the
16 balance.

17 Sec. 10.16.188. RESIGNATION OR EXPIRATION OF MEMBERSHIP. (a) A
18 member has an unrestricted right to resign from membership, except
19 that the articles or bylaws may require reasonable notice before a
20 resignation is effective.

21 (b) Notwithstanding (a) of this section, a resigning member is
22 liable for charges incurred, services or benefits actually rendered
23 and unpaid, dues, assessments, fees, and obligations incurred by the
24 member under the terms of a cooperative contract that complies with
25 AS 10.16.300 - 10.16.340.

26 (c) A membership issued for a period of time expires when the
27 period of time has elapsed unless the membership is renewed.

28 Sec. 10.16.190. EXPULSION, SUSPENSION, OR TERMINATION. (a) A
29 cooperative may expel or suspend a member, or terminate or suspend a

1 membership, only as provided in this section. An expulsion, termina-
2 tion, or suspension that does not comply with this section is void and
3 without effect.

4 (b) A cooperative shall make an expulsion, suspension, or ter-
5 mination in good faith and in a fair and reasonable manner. A proce-
6 dure that does not comply with (c) of this section may be fair and
7 reasonable. The cooperative has the burden to prove that a procedure
8 that does not comply with (c) of this section is fair and reasonable.

9 (c) An expulsion, suspension, or termination procedure is fair
10 and reasonable if

11 (1) the provisions of the procedure have been set out in
12 the articles or bylaws, or the cooperative has sent on request a copy
13 of the provisions to a member in the manner required by the articles
14 or bylaws;

15 (2) the procedure provides notice to the member of the
16 proposed action and the reasons for the proposed action 30 days before
17 the expulsion, suspension, or termination; and

18 (3) the procedure provides an opportunity for the member to
19 respond, orally or in writing, not less than 10 days before the effec-
20 tive date of the expulsion, suspension, or termination, to the person
21 or body authorized to decide that the proposed expulsion, suspension,
22 or termination not take place.

23 (d) Notice required under this section may be given by a method
24 reasonably calculated to provide actual notice. To give notice by
25 mail, the cooperative shall send the notice by first-class or
26 certified mail to the last address of the member shown on the records
27 of the cooperative.

28 (e) An action challenging an expulsion, suspension, or termina-
29 tion of membership, including a claim alleging defective notice, must

1 be commenced within one year after the date of the expulsion, suspen-
2 sion, or termination. If the action is successful, the court may
3 order the relief, including reinstatement, that is finds equitable
4 under the circumstances. A court may not set aside either a vote of
5 the members of the cooperative that are entitled to vote, or a vote of
6 the board, because a person was wrongfully excluded from voting at the
7 time of the vote due to the challenged expulsion, suspension, or
8 termination, unless the court finds that the wrongful expulsion,
9 suspension, or termination was made in bad faith and for the purpose,
10 and with the effect, of wrongfully excluding the member from voting or
11 from the meeting at which the vote took place in order to affect the
12 outcome of the vote.

13 (f) This section governs the procedures for expulsion, suspen-
14 sion, or termination of a member and not the substantive grounds for
15 expulsion, suspension, or termination. Compliance with this section
16 does not validate an expulsion, suspension, or termination based on
17 substantive grounds that violate the contractual or other rights of a
18 member or that are otherwise unlawful.

19 Sec. 10.16.195. MEETINGS OF MEMBERS. (a) Members shall hold
20 their meetings inside or outside the state as provided in the bylaws.
21 In the absence of a bylaw provision, members shall hold their meetings
22 at the principal place of business of the cooperative.

23 (b) The members shall hold an annual meeting at the time or
24 within the time provided in the bylaws. If the bylaws do not fix a
25 time for the meeting, the members shall hold their annual meeting each
26 year at the time determined by the board. If the members do not hold
27 their annual meeting within a 13-month period, the superior court may,
28 on the application of a member, summarily order the members to hold an
29 annual meeting.

1 (c) The board, the chairman of the board, the president, or the
2 members by written petition that states the business to be brought
3 before the meeting and that is signed by not less than 10 percent of
4 the members of the cooperative, may call a special member meeting.

5 (d) The board, the chairman of the board, the president, or the
6 members, by written petition that states the business to be brought
7 before the district meeting and that is signed by not less than 10
8 percent of the members of the cooperative district, may call a special
9 district meeting.

10 Sec. 10.16.200. CLOSING MEMBERSHIP BOOKS AND FIXING RECORD DATE.

11 (a) To determine the members entitled to notice of, or to vote at, a
12 meeting of members or an adjournment of a meeting, to determine the
13 members entitled to apportionment and distribution of net proceeds or
14 savings or net losses, or to determine the members for another
15 purpose, the board of a cooperative may close the membership books for
16 a stated period that does not exceed 70 days. If the board closes the
17 membership books to determine members entitled to notice or to vote at
18 a meeting of members, the board shall close the membership books for
19 at least 20 days immediately preceding the meeting.

20 (b) Instead of closing the membership books, the bylaws or, in
21 the absence of an applicable bylaw, the board may fix the record date
22 for the determination of members. The record date may not be more
23 than 60 days and, in the case of a meeting of members, not less than
24 20 days before the date when the particular action requiring a
25 determination of members is to be taken.

26 (c) If the membership books are not closed and a record date is
27 not fixed for the determination of members entitled to notice of, or
28 to vote at, a meeting of members, or entitled to apportionment and
29 distribution of net proceeds, savings, or losses, the date when the

1 notice of the meeting is mailed or the date when the resolution of the
2 board declaring the distribution or charge is adopted, is the record
3 date for the determination of members.

4 (d) A determination of members entitled to vote at a meeting of
5 members that has been made under this section applies to an adjourn-
6 ment of the meeting of members.

7 Sec. 10.16.205. NOTICE OF MEMBERS' MEETINGS. The cooperative
8 shall deliver written or printed notice stating the place, day, and
9 hour of the members' meeting and, in the case of a special members'
10 meeting, the purpose of the meeting, not less than 20 or more than 60
11 days before the date of the meeting, either personally or by mail, by
12 or at the direction of the president, the secretary, an officer, or
13 person calling the meeting, to each member of record entitled to vote
14 at the meeting. If mailed, the notice is considered delivered when
15 deposited with postage prepaid in the United States mail addressed to
16 the member at the address of the member that appears on the membership
17 books of the cooperative or, if the member has filed with the
18 secretary of the cooperative a written request that the notice be
19 mailed to a different address, at the new address requested by the
20 member. An affidavit of the secretary, transfer agent of the
21 cooperative, or other person giving the notice, that notice required
22 by this section has been given, is prima facie evidence of the facts
23 stated in the affidavit.

24 Sec. 10.16.208. MEMBERSHIP LIST. (a) At least 20 days before a
25 meeting of members, the officer or agent having charge of the
26 membership books for a cooperative shall make an alphabetical list of
27 the names and addresses of the members entitled to vote at the meeting
28 or at an adjournment of the meeting. The officer or agent shall keep
29 the list on file at the registered office of the cooperative and allow

1 inspection by a member or the agent or attorney of a member during
2 usual business hours for a period of 20 days before the meeting. The
3 officer or agent shall make the list available at the time and place
4 of the meeting for inspection by a member. The original membership
5 books are prima facie evidence of the members who are entitled to
6 examine the list or books or to vote at a meeting of members.

7 (b) Failure to comply with the requirements of this section does
8 not affect the validity of the action taken at the meeting.

9 (c) An officer or agent having charge of the membership books
10 who fails to comply with this section, after a member makes a written
11 request for compliance by the officer or agent, shall pay a penalty of
12 \$5,000 to the member who made the request.

13 Sec. 10.16.210. QUORUM OF MEMBERS. Ten percent of the voting
14 members of a cooperative constitutes a quorum for an annual or special
15 meeting of the members unless the articles require a greater percent-
16 age.

17 Sec. 10.16.215. VOTING BY MEMBERS. (a) Each member has one
18 vote except that the bylaws may authorize voting according to actual,
19 estimated or potential patronage, or a combination of these voting
20 plans.

21 (b) Members may not vote by proxy, except that a member that is
22 a corporation, association, or partnership may designate a representa-
23 tive to cast its vote. In the absence of written notice that a member
24 that is other than a natural person has designated a person to repre-
25 sent the member, a principal officer of the member may represent the
26 member.

27 (c) If the articles of a cooperative allow the formation of
28 districts and the election of delegates at district meetings to repre-
29 sent the districts in member meetings, this representation is not

1 considered voting by proxy. For those matters not covered by mail
2 ballots submitted to all member, a delegate shall cast the number of
3 votes equal to the number of members who attended the district meeting
4 at which the delegate was elected.

5 (d) If the articles allow, the board may require that a question
6 to be voted on at a member meeting, including the election of direc-
7 tors be submitted by mail ballot. For a mail ballot the secretary
8 shall mail to each member, along with notice of the meeting, the
9 ballot for each question and a voting envelope. The member shall cast
10 the ballot in a sealed envelope authenticated by the member's signa-
11 ture. A vote cast by mail shall be counted as if the member were
12 present and voting in person.

13 Sec. 10.16.220. ACTIONS TAKEN WITHOUT MEETING. (a) Unless
14 prohibited by the articles or bylaws, whenever under this chapter
15 members are required or permitted to take action by vote, the members
16 may take the action by written consents without a meeting. The writ-
17 ten consents must be identical in content, state the action taken, and
18 be signed by all of the members entitled to vote on the action.

19 (b) A member giving a written consent may revoke the consent on-
20 ly by a writing received by the cooperative before the time that writ-
21 ten consents of the members required to authorize the proposed action
22 have been filed with the secretary of the cooperative. The revocation
23 is effective when received by the secretary of the cooperative.

24 Sec. 10.16.225. BOOKS AND RECORDS. (a) A cooperative organized
25 under this chapter shall keep correct and complete books and records
26 of account, minutes of proceedings of its members, board, and commit-
27 tees, and a record of its members. The books, records, and minutes
28 may be in written form or in other form capable of being converted
29 into written form within a reasonable time.

1 (b) A cooperative organized under this chapter shall make its
2 books and records, or certified copies of them, reasonably available
3 for inspection and copying by the department or a member of the co-
4 operative at the registered office or principal place of business of
5 the cooperative in the state. A member may inspect the records after
6 making written demand stating the purpose of the inspection. The
7 member may inspect in person or by agent or attorney, at a reasonable
8 time and for a proper purpose. The member may inspect or copy only
9 books and records of account, minutes, and the record of members
10 relevant to the stated purpose of the inspection.

11 (c) An officer of a cooperative, an agent of a cooperative, or a
12 cooperative that refuses to allow a member or the agent or attorney of
13 the member to examine and make copies of its books and record of
14 account, minutes, and record of members, for a proper purpose, is
15 liable to the member for a penalty of \$5,000, in addition to other
16 damages or remedy of the member. It is a defense to an action for
17 penalties under this subsection that the person suing has within two
18 years sold or offered for sale a list of members of the cooperative or
19 other corporation or has aided or abetted a person to procure a list
20 of members for this purpose, has improperly used information secured
21 through a prior examination of the books and records of account,
22 minutes, or record of members of the cooperative or other corporation,
23 or was not acting in good faith or for a proper purpose in making the
24 person's demand.

25 (d) A court may, on proof by a member of a demand properly made
26 and for a proper purpose, compel the production for examination by the
27 member of the books and records of account, minutes, and record of
28 members of a cooperative.

29 Sec. 10.16.228. ANNUAL REPORT TO MEMBERS. (a) The board shall

1 send an annual report to the members not later than 180 days after the
2 close of the fiscal year or the date when notice of the annual meeting
3 in the next fiscal year is sent, whichever is first, unless a coopera-
4 tive with less than 100 members expressly waives this requirement in
5 the articles. The annual report must contain a balance sheet for the
6 end of the fiscal year and an income statement and statement of
7 changes in financial position for the fiscal year, accompanied by a
8 report on the fiscal year by independent accountants or, if there is
9 no independent accountant report, the certificate of an authorized
10 officer of the cooperative that the statements were prepared without
11 audit from the books and records of the cooperative.

12 (b) In addition to the financial statement required by (a) of
13 this section, the annual report of a cooperative having 100 or more
14 members must also briefly describe

15 (1) all transactions during the previous fiscal year in-
16 volving an amount in excess of \$40,000 of the cooperative, its parent,
17 or a subsidiary of the cooperative where a director or officer of the
18 cooperative, a subsidiary of the cooperative or, if known to the
19 cooperative, a parent or subsidiary holds more than 10 percent of the
20 voting power, and had a direct or indirect material interest; the
21 report must include the name of the person, the person's relationship
22 to the cooperative, the nature of the person's interest in the
23 transaction, and, if practicable, the amount of the interest; only the
24 interest of the partnership need be stated for a transaction with a
25 partnership of which the person is partner; the board is not required
26 to report a transaction approved by the members under AS 10.16.283;
27 this paragraph does not apply to contracts for the compensation of
28 officers and directors, contracts that are competitively bid, or
29 contracts for services rendered at prices regulated by law;

(2) the amount and circumstances of indemnifications or advances that total more than \$10,000 paid during the fiscal year to an officer or director of the cooperative under AS 10.16.298; the board is not required to report an indemnification approved by the members under AS 10.16.298(d)(3).

(c) If the board has not sent an annual report for the last fiscal year to the members, a member may request in writing that the cooperative provide the member with an income statement of the cooperative for the three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days before the date of the request and a balance sheet of the cooperative for the period and the statements required by (a) of this section for the last fiscal year. The cooperative shall deliver or mail the statement to the person making the request within 30 days of the request. The cooperative shall keep a copy of the statements on file in the principal office of the cooperative for 12 months and shall exhibit them at all reasonable times to a member demanding an examination of the statements or mail a copy of the statements to that member.

(d) A cooperative shall, on the written request of a member, mail to the member a copy of the last annual, semiannual, or quarterly income statement that it has prepared, and a balance sheet for the same period.

(e) The quarterly income statements and balance sheets referred to in this section must be accompanied by a report on those statements by independent accountants engaged by the cooperative or the certificate of an authorized officer of the cooperative that the financial statements were prepared without audit from the books and records of the cooperative corporation.

(f) A cooperative that neglects, fails, or refuses to prepare or

1 submit the financial statements required by this section is subject to
2 a penalty of \$25 for each day that the failure or refusal continues up
3 to a maximum of \$1,500, beginning 30 days after receipt of written
4 request that the duty be performed from a person entitled to make the
5 request. The cooperative shall pay the penalty to the member or
6 members jointly making the request for performance of the duty imposed
7 by this section. In addition to this penalty, the court may enforce
8 the duty of making and mailing or delivering the information and
9 financial statements required by this section and, for good cause
10 shown, may extend the time limits of this section.

11 (g) This section applies to a domestic cooperative and a foreign
12 cooperative having its principal executive office in the state or
13 customarily holding meetings of its board in the state.

14 Sec. 10.16.230. MEMBERS' DERIVATIVE ACTION. (a) A member of
15 the cooperative may bring an action in the right of a domestic or
16 foreign cooperative to procure a judgment for the cooperative.

17 (b) In a derivative action, the complaint must be verified and
18 allege that the plaintiff was a member of record or a person with a
19 beneficial interest in a membership of the cooperative, at the time or
20 during a part of the transaction addressed by the complaint, or that
21 the plaintiff's membership passed to the plaintiff by operation of law
22 from a member who was a member at the time or during a part of the
23 transaction addressed in the complaint. On motion, a court may in its
24 discretion, allow a member who does not meet the requirements of this
25 section to maintain the action after a preliminary showing at a hear-
26 ing of evidence satisfactory to the court that

27 (1) there is a strong prima facie case for the claim as-
28 serted on behalf of the cooperative;

29 (2) no similar action has been or is likely to be

1 instituted;

2 (3) the plaintiff acquired the membership before the wrong-
3 doing of which plaintiff complains was disclosed to the public or to
4 the plaintiff;

5 (4) the defendant may retain a gain derived from the defen-
6 dant's wilful breach of a fiduciary duty unless the action can be
7 maintained; and

8 (5) the requested relief will not result in unjust enrich-
9 ment of the cooperative or a member of the cooperative.

10 (c) Unless excused because a majority of the directors is im-
11 plicated in the transaction complained of or is under the direct or
12 indirect control of a person who is implicated in the injury to the
13 cooperative, a plaintiff who has standing under (b) of this section
14 shall make a formal demand on the board to secure the relief sought by
15 the plaintiff before bringing an action in the right of a domestic or
16 foreign cooperative.

17 (d) If a member fails to make a formal demand under (c) of this
18 section, the complaint must state with particularity the facts estab-
19 lishing an excuse under (c) of this section. In a motion to dismiss
20 for failure to make a demand on the board the member has the burden to
21 establish the excuse.

22 (e) When a member makes a demand on the board under (c) of this
23 section, a decision by the board that, in its business judgment, the
24 litigation would not be in the best interest of the cooperative termi-
25 nates the right created by this section to bring a derivative action.

26 (f) When a demand on the board is excused under (c) of this
27 section or the decision of the board under (e) of this section is
28 rejected by the court as inconsistent with the directors' duties of
29 care and loyalty to the cooperative, a plaintiff who has standing

1 under (b) of this section may commence or continue the action created
2 by (a) of this section. Notwithstanding (c) or (e) of this section,
3 disinterested, noninvolved directors acting as the board or a duly
4 charged board committee may petition the court to dismiss the
5 plaintiff's action because in their independent, informed business
6 judgment the action is not in the best interest of the cooperative.
7 The petitioners have the burden of establishing to the satisfaction of
8 the court their disinterest, independence from direct or indirect
9 control of defendants in the action, and the informed basis for their
10 exercise of their asserted business judgment. If the court is
11 satisfied that the petitioners are disinterested, independent, and
12 informed it shall then make an independent appraisal of the
13 plaintiff's action to determine whether, considering the welfare of
14 the cooperative and relevant issues of public policy, it should dis-
15 miss the action.

16 (g) A court may not dismiss a member action that conforms with
17 this section because the alleged injury or wrong to the cooperative
18 was ratified by the members. A court may consider the fact of a
19 ratification when ordering relief for the cooperative.

20 (h) In an action instituted or maintained in the right of a
21 cooperative by members totaling less than five percent of the
22 outstanding memberships, the cooperative or the defendants may before
23 final judgment move the court to require the plaintiff to give
24 security for the reasonable expense, including attorney fees, that the
25 moving party may incur. The court in its discretion may increase or
26 decrease the amount of the security from time to time if the security
27 becomes inadequate or excessive. At the termination of the derivative
28 action, the cooperative or other defendants may have recourse to the
29 security in an amount determined by the court, whether or not the

1 court finds the action was brought without reasonable cause.

2 (i) A derivative action may not be discontinued, abandoned,
3 compromised, or settled without the approval of a court having juris-
4 diction of the action. If the court determines that the interests of
5 the members will be substantially affected by a discontinuance, aban-
6 donment, compromise, or settlement, the court in its discretion may
7 direct that notice, by publication or otherwise, be given to the
8 members whose interests will be affected. If the court directs notice
9 to be given, the court shall determine which of the parties to the
10 action shall pay the expense of giving the notice and the court shall
11 determine the amount to be paid by determining what is reasonable
12 under the circumstances. The court shall award the expense of giving
13 the notice as special costs of the action.

14 (j) If the derivative action is successful in whole or in part,
15 or if the judgment, compromise, or settlement of the action results in
16 the transfer of value to the plaintiff by a defendant, the court may
17 award to the plaintiff its reasonable expenses, including reasonable
18 attorney fees, and shall order the plaintiff to provide an accounting
19 to the cooperative for the remainder of the proceeds. The accounting
20 requirement of this subsection does not apply to a judgment rendered
21 only for the benefit of an injured member that is limited to a recov-
22 ery of the loss or damage sustained by the member.

23 ARTICLE 6. DIRECTORS AND OFFICERS.

24 Sec. 10.16.235. QUALIFICATIONS AND MEMBERSHIP OF BOARD. (a)

25 The board of directors shall manage the business and affairs of a
26 cooperative. Except as provided in (b) of this section, each director
27 shall be a member or a representative of a member who is not a natural
28 person. Unless the bylaws state otherwise, directors may be nonresi-
29 dents of the state. The bylaws may establish other qualifications for

1 directors and may require that directors be from specified districts
2 in the state.

3 (b) The articles may require that one or more directors be
4 appointed by a public official or commission or by the other directors
5 selected by the members, and these directors represent primarily the
6 interest of the general public in the cooperative. A director
7 appointed under this subsection does not need to be a member of the
8 cooperative, but has the same powers and rights as other directors.
9 Directors appointed under this subsection may not constitute more than
10 20 percent of the entire number of directors.

11 Sec. 10.16.240. NUMBER AND ELECTION OF DIRECTORS. (a) The
12 number of directors constituting the entire board must be three or
13 more. Subject to the limitation of this subsection, the number of
14 directors may be fixed by the articles, the bylaws, or the board or
15 members under the specific provisions of an article or bylaw adopted
16 by approval of the members. If the number of directors is not
17 otherwise set, the number of directors is three.

18 (b) Subject to the following limitations the number of directors
19 may be increased or decreased by amendment of the articles or the
20 bylaws, or by action of the board or the members under the specific
21 provisions of an article or bylaw adopted by approval of the members:

22 (1) if the board is authorized by the articles or the
23 bylaws to change the number of directors by amending the bylaws or by
24 taking action under the specific provision of an article or a bylaw
25 adopted by the members, the amendment or action requires approval by a
26 majority of the entire board;

27 (2) a decrease in the number of directors may not shorten
28 the term of an incumbent director.

29 (c) Subject to a provision in the articles providing for the

1 appointment of a director, at the first annual meeting and at subse-
2 quent annual meetings, the members shall elect the directors in the
3 manner and for the term of office, not to exceed three years, provided
4 in the articles.

5 (d) Subject to AS 10.16.255, a director holds office until the
6 expiration of the term for which the director was elected or appointed
7 and until a successor has been elected or appointed and qualified.

8 Sec. 10.16.245. DIRECTOR'S DUTY OF CARE AND RIGHT OF INSPECTION.

9 (a) A director shall perform the duties of a director, including
10 duties as a member of a committee of the board on which the director
11 serves, in good faith, in a manner the director reasonably believes to
12 be in the best interest of the cooperative, and with the care,
13 including the obligation of reasonable inquiry, that an ordinarily
14 prudent person in a like position would use under similar circum-
15 stances. Except as provided in (b) of this section, a director is
16 entitled to rely on information, opinions, reports or statements,
17 including financial statements and other financial data, in a matter
18 prepared or provided by

19 (1) an officer or employee of the cooperative whom the
20 director reasonably believes to be reliable and competent in the
21 matter presented;

22 (2) counsel, public accountants, or other persons on mat-
23 ters that the director reasonably believes to be within the person's
24 professional or expert competence; or

25 (3) a committee of the board on which the director does not
26 serve, authorized by the articles or bylaws, on matters within the au-
27 thority of the committee if the director reasonably believes the
28 committee justifies the reliance of the director.

29 (b) A director does not act in good faith if the director knows,

1 or as a reasonable person should know, that reliance under (a) of this
2 section is unwarranted.

3 (c) A director has the absolute right at reasonable times to
4 inspect and copy all books, records, and documents of every kind and
5 to inspect the physical properties of the cooperative or a domestic or
6 foreign subsidiary of the cooperative. A director may inspect
7 personally or by an agent or attorney. Inspection includes the right
8 to make extracts. This subsection applies to a director of a foreign
9 cooperative that has its principal executive office in this state or
10 customarily holds meetings of its board in this state.

11 (d) A director of a cooperative who is present at a meeting of
12 its board where action on a cooperative matter is taken is presumed to
13 have assented to the action taken unless the director's dissent is
14 entered in the minutes of the meeting, the director files a written
15 dissent to the action with the secretary of the meeting before ad-
16 journment, or the director forwards a dissent by certified mail to the
17 secretary of the cooperative immediately after adjournment. A
18 director who voted in favor of the action does not have the right to
19 dissent.

20 Sec. 10.16.248. CLASSIFICATION OF DIRECTORS. (a) If the board
21 consists of four or more directors elected by the members, or elected
22 by districts under a provision of the articles, the articles may
23 provide that the board of directors be divided, as nearly equally as
24 practicable, into three classes. At the first annual meeting, the
25 members shall elect from among themselves one or more directors of the
26 first class for a term of one year, of the second class for a term of
27 two years, and of the third class for a term of three years. At the
28 expiration of the respective terms, the members shall elect successors
29 for terms of three years.

1 (b) When the articles provide that the directors are elected by
2 districts, the cooperative may not amend the articles to establish or
3 require classification of the board under (a) of this section if the
4 amendment would impair the right or ability of a district to elect the
5 number of directors permitted under the articles.

6 (c) This section applies only to directors elected from the
7 members, representatives of members, or districts. Directors appoint-
8 ed under AS 10.16.235 are not counted when dividing directors into
9 three practicably equal classes.

10 Sec. 10.16.250. VACANCIES ON THE BOARD. The board may declare
11 vacant the office of a director who has been declared unsound of mind
12 by a court or whose civil rights have been suspended under
13 AS 33.30.310 due to imprisonment.

14 Sec. 10.16.255. REMOVAL OF DIRECTORS WITHOUT CAUSE. (a) Sub-
15 ject to the limitation in (b) of this section, at a regular or special
16 members' meeting for which notice is given under AS 10.16.205, one or
17 all of the directors may be removed without reason if a majority of
18 the members approves the removal.

19 (b) Unless the members remove the entire board, if the articles
20 provide for election of directors by districts, the members may not
21 remove a director if the majority of the members in the district that
22 elected the director vote against the removal.

23 (c) The members under (a) of this section or the appointing
24 authority may remove directors appointed by a public authority under
25 AS 10.16.235.

26 Sec. 10.16.260. REMOVAL OF DIRECTOR BY SUPERIOR COURT. The
27 superior court may, in an action by the board or at least 10 percent
28 of the members, remove a director from office for fraudulent or dis-
29 honest acts, gross neglect of duty, or gross abuse of authority or

1 discretion, in the affairs of the cooperative. The superior court may
2 bar a director removed under this section from reelection or reap-
3 pointment for a period of time determined by the court. The coopera-
4 tive shall be made a party to the suit.

5 Sec. 10.16.263. VACANCIES AND RESIGNATION. (a) Unless other-
6 wise provided in the articles or bylaws, and except for a vacancy
7 created by the removal of a director, a majority of the directors then
8 in office, whether or not less than a quorum, or a sole remaining
9 director who was elected by the members may fill a vacancy on the
10 board. Unless the articles or a bylaw approved by the members pro-
11 vides that the board may fill a board vacancy caused by removal of a
12 director, a vacancy caused by removal may be filled only by the
13 approval of the members. A board vacancy of a director appointed by a
14 public official or commission under AS 10.16.235 may only be filled by
15 the appointing authority.

16 (b) The members may elect a director to fill a vacancy not
17 filled by the directors, including a director appointed by the elected
18 directors under AS 10.16.235. Members may not elect a director
19 appointed by a public official or commission under AS 10.16.235.

20 (c) If, after the directors fill a vacancy, the directors who
21 have been elected by the members constitute less than a majority of
22 the directors, 10 percent or more of the membership may call a special
23 meeting to elect the entire board, subject to AS 10.16.235. The term
24 of office of a director who is replaced under this subsection termi-
25 nates when the successor of the director is elected and qualifies.

26 (d) A director may resign by giving written notice to the chair-
27 man of the board, the president, the secretary, or the board of direc-
28 tors of the cooperative. The resignation is effective when the
29 director gives the written notice unless the notice specifies a later

1 time for the resignation to be effective. Notwithstanding the
2 effectiveness of the resignation, and except for directors appointed
3 by a public official or commission under AS 10.16.235, a director
4 holds office until a successor has been elected and qualified. If the
5 resignation is effective after the date of the written notice, a
6 successor may be elected to take office when the resignation becomes
7 effective.

8 Sec. 10.16.265. EXECUTIVE AND OTHER BOARD COMMITTEES. (a) If
9 authorized by the articles or the bylaws of the cooperative, the board
10 may designate from among its members, and by resolution adopted by a
11 majority of the entire board, an executive committee and other
12 committees of the board. Each committee shall have at least two
13 members. The members serve at the pleasure of the board of directors.
14 Each committee has the authority of the board, to the extent provided
15 in the resolution, articles, or bylaws, except that a committee may
16 not

17 (1) declare a dividend or distribution;

18 (2) approve or recommend to members an action or proposal
19 required by this chapter to be approved by the members;

20 (3) designate or appoint a candidate for the office of
21 director, or fill a vacancy on the board or on a committee of the
22 board;

23 (4) amend the bylaws;

24 (5) capitalize retained earnings;

25 (6) authorize or approve the reacquisition of shares unless
26 the board has provided the committee with a general formula or method
27 for making the authorization or approval;

28 (7) authorize or approve the issuance or sale of shares, or
29 a contract to issue or sell shares, or designate the terms of a series

1 of a class of shares, unless the board, having made a general author-
2 ization for the issuance or sale of shares, a contract to issue or
3 sell shares, or the designation of a series, authorizes a committee,
4 under a general formula or method specified by the board by resolution
5 or by adoption of a stock option or other plan, to fix the terms of a
6 contract for the sale of the shares and to fix the terms for the
7 issuance or sale of the shares, with full power in the committee to
8 adopt a final resolution setting out all the terms of a series for
9 filing with the commissioner under this chapter; the terms for issu-
10 ance or sale of shares that a committee may fix under this paragraph
11 include without limitation, price, dividend rate, redemption
12 provisions, sinking fund, conversion, voting or preferential rights,
13 and provisions for other features of a class of shares, or a series of
14 a class of shares; or

15 (8) authorize, approve, or ratify a contract or other
16 transaction between the cooperative and one or more of its directors,
17 or between the cooperative and a cooperative, corporation, firm, or
18 association in which one or more of the directors of the cooperative
19 has a material financial interest, except for a contract or other
20 transaction that is available to, and conducted with, other members on
21 equal terms.

22 (b) The designation of a committee, the delegation to the com-
23 mittee of authority, or an action by the committee under that authori-
24 ty does not alone constitute compliance by a member of the board or
25 the committee in question with the responsibility to act with the care
26 required by AS 10.16.245.

27 Sec. 10.16.270. MEETINGS OF BOARD. (a) A regular or special
28 meeting of the board or a committee of the board may be called by the
29 chairman of the board, the president, a vice-president, the secretary,

1 or two directors, and may be held in or out of the state.

2 (b) The board or a committee designated by the board may hold a
3 regular meeting without notice if the time and place of the meeting is
4 fixed by the bylaws or the board. The board or a committee of the
5 board may hold a special meeting only after giving notice in writing
6 sent 20 days before the meeting or notice by electronic means,
7 personal messenger, or comparable person-to-person communication given
8 at least 72 hours before the meeting, to the members of the board or
9 committee holding the meeting. In the case of a special meeting, the
10 notice must disclose the purpose of the meeting and the business to be
11 transacted.

12 (c) The board or a committee designated by the board does not
13 need to give notice of a meeting to a director who signs a waiver of
14 notice before or after the meeting, or who attends the meeting without
15 protesting the lack of notice before the meeting or at its
16 commencement.

17 Sec. 10.16.275. QUORUM OF DIRECTORS. (a) A majority of the
18 number of directors fixed by the articles or bylaws of a cooperative
19 constitutes a quorum for the transaction of business unless a greater
20 number is required by the articles or bylaws. The act of the majority
21 of the directors present at a meeting at which a quorum is present is
22 the act of the board, unless the act of a greater number is required
23 by the articles or the bylaws.

24 (b) The provisions of this section apply to committees of the
25 board.

26 Sec. 10.16.280. INFORMAL ACTION BY DIRECTORS. (a) Unless
27 prohibited by the articles or bylaws, the board of a cooperative or a
28 committee designated by the board may validly conduct a meeting by
29 communicating simultaneously with each other by means of conference

1 telephones or similar communications equipment.

2 (b) Unless prohibited by the articles or bylaws of the coopera-
3 tive, action required or permitted to be taken by the board or a
4 committee designated by the board may be taken without a meeting if
5 all the members of the board or committee sign written consents,
6 identical in content, setting out the action taken. The written
7 consents shall be filed with the minutes. The consents have the same
8 effect as a unanimous vote.

9 Sec. 10.16.283. DIRECTOR CONFLICTS OF INTEREST. (a) A contract
10 or other transaction between a cooperative and one or more of its
11 directors, or between a cooperative and a domestic cooperative or
12 foreign cooperative, corporation, firm, or association in which one or
13 more of the directors of the cooperative has a material financial
14 interest, is not void or voidable because the director or directors or
15 other cooperative, corporation, firm, or association is a party, or
16 because a director is present at the meeting of the board or a board
17 committee that authorizes, approves, or ratifies the contract or
18 transaction, if

19 (1) the material facts of the transaction and the direc-
20 tor's interest are fully disclosed or known to the members, the con-
21 tract or transaction is approved in good faith by a majority of all of
22 the members, and an interested director is not entitled to vote; or

23 (2) the material facts of the transaction and the direc-
24 tor's interest are fully disclosed or known to the board, and the
25 board authorizes, approves or ratifies the contract or transaction in
26 good faith by a sufficient vote without counting the vote of the
27 interested director; a person asserting the validity of the contract
28 or transaction has the burden of proving that the contract or
29 transaction was just and reasonable for the corporation at the time it

1 was authorized, approved, or ratified.

2 (b) A common directorship or a member-patron relationship on
3 terms available to all members does not by itself constitute a
4 material financial interest within the meaning of (a) of this section.
5 A director is not interested within the meaning of this section in a
6 resolution fixing the compensation of another director as a director,
7 officer, or employee of the cooperative, even if the first director is
8 also receiving compensation from the corporation.

9 (c) A contract or other transaction between a cooperative and
10 another cooperative, corporation, or association of which a director
11 of the cooperative is a director is neither void nor voidable because
12 the director is present at the meeting of the board that authorizes,
13 approves, or ratifies the contract or transaction, if the material
14 facts of the transaction and the director's other directorship are
15 fully disclosed or known to the board and the board approves or rat-
16 ifies the contract or transaction in good faith by a vote sufficient
17 without counting the vote of the common director or directors, or the
18 contract or transaction is approved by a majority of all the members
19 in good faith. This subsection does not apply to a contract or trans-
20 action covered by (a) of this section.

21 (d) Interested or common directors may be counted in determining
22 the presence of a quorum at a meeting of the board that authorizes,
23 approves, or ratifies a contract or transaction.

24 (e) This section does not affect the prohibitions or restraints
25 imposed by AS 45.50.

26 Sec. 10.16.285. LIABILITY OF DIRECTORS. (a) In addition to
27 other liabilities, a director is liable in the following circumstances
28 unless the director complies with the standard provided in AS 10.16.-
29 245 for the performance of the duties of a director:

1 (1) a director who votes for or assents to a distribution
2 to the cooperative's members contrary to the provisions of AS 10.16.-
3 133 and 10.16.153, or contrary to a restriction in the articles, is
4 liable to the cooperative, jointly and severally with all other direc-
5 tors voting for or assenting to the distribution, for the amount of
6 the distribution that is paid or the value of the assets that are
7 distributed in excess of the amount of the distribution that could
8 have been paid or distributed without violating AS 10.16.133 and
9 10.16.153, or the restrictions of the articles;

10 (2) a director who votes for or assents to a distribution
11 to the cooperative's members during the liquidation of the cooperative
12 without paying and discharging or making adequate provisions for all
13 known debts, obligations, and liabilities of the cooperative, is
14 liable to the cooperative, jointly and severally with all other direc-
15 tors voting for or assenting to distribution, for the value of the
16 assets that are distributed, to the extent that the debts, obliga-
17 tions, and liabilities of the cooperative are not thereafter paid and
18 discharged;

19 (3) a director who votes for or assents to a loan of assets
20 of the cooperative to an officer or employee contrary to the pro-
21 visions of AS 10.16.295 or contrary to a restriction in the articles,
22 is liable to the cooperative, jointly and severally with all other
23 directors who voted for or assented to the loan, for the amount of the
24 loan that is in excess of a loan that could have been extended without
25 violating AS 10.16.295 or the restriction in the articles.

26 (b) A director against whom a claim is asserted under this
27 section for the distribution of assets of the cooperative is entitled
28 to contribution from members who accepted or received the assets
29 knowing the distribution to have been made in violation of this

1 chapter, in proportion to the amounts received by them. A director
2 against whom a claim is asserted under this section for the extension
3 of a loan is entitled to contribution from the person receiving the
4 loan.

5 (c) A director against whom a claim is asserted under this
6 section is entitled to contribution from other directors who voted for
7 or assented to the action on which the claim is based.

8 Sec. 10.16.290. OFFICERS. (a) The principal officers of a
9 cooperative are a president, one or more vice-presidents as estab-
10 lished in the bylaws, a secretary, and a treasurer. The officers
11 shall be elected annually by the board at the time and in the manner
12 established by the bylaws. The offices of secretary and treasurer may
13 be combined in one person. Each principal officer except the secre-
14 tary and the treasurer, and one of the vice-presidents, if the bylaws
15 provide for more than one, shall be a director of the cooperative.
16 The manager of a cooperative may hold the office of vice-president if
17 the bylaws provide for more than one vice-president.

18 (b) Except as otherwise provided in the articles or bylaws, the
19 board shall choose the officers. The officers serve at the pleasure
20 of the board, subject to the rights of an officer under a contract of
21 employment. An officer may resign at any time by giving written
22 notice to the cooperative. The resignation does not prejudice the
23 cooperative's rights under a contract with the officer.

24 (c) Between the officer and the cooperative, an officer has the
25 authority, and shall perform the duties in the management of the co-
26 operative, provided in the bylaws of the cooperative or, to the extent
27 not provided in the bylaws, provided by the board.

28 (d) Subject to the provisions of AS 10.16.017, a note, mortgage,
29 evidence of indebtedness, contract, share certificate, conveyance, or

1 other instrument in writing, or an assignment or endorsement of these
2 items, executed or entered into between the cooperative and another
3 person, if signed by two individuals, one of whom is the chairman of
4 the board, the president, or a vice-president and the other of whom is
5 the secretary, assistant secretary, treasurer, or assistant treasurer
6 of the cooperative, is not invalidated for the cooperative if the
7 signing officers lacked authority to execute the instrument, unless
8 the other person had actual knowledge that the signing officers did
9 not have authority to execute the instrument.

10 (e) An officer shall perform the duties of an officer in good
11 faith and with that degree of care, including the duty of reasonable
12 inquiry, that an ordinarily prudent person in a like position would
13 use under similar circumstances.

14 Sec. 10.16.295. LOANS TO DIRECTORS, OFFICERS, AND EMPLOYEES.

15 (a) Except for loans authorized by the articles or bylaws of a co-
16 operative that are available to all members of the cooperative under
17 the stated purposes of the cooperative, the cooperative may not extend
18 a loan to an officer or employee of the cooperative without authoriza-
19 tion by the board. Except for loans authorized by the articles or
20 bylaws of a cooperative that are available to all members of the
21 cooperative under the stated purposes of the cooperative, the coopera-
22 tive may not extend a loan to a director without the approval of
23 two-thirds of the membership. An employee or officer who is also a
24 director is treated as a director for purposes of this section.

25 (b) The cooperative may not make a loan to a director, officer,
26 or employee, or a loan secured by the shares of the cooperative unless
27 the loan would be permissible as a distribution under AS 10.16.133 -
28 10.16.153. A loan made under this subsection impairs the retained
29 earnings or paid-in capital accounts to the extent of the loan.

1 (c) For the purposes of this section, a loan may consist of
2 cash, securities, personal property or real property.

3 (d) If a cooperative guarantees a loan to a director, officer,
4 or employee, the guarantee is treated as a loan under this section.

5 (e) A director, officer, or employee of a cooperative affiliated
6 with the lending cooperative is a director, officer, or employee of
7 the lending cooperative for the purposes of this section.

8 (f) A loan made under this section is to be judged by the duties
9 of directors and officers to act in good faith in a manner reasonably
10 believed to be in the best interests of the cooperative and with the
11 care, including reasonable inquiry, that an ordinarily prudent person
12 in a like position would use under similar circumstances.

13 Sec. 10.16.298. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOY-
14 EES, AND AGENTS. (a) A cooperative may indemnify a person who was,
15 is, or is threatened to be made a party to a completed, pending, or
16 threatened civil, criminal, administrative, or investigative action or
17 proceeding, except an action by or in the right of the cooperative
18 because the indemnified person is or was a director, officer,
19 employee, or agent of the cooperative, or is or was serving at the
20 request of the cooperative as a director, officer, employee, or agent
21 of another cooperative, association, corporation, partnership, joint
22 venture, trust, or other enterprise. Indemnification may include
23 reimbursement of expenses, attorney fees, judgments, fines, and
24 amounts paid in settlement, that the person actually and reasonably
25 incurs in connection with the action or proceeding, if the person
26 acted in good faith and in a manner the person reasonably believed to
27 be in, or not opposed to, the best interest of the cooperative and,
28 with respect to a criminal action or proceeding, the person had no
29 reasonable cause to believe the conduct was unlawful. The termination

1 of an action or proceeding by judgment, order, settlement, conviction,
2 or a plea of nolo contendere or its equivalent, does not create a
3 presumption that the person did not act in good faith or in a manner
4 that the person reasonably believed to be in, or not opposed to, the
5 best interest of the cooperative, or, with respect to a criminal
6 action or proceeding, that the person had reasonable cause to believe
7 that the conduct was unlawful.

8 (b) A cooperative may indemnify a person who was, is, or is
9 threatened to be made a party to a completed, pending, or threatened
10 action by or in the right of the cooperative to procure a judgment in
11 its favor because the person is or was a director, officer, employee,
12 or agent of the cooperative, or is or was serving at the request of
13 the cooperative as a director, officer, employee, or agent of another
14 cooperative, association, corporation, partnership, joint venture,
15 trust, or other enterprise. Indemnification may include reimbursement
16 for expenses and attorney fees the person actually and reasonably
17 incurred in connection with the defense or settlement of the action if
18 the person acted in good faith and in a manner the person reasonably
19 believed to be in, or not opposed to, the best interests of the co-
20 operative. A cooperative may not indemnify a person for a claim,
21 issue, or matter for which a court holds the person to be liable due
22 to negligence or misconduct in the performance of the person's duty to
23 the cooperative, except to the extent that the court determines that,
24 despite the adjudication of liability, in view of all the circum-
25 stances of the case, the person is fairly and reasonably entitled to
26 indemnity for expenses that the court considers proper.

27 (c) To the extent that a director, officer, employee, or agent
28 of a cooperative has successfully defended an action or proceeding
29 referred to in (a) or (b) of this section, or a claim, issue, or

1 matter in the action or proceeding, the cooperative shall indemnify
2 the director, officer, employee, or agent against expenses and attor-
3 ney fees actually and reasonably incurred in connection with the
4 defense.

5 (d) Unless otherwise ordered by the court, a cooperative may
6 indemnify under (a) or (b) of this section only after a determination
7 that indemnification of the director, officer, employee, or agent is
8 proper in the circumstances because the director, officer, employee,
9 or agent has met the applicable standard of conduct set out in (a) and
10 (b) of this section. The determination that indemnification is proper
11 shall be made

12 (1) by the board by majority vote of a quorum of the direc-
13 tors who were not parties to the action or proceeding; or

14 (2) by independent legal counsel in a written opinion if

15 (A) the board cannot obtain a quorum under (1) of this
16 subsection; or

17 (B) the board can obtain a quorum under (1) of this
18 subsection but a majority of the disinterested directors of the
19 board directs legal counsel to prepare a written opinion; or

20 (3) by approval of the members.

21 (e) The cooperative may pay or reimburse the reasonable expenses
22 incurred in defending a civil or criminal action or proceeding in
23 advance of the final disposition of the action or proceeding in the
24 manner provided in (d) of this section if

25 (1) in the case of a director or officer, the director or
26 officer furnishes the cooperative with a written affirmation of a good
27 faith belief that the officer met the standard of conduct described in
28 AS 10.16.245 or 10.16.290;

29 (2) the director, officer, employee, or agent furnishes the

1 cooperative with a written, unlimited general undertaking, executed
2 personally or on behalf of the individual, to repay the advance if it
3 is ultimately determined that an applicable standard of conduct was
4 not met; and

5 (3) a determination is made that the facts then known to
6 those making the determination would not preclude indemnification
7 under this chapter.

8 (f) The indemnification provided by this section is in addition
9 to other rights of the person seeking indemnification that are
10 available under a bylaw, agreement, vote of members, vote of
11 disinterested directors, or otherwise, for action in the official
12 capacity of the person or for action in another capacity while holding
13 the office. The right to indemnification continues for a person who
14 has ceased to be a director, officer, employee, or agent, and inures
15 to the benefit of the heirs, executors, and administrators of the
16 person.

17 (g) A cooperative may purchase and maintain insurance for a
18 person who is or was a director, officer, employee, or agent of the
19 cooperative, or is or was serving at the request of the cooperative as
20 a director, officer, employee, or agent of another cooperative, asso-
21 ciation, corporation, partnership, joint venture, trust, or enterprise
22 against liability alleged against the person and incurred by the
23 person in that capacity, or arising out of that status, whether or not
24 the cooperative has the power to indemnify the person against the
25 liability under the provisions of this section.

26 ARTICLE 7. COOPERATIVE CONTRACTS.

27 Sec. 10.16.300. CONTENT, DURATION, AND ASSIGNMENT OF COOPERATIVE
28 CONTRACTS. (a) Subject to (b) of this section, a cooperative and a
29 member may make a contract for the member to

1 (1) sell, market, or deliver to or through the cooperative,
2 or facilities furnished by the cooperative, all or a specified part of
3 products produced by or under the member's control;

4 (2) authorize the cooperative, or facilities furnished by
5 the cooperative, to act for the member with respect to all or a spec-
6 ified part of products produced by or under the member's control;

7 (3) buy or procure from or through the cooperative, or
8 facilities furnished by the cooperative, all or a specified part of
9 goods or services to be bought or produced by the member;

10 (4) authorize the cooperative, or facilities furnished by
11 the cooperative, to act for the member in the procurement of goods or
12 the procurement of performance of services.

13 (b) Whether contained in the bylaws or created by a separate
14 writing, a contract under (a) of this section is valid for a period
15 not to exceed five years from the date of formation. When a period
16 not exceeding this maximum duration expires, a contract under (a) of
17 this section may be renewed by a written document signed by the co-
18 operative and the member for an additional period not to exceed five
19 years.

20 (c) Except for a merger or consolidation authorized under
21 AS 10.16.400 or a sale, lease, exchange, or other disposition of all
22 or substantially all of the property and assets of a cooperative
23 authorized under AS 10.16.425, the cooperative may not assign the
24 right to receive the performance of a member under the terms of a
25 cooperative contract without the express written consent of the mem-
26 ber.

27 Sec. 10.16.305. LIQUIDATED DAMAGES CLAUSE. A contract under
28 AS 10.16.300 may fix and require that liquidated damages be paid by
29 the member to the cooperative if the member breaches the contract.

1 Liquidated damages may be fixed as a specific sum, a percentage of the
2 value of the products, goods, or services involved in the breach, or a
3 specific amount per unit of the products, goods, or services involved
4 in the breach.

5 Sec. 10.16.310. CONTRACTS BETWEEN COOPERATIVES. Cooperatives
6 may contract and act in association, corporate or otherwise, to per-
7 form collectively the powers or purposes authorized by this chapter.

8 Sec. 10.16.313. RECORDING OF COOPERATIVE CONTRACTS. A coopera-
9 tive may record a contract authorized by this chapter in the recording
10 district where the member resides or where the products covered by the
11 contract have been or are to be produced.

12 Sec. 10.16.315. RECORDING OF UNIFORM COOPERATIVE CONTRACTS. If
13 a cooperative has substantially uniform contracts with more than one
14 member producing products covered by a cooperative contract or
15 residing in the same recording district, the cooperative may, instead
16 of recording the original contracts, record

17 (1) an exact copy of the uniform contract; and

18 (2) a sworn list of the names of members who have executed
19 the contract and who produce the products or reside in the district,
20 and the effective date of the contract with each member.

21 Sec. 10.16.320. RECORDING PROCEDURE. The recorder shall number
22 consecutively and file each contract, and shall index the name of each
23 party to the contract and enter opposite that name the file number of
24 the contract and its effective date as to that party. The records
25 shall be available for public inspection.

26 Sec. 10.16.325. EFFECT OF RECORDING CONTRACT. Recording under
27 AS 10.16.313 - 10.16.333 gives constructive notice to all persons of
28 the existence and contents of the contract. A right, title, interest
29 or lien created in or on the products covered by the contract after

1 the recording is subject to the cooperative's right, title, or inter-
2 est under the contract. If the member creates a mortgage on the
3 products after the recording of the contract, and if the member and
4 the mortgagee jointly notify the cooperative in writing of the exist-
5 tence and amount of the mortgage, the cooperative shall make all
6 payments from the cooperative to the member that become due after the
7 notice because the cooperative sells or otherwise handles the
8 products, to the mortgagee until the full amount of the mortgage has
9 been paid, and to the member after the mortgage has been paid in full.

10 Sec. 10.16.330. TERMINATION OF RECORDED CONTRACT. When a con-
11 tract recorded under AS 10.16.313 - 10.16.333 has been terminated, the
12 cooperative shall on demand give a statement of termination to the
13 member who is a party to the contract; the member may record the
14 statement in the recording district where the contract was originally
15 filed or recorded.

16 Sec. 10.16.333. RECORDING A LIST OF TERMINATED CONTRACTS. A
17 cooperative may record in the recording district where the contracts
18 were originally filed or recorded a sworn list of the names of all
19 persons whose contracts have been terminated other than by expiration
20 of the terms of their contracts.

21 Sec. 10.16.335. RELIEF AGAINST BREACH OR THREATENED BREACH OF
22 CONTRACT. (a) In the event of a breach or threatened breach of a
23 cooperative contract authorized by this chapter, the cooperative is
24 entitled to an injunction to prevent the breach or further breach of
25 the contract, and to a court order of specific performance of the
26 contract. The cooperative is entitled to a temporary restraining
27 order after filing a verified complaint showing a breach or threatened
28 breach and after filing a sufficient bond.

29 (b) A person who, with knowledge that a contract exists, induces

1 or attempts to induce a member to breach the contract with a coopera-
2 tive, or who assists in a breach of the contract, is liable to the
3 cooperative for damages caused by the interference. The cooperative
4 is also entitled to an injunction to prevent interference or further
5 interference with the contract.

6 Sec. 10.16.340. ACTION FOR CIVIL PENALTY FOR INDUCING BREACH OF
7 CONTRACT WITH COOPERATIVE OR SPREADING FALSE REPORTS ABOUT COOPERATIVE
8 CONTRACTS. In addition to the remedies provided in AS 10.16.335(b), a
9 person who knowingly and maliciously induces or attempts to induce a
10 member of a cooperative to breach a contract with the cooperative
11 authorized by this chapter, or who knowingly or maliciously spreads a
12 false report about the finances or management of a cooperative is
13 liable, in a civil action, to pay the aggrieved cooperative \$500 for
14 each offense.

15 ARTICLE 8. AMENDMENTS AND NONORGANIC CHANGES.

16 Sec. 10.16.345. AMENDMENT OF ARTICLES. A cooperative may amend
17 its articles from time to time if it complies with this chapter and if
18 its articles as amended contain only those provisions that the
19 cooperative could have lawfully included in the original articles at
20 the time of amendment, and those provisions necessary to effect a
21 change, exchange, reclassification or cancellation of the rights of
22 members if member rights are changed by the amendment.

23 Sec. 10.16.350. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.

24 (a) A cooperative shall amend its articles of incorporation in the
25 following manner:

26 (1) adoption by the board of a resolution stating the
27 proposed amendment and directing the amendment to be submitted to a
28 vote of the members at an annual or special meeting;

29 (2) giving written notice setting out the proposed

1 amendment or summary of the changes to be effected by the amendment to
2 each member of record in the time and manner provided in this chapter
3 for the giving of notice of meetings of members; if the meeting is an
4 annual meeting, the proposed amendment or the summary may be included
5 in the notice of the annual meeting; and

6 (3) at the member meeting, conducting a vote of the members
7 on the proposed amendment; the proposed amendment is adopted if it
8 receives the affirmative vote of a majority of the member votes cast.

9 (b) More than one amendment may be submitted to the members and
10 voted on by them at one meeting.

11 (c) Notwithstanding (a) of this section, and unless the articles
12 of incorporation provide otherwise, the board may adopt either or both
13 of the following amendments to the articles without member action:

14 (1) deletion of the names and addresses of the initial
15 directors; or

16 (2) deletion of the name and address of the initial regis-
17 tered agent or registered office, if the cooperative has filed a
18 statement of change with the commissioner.

19 Sec. 10.16.353. GREATER VOTING REQUIREMENTS. If the articles
20 require the vote of a larger proportion of the members or of a larger
21 proportion of the directors than is otherwise required by this
22 chapter, the provision in the articles requiring the greater vote may
23 be altered, amended, or repealed only by that larger vote, unless
24 otherwise provided in the articles.

25 Sec. 10.16.355. ARTICLES OF AMENDMENT. The articles of amend-
26 ment shall be executed by the cooperative by its president or vice-
27 president and by its secretary or an assistant secretary, and verified
28 by one of the officers signing the articles of amendment, and shall
29 include

- 1 (1) the name of the cooperative;
- 2 (2) if an amendment changes the articles, an identification
3 by reference or description of the affected provision and a statement
4 of the text after amendment;
- 5 (3) if an amendment strikes or deletes a provision of the
6 articles, an identification by reference or description of the
7 provision stricken or deleted and a statement that it is stricken or
8 deleted;
- 9 (4) if the amendment is an addition to the articles, a
10 statement of that fact and the full text of the provision added;
- 11 (5) the date of the adoption of the amendment by the mem-
12 bers; and
- 13 (6) the number of members voting for the amendment and the
14 number of members voting against the amendment.

15 Sec. 10.16.360. FILING OF ARTICLES OF AMENDMENT. The coopera-
16 tive shall deliver an original and an exact copy of the articles of
17 amendment to the commissioner for processing under AS 10.16.805.

18 Sec. 10.16.365. EFFECT OF CERTIFICATE OF AMENDMENT. (a) An
19 amendment is effective the day the commissioner issues a certificate
20 of amendment, or on a later date specified in the articles of amend-
21 ment that is not more than 30 days after the cooperative files the
22 articles of amendment with the commissioner.

23 (b) An amendment may not affect an existing cause of action
24 brought by or against the cooperative, a pending suit to which the
25 cooperative is a party, or the existing rights of persons other than
26 members. Change of the corporate name by amendment does not abate a
27 suit brought by or against the cooperative under its former name.

28 Sec. 10.16.370. RESTATED ARTICLES OF INCORPORATION. A domestic
29 cooperative may, by resolution adopted by the board, restate its

1 articles of incorporation as amended to the time of restatement. The
2 president, or a vice-president, and the secretary or assistant secre-
3 tary of the cooperative shall execute the restated articles and one of
4 the officers signing the articles shall verify the restated articles.
5 The restated articles must set out all of the operative provisions of
6 the articles as amended to that time together with a statement that
7 the restated articles correctly set out without change the correspond-
8 ing provisions of the articles as amended to that time and that the
9 restated articles supersede the original articles and all amendments
10 to the original articles.

11 Sec. 10.16.373. FILING OF RESTATED ARTICLES OF INCORPORATION.
12 The cooperative shall deliver an original and an exact copy of the
13 restated articles of incorporation to the commissioner for processing
14 under AS 10.16.805 and for issuance of a restated certificate of
15 incorporation.

16 Sec. 10.16.375. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF
17 INCORPORATION. The restated articles of incorporation become effec-
18 tive when the commissioner issues a restated certificate of incorpo-
19 ration and supersede the original articles and all amendments to the
20 original articles.

21 Sec. 10.16.380. AMENDMENT OF ARTICLES OF INCORPORATION IN REOR-
22 GANIZATION PROCEEDINGS. (a) If a court has confirmed a plan of
23 reorganization of a cooperative in proceedings for the reorganization
24 of the cooperative under an applicable statute of the United States
25 relating to reorganization of corporations, the cooperative may amend
26 its articles as necessary in the manner provided in (c) of this sec-
27 tion in order to carry out the plan of reorganization only if the
28 articles as amended contain provisions that the cooperative may law-
29 fully put in its articles when it amends the articles.

1 (b) Amendments to the articles may include

2 (1) changing the name, period of duration, or purposes of
3 the cooperative;

4 (2) repealing, altering, or amending the bylaws;

5 (3) authorizing the issuance, terms, and conditions of
6 bonds, debentures, or other obligations of the cooperative;

7 (4) constituting or classifying the board, and appointing
8 directors and officers in place of or in addition to the current
9 directors or officers.

10 (c) Articles of amendment approved by a court shall be executed
11 and verified by the person the court designates or appoints for the
12 purpose, and must set out the name of the cooperative, the amendments
13 of the articles approved by the court, the date the court approved the
14 articles of amendment, the title of the court proceedings, and a
15 statement that the court had jurisdiction of the proceedings for the
16 reorganization of the cooperative under an applicable statute of the
17 United States.

18 Sec. 10.16.385. FILING OF AMENDMENT OF ARTICLES IN REORGANIZA-
19 TION PROCEEDINGS. A cooperative shall deliver an original and an
20 exact copy of the articles of amendment in reorganization proceedings
21 to the commissioner for processing under to AS 10.16.805 and for
22 issuance of a certificate of amendment.

23 Sec. 10.16.390. EFFECT OF ISSUANCE OF CERTIFICATE OF AMENDMENT
24 IN REORGANIZATION PROCEEDINGS. An amendment of articles under
25 AS 10.16.380 becomes effective when the commissioner issues a
26 certificate of amendment; the articles are considered to be amended
27 without action by the directors or members of the cooperative and have
28 the same effect as if the directors and members of the cooperative had
29 adopted the amendments by unanimous action.

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ARTICLE 9. ORGANIC CHANGE.

Sec. 10.16.400. MERGER AND CONSOLIDATION. Two or more cooperatives may merge or consolidate under a plan of merger or consolidation adopted under AS 10.16.405 - 10.16.410.

Sec. 10.16.405. PROCEDURE FOR MERGER OR CONSOLIDATION. The board of a cooperative shall approve by resolution a plan of merger or consolidation setting out

(1) the names of the cooperatives proposing to merge or consolidate, and the name of the existing cooperative into which they propose to merge or the name of the new cooperative into which they propose to consolidate;

(2) the terms and conditions of the proposed merger or consolidation;

(3) the effect of the proposed merger or consolidation on all members of each of the cooperatives;

(4) in the case of a consolidation, the articles of the new cooperative including all of the statements required to be set out in articles for a cooperative organized under this chapter; and

(5) other necessary or desirable provisions for the proposed merger or consolidation.

Sec. 10.16.410. NOTICE TO AND APPROVAL BY MEMBERS. (a) When the board of a cooperative approves a plan of merger or consolidation, the board shall by resolution direct that the plan be submitted to a vote of members at an annual or special meeting. The cooperative shall give written notice of the vote to each member in the manner provided in this chapter for meetings of members; the notice must state that a purpose of the meeting is to consider the proposed plan of merger or consolidation. The cooperative shall include a copy or summary of the plan of merger or consolidation and a copy of

HB 581

1 AS 10.16.430 and 10.16.433 with the notice.

2 (b) The plan is approved if it receives the affirmative vote of
3 a majority of all the members of the cooperative.

4 Sec. 10.16.413. ABANDONMENT OF PLAN OF MERGER OR CONSOLIDATION.
5 After approval by the members of each cooperative under AS 10.16.410
6 and before the filing of the articles of merger or consolidation, a
7 cooperative may abandon the merger or consolidation under provisions
8 set out in the plan.

9 Sec. 10.16.415. ARTICLES OF MERGER OR CONSOLIDATION. (a) The
10 president or a vice-president and a secretary or assistant secretary
11 of each cooperative shall execute the articles of merger or articles
12 of consolidation and one of the officers of each cooperative signing
13 the articles shall verify the articles of merger or consolidation.

14 (b) The articles of merger or the articles of consolidation must
15 include

- 16 (1) the plan of merger or consolidation;
17 (2) the date of the adoption of the plan by the members;
18 (3) for each merging or consolidating cooperative, the
19 number of member votes cast for and against the plan.

20 Sec. 10.16.418. FILING ARTICLES OF MERGER OR CONSOLIDATION. The
21 surviving or new cooperative shall deliver an original and an exact
22 copy of the articles of merger or the articles of consolidation to the
23 commissioner for processing under AS 10.16.805 and for issuance of a
24 certificate of merger or consolidation.

25 Sec. 10.16.420. EFFECTIVE DATE AND EFFECT. (a) A merger or
26 consolidation is effective on the day the commissioner issues the
27 certificate of merger or consolidation, or on a later date provided in
28 the plan that is not more than 30 days after the filing of the
29 certificate with the commissioner.

1 (b) When the merger or consolidation becomes effective

2 (1) the several cooperatives that are parties to the plan
3 of merger or consolidation are a single cooperative; in a merger, the
4 single cooperative is that cooperative designated in the plan of
5 merger as the surviving cooperative, and, in the case of a consolida-
6 tion, the single cooperative is the new cooperative identified in the
7 plan of consolidation;

8 (2) the separate existence of all cooperatives that are
9 parties to the plan of merger or consolidation, except the surviving
10 or new cooperative, ceases;

11 (3) the surviving or new cooperative possesses all the
12 rights, privileges, immunities and franchises of a public or private
13 nature of each of the merging or consolidating cooperatives; all real,
14 personal and mixed property, all debts due, including subscriptions to
15 shares, all other choses in action, and every other interest of,
16 belonging to, or due to each of the merged or consolidated coopera-
17 tives are transferred to the surviving or new cooperative without the
18 need for further action; a title or interest in real estate vested in
19 the merged or consolidated cooperatives does not revert and is not
20 impaired by the merger or consolidation;

21 (4) the surviving or new cooperative is thereafter respon-
22 sible and liable for the liabilities and obligations of each of the
23 cooperatives merged or consolidated; an existing claim or pending
24 action or proceeding by or against a merged or consolidated coopera-
25 tive may be prosecuted as if the merger or consolidation had not taken
26 place, or the surviving or new cooperative may be substituted in its
27 place; the merger or consolidation does not impair the rights of
28 creditors and liens on the property of a cooperative;

29 (5) in the case of a merger, the articles of the surviving

1 cooperative are amended to the extent that the plan of merger changes
2 its articles; in the case of a consolidation, the statements set out
3 in the articles of consolidation that this chapter requires or permits
4 to be set out in the articles of cooperatives organized under this
5 chapter are the original articles of the new cooperative.

6 Sec. 10.16.423. MERGER OR CONSOLIDATION BETWEEN DOMESTIC AND
7 FOREIGN COOPERATIVES. (a) One or more foreign cooperatives and one
8 or more domestic cooperatives may merge or consolidate if the laws of
9 the state under which each foreign cooperative is organized permit the
10 merger or consolidation and

11 (1) each domestic cooperative complies with the merger or
12 consolidation provisions of this chapter and each foreign cooperative
13 complies with the applicable provisions of the law of the state under
14 which it is organized; and

15 (2) if the laws of another state will govern the surviving
16 or new cooperative and if the surviving or resulting cooperative will
17 transact business in this state, the surviving or new cooperative
18 complies with the provisions of this chapter concerning foreign
19 cooperatives and files with the commissioner

20 (A) an agreement that the surviving or new foreign
21 cooperative may be served with process in the state in a proceed-
22 ing for the enforcement of an obligation of a domestic coopera-
23 tive that is a party to the merger or consolidation, and in a
24 proceeding for the enforcement of the rights of a dissenting
25 member of a domestic cooperative that is a party to the merger or
26 consolidation against the surviving or new cooperative;

27 (B) an irrevocable appointment of the commissioner as
28 the agent of the surviving or new cooperative to accept service
29 of process in a proceeding described in (2)(A) of this sub-

1 section; and

2 (C) an agreement that it will promptly pay to the
3 dissenting members of a domestic cooperative that is a party to
4 the merger or consolidation the amount to which they are entitled
5 under provisions of this chapter regarding the rights of
6 dissenting members.

7 (b) In this section "foreign cooperative" means a corporation
8 that is organized under laws other than the law of this state, and
9 that would, if formed in this state, be a cooperative corporation.

10 Sec. 10.16.425. SALE OF ASSETS NOT IN REGULAR COURSE OF BUSI-
11 NESS. (a) A cooperative may make a sale, lease, exchange, or other
12 disposition of all, or substantially all, of its property and assets,
13 with or without the good will of the business, that is not in the
14 usual and regular course of its business, on terms and conditions
15 authorized under (b) of this section. The consideration may consist
16 in whole or in part of cash or other property, including shares,
17 obligations or other securities of another foreign or domestic
18 cooperative or noncooperative corporation.

19 (b) A sale, lease, exchange, or other disposition of the
20 property of a cooperative shall be recommended to the members by
21 resolution approved by the board and submitted to a vote of the
22 members at a regular or special meeting. The cooperative shall give
23 written notice of the meeting and proposed sale, lease, exchange or
24 other disposition to each member of the cooperative not less than 20
25 days before the meeting, in the manner provided in this chapter for
26 the giving of notice of meetings of members. Whether the meeting is
27 an annual or special meeting, the notice must state that a purpose of
28 the meeting is to consider the proposed sale, lease, exchange, or
29 other disposition, and include a copy of AS 10.16.430 - 10.16.433.

1 Sec. 10.16.427. APPROVAL OF TRANSACTION BY MEMBERS. At a
2 meeting for which notice is given under AS 10.16.425(b) the members
3 shall vote on the recommended sale, lease, exchange, or other disposi-
4 tion of the property of the cooperative, and the members may fix or
5 authorize the board to fix, the terms and conditions, including the
6 consideration to be received by the cooperative. The transaction is
7 approved if the members of the cooperative approve the recommendation
8 of the board by an affirmative vote of a majority of all of the
9 members.

10 Sec. 10.16.430. RIGHT OF MEMBERS TO DISSENT. A member may
11 dissent from the following actions of a cooperative:

12 (1) a plan of merger or consolidation;

13 (2) a sale or exchange of all or substantially all of the
14 property and assets of the cooperative that is not made in the usual
15 and regular course of business, including a sale in dissolution, but
16 not including a sale under a court order or a sale for cash on terms
17 requiring that all or substantially all of the net proceeds of the
18 sale be distributed to the members in accordance with their respective
19 interests within one year after the date of sale.

20 Sec. 10.16.433. PROCEDURE TO ENFORCE MEMBER'S RIGHT TO RECEIVE
21 PAYMENT FOR INTEREST IN COOPERATIVE. (a) A member electing to exer-
22 cise a right to dissent shall file with the cooperative a written
23 objection to the proposed corporate action before or at the meeting of
24 the members to which the proposal of merger or consolidation is sub-
25 mitted for a vote. The objection must include a notice of election to
26 dissent, the member's name and residence address, and a demand for a
27 payment of the fair value of the member's interest in the cooperative
28 if the action is taken. A member to whom the cooperative did not give
29 notice of the meeting in accordance with this chapter is not required

1 to make the objection provided in this section.

2 (b) Within 10 days after the members' vote authorizing the
3 action, the cooperative shall give written notice of the authorization
4 to each member who filed written objection or from whom written ob-
5 jection was not required. The cooperative may consider that a member
6 who voted for the proposed action has elected not to enforce a right
7 to dissent under this chapter, and need not give notice to that mem-
8 ber.

9 (c) Within 20 days after notice has been given under (b) of this
10 section, a member from whom written objection was not required under
11 (a) of this section and who elects to dissent shall file with the
12 cooperative a written notice of the election, stating the member's
13 name and residence address, and a demand for payment of the fair value
14 of the member's interest in the cooperative. A member who elects to
15 dissent from a merger or consolidation under AS 10.16.400 or a sale of
16 assets under AS 10.16.425 shall file a written notice of the election
17 to dissent within 20 days after the merger plan, consolidation plan,
18 or sale of assets resolution has been mailed to the member.

19 (d) A merger or consolidation is consummated within the meaning
20 of this chapter on the effective date determined under AS 10.16.420; a
21 sale of assets under AS 10.16.425 is consummated within the meaning of
22 this chapter when the cooperative has received the consideration
23 specified in the board resolution that was submitted to the members in
24 accordance with that section.

25 (e) When the cooperative has consummated the action, the
26 dissenting member ceases to have the rights of a member, except the
27 right to be paid the fair value of that member's interest in the
28 cooperative.

29 (f) The dissenting member may withdraw a notice of election to

1 dissent before the member accepts under AS 10.16.435(f), but no later
2 than 60 days from the date of consummation of the action, except that
3 the time for withdrawing a notice of election is extended for 60 days
4 from the date an offer is made, if the cooperative fails to make a
5 timely offer under AS 10.16.435. After the time for withdrawal has
6 expired, withdrawal of a notice of election requires the written
7 consent of the cooperative. In order for the withdrawal of a notice
8 of election to be effective, the member shall return the advance
9 payment made to the member as provided in AS 10.16.435. If a member
10 withdraws a notice of election, if the corporate action is rescinded,
11 if a court determines that the member is not entitled to the right to
12 dissent, or if the member otherwise loses the right to dissent, the
13 member does not have the right to receive payment otherwise required
14 by this chapter and the cooperative shall reinstate the member to all
15 rights as a member that were effective on the date of the consummation
16 of the action. The rights to which the member is reinstated include
17 the right to payment of intervening distributions by the cooperative.

18 (g) When filing the notice of election to dissent, or within 30
19 days after filing the notice, the member shall submit to the coopera-
20 tive, or to its transfer agent, the membership stock or evidence of
21 the membership rights or interests for which fair value is claimed.
22 Unless a court, for good cause shown, otherwise directs, a member who
23 fails to comply with this subsection loses the right to dissent gran-
24 ted by this chapter, if the cooperative gives written notice to the
25 member that the right to dissent will be lost to the member 45 days
26 after the member filed the notice of election to dissent. If the
27 cooperative fails to exercise this notice option in a timely manner,
28 the member retains the right to dissent granted by this chapter.

29 Sec. 10.16.435. OFFER AND PAYMENT TO DISSENTING MEMBERS. (a)

1 Within 15 days after the expiration of the period within which members
2 may file their notice of election to dissent under AS 10.16.433, or
3 within 15 days after the proposed action is consummated, whichever is
4 later, the cooperative or, in the case of a merger or consolidation,
5 the surviving or new cooperative, shall make a written offer by
6 certified mail to each member who has filed the notice of election, to
7 pay the amount the cooperative estimates to be the fair value of the
8 member's interest. The cooperative shall use the same method of
9 computation for each offer to a dissenting member

10 (b) The cooperative shall accompany the offer required by (a) of
11 this section by

12 (1) the most recent balance sheet for the cooperative
13 produced in the 12 months before the offer;

14 (2) a profit and loss statement for the cooperative for at
15 least 12 months preceding the date of the balance; if the cooperative
16 did not exist during the entire 12-month period preceding the balance
17 sheet required by (1) of this subsection, then a profit and loss
18 statement for that portion of the 12-month period preceding the date
19 of the balance sheet during which the cooperative was in existence;

20 (3) a statement of the total number of membership interests
21 for which the cooperative has received notices of election to dissent;
22 and

23 (4) a copy of AS 10.16.435 and 10.16.440.

24 (c) If the cooperative has consummated the action, the coopera-
25 tive shall accompany the offer required by (a) of this section with

26 (1) advance payment to each member who submitted evidence
27 of membership interest under AS 10.16.433(g), of the amount offered
28 under (a) of this section; or

29 (2) a statement to a member who has not submitted evidence

1 of membership interest that advance payment of the amount offered
2 under (a) of this section will be made by the cooperative promptly
3 when the member has submitted the evidence of membership.

4 (d) If the cooperative has not consummated the action when the
5 cooperative makes the offer required by (a) of this section, the
6 cooperative shall send the advance payment or statement about the
7 advance payment to each member entitled to the payment or notice after
8 the cooperative has consummated the action.

9 (e) The advance payment or statement about the advance payment
10 must advise the member that acceptance of the payment does not waive
11 the member's right under AS 10.16.440.

12 (f) The cooperative may consider that a member who fails to make
13 written objection to the amount tendered under (c)(1) of this section
14 or to submit evidence of membership interest in response to the state-
15 ment sent under (c)(2) of this section within 30 days of the date the
16 statement was mailed has agreed that the amount offered represents the
17 fair value of that member's interest in the cooperative. That share-
18 holder has no interest in the cooperative or the outcome of litigation
19 begun under AS 10.16.440.

20 (g) Notwithstanding the other provisions of this section, if the
21 payments otherwise required by (c) and (d) of this section or de-
22 termined in accordance with AS 10.16.440 would be distributions in
23 violation of AS 10.16.133 or 10.16.153, the cooperative may not make a
24 distribution to a dissenting member. In that event, a cooperative
25 that would otherwise have the payment obligation under (c) and (d) of
26 this section or AS 10.16.440 shall, in addition to complying with (a)
27 and (b) of this section, give written notice within the time limits of
28 (a) of this section to dissenting members of its inability to make
29 payment. The cooperative shall include in the notice

1 (1) an explanation why the cooperative is unable to make
2 the payments otherwise required by this section;

3 (2) a statement that a dissenting member has an option to

4 (A) withdraw the member's notice of election to dis-
5 sent, and the cooperative will consider that the withdrawal was
6 made with the written consent of the cooperative; or

7 (B) retain the status of a dissenter, and, if the
8 cooperative is liquidated, be subordinated to the rights of the
9 creditors of the cooperative but have rights superior to the
10 nondissenting members, but if the cooperative is not liquidated,
11 retain the right to be paid under (c) and (d) of this section or
12 AS 10.16.440 and the cooperative must satisfy the obligation when
13 the restrictions on distributions do not apply; and

14 (3) a statement that if the cooperative does not receive
15 the written election provided under (2) of this subsection within 60
16 days after notice given as required by this subsection, the
17 cooperative will consider that the member has withdrawn the notice of
18 election under (2)(A) of this subsection.

19 Sec 10.16.440. ACTION TO DETERMINE VALUE OF MEMBERS' INTEREST ON
20 FAILURE TO ACCEPT CORPORATE OFFER. (a) If the cooperative fails to
21 make the offer required by AS 10.16.435(a) or the member rejects the
22 offer within the 30-day period specified in AS 10.16.435(f)

23 (1) the cooperative shall, within 20 days after the ex-
24 piration of the 30-day period specified in AS 10.16.435(f), file a
25 petition in the court of the judicial district where the registered
26 office of the cooperative is located, requesting that the fair value
27 of the interest of dissenting members be determined; if, in the case
28 of a merger or consolidation, the surviving or new cooperative is a
29 foreign cooperative without a registered office in the state, the

1 petition shall be filed in the judicial district where the registered
2 office of the domestic cooperative was last located; or

3 (2) if the cooperative does not institute a proceeding
4 under this section, a dissenting member may institute a proceeding in
5 the name of the cooperative; if a dissenting member does not institute
6 a proceeding within 30 days after the expiration of the 20-day period
7 granted the cooperative under (1) of this subsection, the dissenter
8 loses the dissenter's rights unless the superior court, for good cause
9 shown, otherwise directs.

10 (b) The cooperative shall make all dissenting members who have
11 rejected the corporate offer extended under AS 10.16.435(a), wherever
12 residing, parties to the proceeding as an action against their inter-
13 est in the cooperative quasi in rem. The cooperative shall serve a
14 copy of the complaint in the proceeding on each dissenting member who
15 is a resident of the state in the manner provided in the Alaska Rules
16 of Civil Procedure, and on each nonresident dissenting member either
17 by certified mail and publication, or in another manner permitted by
18 law. The jurisdiction of the court shall be plenary and exclusive. A
19 member who is a party to the proceeding is entitled to judgment
20 against the cooperative for the amount determined under (c) of this
21 section to be the fair value of the interest of that member.

22 (c) The court shall determine whether a dissenting member who is
23 a party to the court action is entitled to receive payment for that
24 member's interest in the cooperative. If the cooperative does not
25 request a determination, or if the court finds that a dissenting
26 member is entitled to a determination, the court shall establish the
27 value of the member's interest. For the purposes of this section, the
28 value shall be the fair value at the close of business on the day
29 before the date on which the vote was taken by the members approving

1 the proposed corporate action. In fixing the fair value of the inter-
2 est, the court shall consider the nature of the transaction giving
3 rise to the right to dissent under AS 10.16.430, its effects on the
4 cooperative and its members, the concepts and methods customary in the
5 relevant financial markets for determining the fair value of member
6 interests in cooperatives engaging in a similar transaction under
7 comparable circumstances, and other relevant factors. The court may
8 appoint one or more persons as appraisers to receive evidence and
9 recommend a decision on the question of fair value. The appraisers
10 have the power and authority specified in the order of appointment.

11 (d) The judgment must include an allowance for interest at the
12 rate the court finds to be fair and equitable, from the date when the
13 proposed corporate action vote was taken to the date of payment. In
14 determining the rate of interest the court shall consider all relevant
15 factors, including the rate of interest that the corporation would
16 have had to pay to borrow money during the pendency of the proceeding.
17 If the court finds that the refusal of a member to accept the corpo-
18 rate offer of payment was arbitrary, vexatious, or otherwise in bad
19 faith, the court shall deny interest to that member.

20 (e) A party to the proceeding shall bear its own costs and
21 expenses, including the fees and expenses of its counsel and of ex-
22 perts employed by it. Notwithstanding the foregoing, the court may,
23 in its discretion, apportion and assess all or part of the costs,
24 expenses, and fees incurred by the cooperative against one or more of
25 the dissenting members who are parties to the proceeding, if the court
26 finds that a refusal to accept the corporate offer was arbitrary,
27 vexatious, or otherwise in bad faith. The court may, in its dis-
28 cretion, apportion and assess all or a part of the costs, expenses,
29 and fees incurred by a dissenting member who is a party to the

1 proceeding against the cooperative if the court finds that

2 (1) the fair value of the interest materially exceeds the
3 amount that the cooperative offered to pay;

4 (2) an offer or required advance payment required by
5 AS 10.16.435 was not made by the cooperative;

6 (3) the cooperative failed to institute the special pro-
7 ceeding within the period specified in (a) of this section; or

8 (4) the action of the cooperative in complying with its
9 obligations under this chapter was arbitrary, vexatious, or otherwise
10 in bad faith.

11 (f) Unless prohibited by AS 10.16.435(g), within 60 days after
12 the final determination of the proceeding, the cooperative shall pay
13 to each dissenting member who is a party the amount determined under
14 this section in exchange for the surrender of the evidence of the
15 member's interest in the cooperative and the extinguishing of that
16 interest. When the judgment is paid, the dissenting member ceases to
17 have an interest in the cooperative, and the rights and obligations of
18 both the member and the cooperative under a contract authorized by
19 this chapter are discharged and the contract rescinded.

20 Sec. 10.16.445. CONVERSION OF A CORPORATION INTO A COOPERATIVE.
21 A domestic corporation may convert itself into a cooperative by amend-
22 ing its articles to subject itself to this chapter, to satisfy the
23 requirements of this chapter, and to make other changes permitted by
24 this chapter that it determines desirable. The provisions of this
25 title under which the converting corporation operates before
26 conversion govern the adoption, filing, and effective date of the
27 amendments to convert a domestic corporation into a cooperative.

28 ARTICLE 10. DISSOLUTION.

29 Sec. 10.16.450. VOLUNTARY DISSOLUTION. (a) A cooperative may

1 elect voluntarily to wind up and dissolve by

2 (1) the vote of members taken at a special or annual meet-
3 ing after notice under AS 10.16.205 to each member entitled to vote at
4 the meeting stating that a purpose of the meeting is to consider
5 approval of voluntary dissolution of the cooperative; at the meeting
6 the election to voluntarily dissolve is adopted if it receives the
7 affirmative votes of a majority of all the members of the cooperative;
8 or

9 (2) written consent of the members taken without a meeting
10 under AS 10.16.220.

11 (b) The following cooperatives may elect by approval of the
12 board to wind up and dissolve:

13 (1) a cooperative that has been adjudicated bankrupt;

14 (2) a cooperative that has disposed of all of its assets,
15 has no outstanding executory cooperative contracts, and has not con-
16 ducted business for a period of five years immediately preceding the
17 adoption of the resolution to dissolve the cooperative; and

18 (3) a cooperative that has no members.

19 Sec. 10.16.453. CERTIFICATE OF ELECTION. (a) A cooperative
20 that has elected to wind up and dissolve shall immediately file a
21 certificate in accordance with this section evidencing the election.

22 (b) The certificate must be an officers' certificate or must be
23 signed and verified by at least a majority of the directors then in
24 office, by one or more members authorized to do so by the members
25 holding 50 percent or more of the voting power, or by the officer or
26 member designated in the written consent.

27 (c) The certificate must include

28 (1) the name of the cooperative, the names and addresses of
29 its officers, and the names and addresses of its directors;

1 (2) the statement that the cooperative has elected to wind
2 up and dissolve;

3 (3) the number of members voting for the election if the
4 election was made by a vote of the members, and a statement that a
5 majority of all of the members of the cooperative made the election;

6 (4) a copy of the written consent signed by all members of
7 the cooperative if the election was made by the written consent of the
8 members;

9 (5) circumstances showing the cooperative is within one of
10 the categories described in AS 10.16.450(b) if the board made the
11 election under that provision.

12 (d) The cooperative shall deliver an original and an exact copy
13 of a certificate conforming to (b) and (c) of this section to the
14 commissioner for processing.

15 Sec. 10.16.455. CERTIFICATE OF REVOCATION OF ELECTION. (a) A
16 cooperative may revoke a voluntary election to wind up and dissolve
17 under AS 10.16.450 before distribution of assets by making an election
18 to revoke in the same manner as an election to dissolve under
19 AS 10.16.450. The cooperative shall sign, verify, and file a
20 certificate evidencing the election to revoke in the manner prescribed
21 in AS 10.16.453.

22 (b) The cooperative shall state in the certificate

23 (1) that the cooperative has revoked its election to wind
24 up and dissolve;

25 (2) that no assets have been distributed as a result of the
26 election;

27 (3) the number of members voting for the revocation and the
28 total number of members who were entitled to vote on the revocation,
29 if the members made the election to revoke by vote of the majority of

1 all the members;

2 (4) a copy of the written consent signed by all members of
3 the cooperative if the members made the election to revoke by written
4 consent;

5 (5) the resolution of the board if the board made the
6 election to revoke.

7 Sec. 10.16.460. EFFECTIVE DATE OF CERTIFICATE OF REVOCATION OF
8 ELECTION. Revocation of a voluntary dissolution proceeding is
9 effective when the cooperative has complied with AS 10.16.455.

10 Sec 10.16.463. COMMENCEMENT AND CONDUCT OF VOLUNTARY PROCEEDINGS
11 FOR WINDING UP. (a) Voluntary proceedings for winding up the cooper-
12 ative begin when the members or directors of the cooperative elect by
13 resolution to wind up and dissolve, or when the written consent of the
14 members is filed with the cooperative.

15 (b) If the cooperative has begun a voluntary proceeding for
16 winding up, the board shall continue to act as a board and has the
17 powers provided in (c) of this section to wind up and settle the
18 cooperative's affairs, before and after the filing of the certificate
19 of dissolution.

20 (c) If the cooperative has begun a voluntary proceeding for
21 winding up, the cooperative shall only continue the business of the
22 cooperative necessary to wind up its business beneficially during the
23 period the board considers necessary to preserve the cooperative's
24 good will or going-concern value pending a total or partial sale of
25 its business or assets.

26 (d) The board shall mail written notice of the commencement of
27 the voluntary winding up to all members and all known creditors and
28 claimants whose addresses appear on the records of the cooperative,
29 except for members who voted in favor of winding up and dissolving the

1 cooperative.

2 Sec. 10.16.465. JUDICIAL SUPERVISION OF WINDING UP. If a co-
3 operative is voluntarily winding up, a court, on the petition of the
4 cooperative, five or more members, or three or more creditors, and
5 after notice that the court may order to the cooperative and to other
6 persons interested in the cooperative as members and creditors, may
7 take jurisdiction of the winding up if it appears necessary to protect
8 an interested party. If the court assumes jurisdiction, it may issue
9 orders concerning the winding up and the protection of the members and
10 creditors of the cooperative.

11 Sec. 10.16.470. CONTENTS OF ARTICLES OF DISSOLUTION. If a
12 cooperative has been completely wound up without court proceedings, a
13 majority of the directors then in office shall sign and verify arti-
14 cles of dissolution stating that

15 (1) the cooperative has been completely wound up;

16 (2) the known debts and liabilities of the cooperative have
17 been paid or adequately provided for under AS 10.16.545, or paid or
18 adequately provided for as far as the assets of the cooperative per-
19 mit, or that the cooperative has no known debts or liabilities; if
20 there are known debts or liabilities for which adequate provision for
21 payment has been made, the articles of dissolution must state what
22 provision has been made, the name and address of the corporation,
23 person, or governmental agency that has assumed or guaranteed payment,
24 or the name and address of the depository to which deposit has been
25 made, and other information that is necessary to enable the creditor
26 or other person to whom payment is to be made to appear and claim
27 payment of the debt or liability;

28 (3) the cooperative has distributed its known assets to its
29 members, or, if there are no members, to the persons entitled to the

1 assets, or has wholly applied or deposited its assets to its debts and
2 liabilities, or that it had no known assets;

3 (4) the cooperative is dissolved.

4 Sec. 10.16.475. FILING ARTICLES OF DISSOLUTION. The cooperative
5 shall deliver an original and an exact copy of the articles of
6 dissolution to the commissioner for processing and for issuance of a
7 certificate of dissolution.

8 Sec. 10.16.480. EFFECT OF CERTIFICATE OF DISSOLUTION. When the
9 commissioner issues a certificate of dissolution, the existence of the
10 cooperative ceases, except for the purpose of suits, other pro-
11 ceedings, and appropriate corporate action by members, directors, and
12 officers provided in this chapter.

13 Sec. 10.16.483. INVOLUNTARY DISSOLUTION BY VERIFIED COMPLAINT.

14 (a) The following persons may file a verified complaint in the supe-
15 rior court for involuntary dissolution of a cooperative on a ground
16 specified in (b) of this section:

17 (1) one-half or more of the directors in office;

18 (2) not less than 33-1/3 percent of the total number of
19 members;

20 (3) a member, if the ground for dissolution is that the
21 period for which the cooperative was formed has terminated without
22 extension; or

23 (4) a person expressly authorized to do so in the articles.

24 (b) The grounds for involuntary dissolution are

25 (1) the cooperative has abandoned its business for more
26 than one year;

27 (2) the cooperative has an even number of directors who are
28 equally divided and cannot agree on the management of its affairs, so
29 that either the cooperative can no longer conduct its business to

1 advantage or there is danger that the property and business of the
2 cooperative will be impaired or lost, and the members are so divided
3 into factions that they cannot elect a board consisting of an uneven
4 number;

5 (3) there is internal dissention in the cooperative and two
6 or more factions of members in the cooperative are so deadlocked that
7 the cooperative cannot conduct its business with advantage to its
8 members, or the members have failed at two consecutive annual meetings
9 at which all voting power was exercised to elect successors to direc-
10 tors whose terms have expired or would have expired at the election of
11 their successors;

12 (4) those in control of the cooperative are guilty of or
13 have knowingly approved persistent and pervasive fraud, mismanagement
14 or abuse of authority or persistent unfairness toward members, or the
15 directors or officers are misapplying or wasting the property of the
16 cooperative;

17 (5) in the case of a cooperative with 35 or fewer members,
18 liquidation is reasonably necessary to protect the rights or interests
19 of the complaining member; or

20 (6) the period for which the cooperative was formed has
21 terminated without extension.

22 (c) A member or creditor of the cooperative may intervene before
23 the trial of the action begins.

24 Sec. 10.16.485. AVOIDING DISSOLUTION BY VERIFIED COMPLAINT. (a)
25 Unless the articles provide otherwise, in an action for involuntary
26 dissolution the cooperative or, if the cooperative does not elect to
27 purchase, the holders of 50 percent or more of the voting power of the
28 cooperative, may avoid the dissolution of the cooperative and the
29 appointment of a receiver by purchasing for cash the interests in the

1 cooperative owned by the plaintiffs at the fair value of the interests
2 and discharging the plaintiffs from executory duties under the
3 contracts of the cooperative. The court shall base the fair value of
4 the plaintiffs' interests in the cooperative on the liquidation value
5 of the plaintiffs' interests in the cooperative, taking into account
6 the possibility of sale of the entire business as a going concern in
7 liquidation. The cooperative may elect to purchase by obtaining the
8 approval of the members, excluding the votes of the plaintiffs.

9 (b) If the purchasing party elects to purchase the interests
10 owned by the plaintiffs, is unable to agree with the plaintiffs on the
11 fair value of the interests, and gives a bond with sufficient security
12 to pay the estimated reasonable expenses, including attorney fees, of
13 the plaintiffs if the expenses are recoverable under (c) of this
14 section, the court, on application of the purchasing party, shall stay
15 the winding up and dissolution proceeding and shall proceed to
16 ascertain and fix the fair value of the interests owned by the plain-
17 tiffs.

18 (c) The court shall appoint three disinterested appraisers to
19 appraise the fair value of the interests owned by the plaintiffs, and
20 shall refer the matter to the appraisers for the appraisal. In the
21 order the court shall, if evidence is required, establish the time and
22 manner of producing evidence. The determination of the appraisers or
23 a majority of the appraisers, after confirmation by the court, is
24 final and conclusive on all parties. The court shall enter a decree
25 that provides in the alternative for winding up and dissolution of the
26 cooperative if the purchasing party does not pay for the interests of
27 the plaintiffs within the time specified by the decree. If the pur-
28 chasing party does not pay for the interests of the plaintiffs within
29 the time specified, the court shall enter judgment against the

1 purchasing party and surety on the bond for the amount of the
2 expenses, including attorney fees, of the plaintiffs. A member may
3 appeal the action of the court.

4 (d) If a purchasing party desires to prevent the winding up and
5 dissolution, the purchasing party shall pay to the plaintiffs the
6 value of their interests as provided under this section less an allow-
7 ance determined by the court for the costs of the appraisal. In an
8 appeal, the purchasing party shall pay the plaintiffs the value of the
9 shares and costs of appraisal fixed on appeal. On receiving payment
10 or the tender of payment under (c) of this section, a plaintiff shall
11 transfer the plaintiff's interest to the purchasing party.

12 Sec. 10.16.490. INVOLUNTARY DISSOLUTION BY THE COMMISSIONER.

13 (a) The commissioner may dissolve a cooperative involuntarily if

14 (1) the cooperative is six months delinquent in filing its
15 biennial report or in paying a license filing fee or penalty;

16 (2) the cooperative has failed for 30 days to appoint and
17 maintain a registered agent in the state;

18 (3) the cooperative has failed for 30 days after change of
19 its registered office or registered agent to file a statement of the
20 change in the office of the commissioner;

21 (4) the cooperative has failed for two years to complete
22 dissolution under a certificate of election to dissolve;

23 (5) the cooperative has not filled a vacancy on the board
24 of the cooperative within six months or the next annual meeting,
25 whichever occurred first;

26 (6) the cooperative misrepresented a material fact in an
27 application, report, affidavit, or other document submitted under this
28 chapter; or

29 (7) the cooperative is 90 days delinquent in filing a

1 notice of change of an officer or director as required by this chap-
2 ter.

3 (b) The commissioner may not dissolve a cooperative under this
4 section unless the commissioner has given the cooperative written
5 notice of its delinquency, failure, or noncompliance by certified mail
6 addressed to its registered office, registered agent, president, or
7 secretary at the last known address shown in the records of the com-
8 missioner. If the cooperative fails, within 60 days after the
9 commissioner sends the notice, to contest the alleged neglect, omis-
10 sion, delinquency, or noncompliance by a written request for a hearing
11 before the commissioner, or fails to correct the alleged neglect,
12 omission, delinquency, or noncompliance, the commissioner may dis-
13 solve the cooperative under (d) of this section.

14 (c) If, following a hearing, the commissioner determines the
15 presence of neglect, omission, delinquency, or noncompliance providing
16 grounds for involuntary dissolution under this section, the coopera-
17 tive may appeal the commissioner's determination to the superior court
18 by filing with the clerk of the court a petition setting out a copy of
19 the notice given by the commissioner under (b) of this section, a copy
20 of a timely demand by the cooperative for a hearing, and a copy of an
21 affirmation by the commissioner of an intention to dissolve under (d)
22 of this section. The superior court shall try the matter de novo and
23 the court shall either sustain the commissioner or direct the commis-
24 sioner to take the action the court considers proper.

25 (d) If a cooperative has given cause for involuntary dissolution
26 and has failed to correct the neglect, omission, delinquency, or
27 noncompliance as provided in this section, and if the superior court
28 has not made an order preventing the commissioner from dissolving the
29 cooperative, the commissioner shall dissolve the cooperative by

1 issuing a certificate of involuntary dissolution containing a
2 statement that the cooperative has been dissolved, and the date, and
3 the reason for the dissolution. The department shall maintain the
4 original certificate of dissolution in the department files, and shall
5 mail a copy of the certificate to the cooperative at its registered
6 office or in care of its registered agent, president, or secretary at
7 the last known address shown in the records of the commissioner. The
8 existence of the cooperative, except as otherwise provided in this
9 section, ceases when the commissioner issues the certificate of
10 dissolution and the department shall make the name of the dissolved
11 cooperative available for use by another corporation six months after
12 dissolution.

13 (e) The commissioner may reinstate a cooperative dissolved under
14 this section within two years from the date of the certificate of
15 involuntary dissolution if the cooperative establishes to the satis-
16 faction of the commissioner that there was no cause for the dissolu-
17 tion, or that the cooperative has corrected the neglect, omission,
18 delinquency, or noncompliance resulting in dissolution, and that the
19 cooperative has paid two times the delinquent amount and the amount
20 the cooperative would have paid if it had not been dissolved. The
21 commissioner may not reinstate the cooperative if the same or a
22 deceptively similar corporate, reserved, or registered name is
23 currently on file with the commissioner, unless the cooperative being
24 reinstated amends its articles of incorporation to change its name to
25 conform with the provisions of this chapter.

26 (f) The commissioner may impose on a cooperative reinstated
27 under this section a penalty, or order, a forfeiture of the
28 cooperative's powers, if the cooperative subsequently fails to pay
29 license fees and taxes imposed by the state.

1 (g) The assignee of a contract assigned by a cooperative dis-
2 solved under this section may bring an action on the assigned contract
3 in the name of the assignee. The plaintiff shall state the fact of
4 assignment and purchase by the plaintiff in the complaint or other
5 process. The defendant may assert a defense that would otherwise have
6 been available against the assigning cooperative, including the prohi-
7 bition against assignment in AS 10.16.300(c) and the defense that the
8 subject matter of the contract is not suitable for a present, opera-
9 tive assignment.

10 (h) Service of process on a cooperative dissolved under this
11 section shall be made in the same manner as if the cooperative had not
12 been dissolved.

13 Sec. 10.16.495. COMMISSIONER'S AUTHORITY TO BRING ACTION FOR
14 INVOLUNTARY DISSOLUTION. (a) In addition to other remedies provided
15 by law, the superior court may dissolve a cooperative involuntarily in
16 an action filed by the commissioner when the commissioner establishes
17 that the cooperative

18 (1) procured its certificate of incorporation through
19 fraud;

20 (2) continued to exceed or abuse the authority conferred on
21 it by law;

22 (3) committed a serious violation of a statute regulating
23 corporations; or

24 (4) violated a provision of law by an act or default that
25 is a ground for forfeiture of corporate existence in the state.

26 (b) The court may order dissolution or other relief that it
27 considers just and expedient. The court may appoint a receiver under
28 AS 10.16.508 for winding up the affairs of the cooperative or may
29 order that the board wind up the cooperative under the supervision of

1 the court.

2 Sec. 10.16.500. JURISDICTION AND PROCESS FOR COMMISSIONER'S
3 ACTION. (a) The commissioner shall begin an action for the
4 involuntary dissolution of a cooperative under AS 10.16.495 in the
5 superior court.

6 (b) Summons shall issue and be served as in a civil action. If
7 the commissioner cannot find a registered agent or office of the
8 cooperative to serve, the commissioner shall publish notice as in a
9 civil action in a newspaper published in the judicial district where
10 the registered office of the cooperative is situated, containing a
11 notice of the pendency of the action, the title of the court, the
12 title of the action, and the date on or after which the commissioner
13 may enter default. The commissioner may include in one notice the
14 names of other cooperatives against which similar actions by the
15 commissioner are pending in the same court.

16 (c) Within 10 days after the first publication of the notice,
17 the commissioner shall mail a copy of the notice to the cooperative at
18 the latest address of its registered office in the department file for
19 the cooperative.

20 (d) The commissioner shall publish the notice at least once each
21 week for two successive weeks. The commissioner may begin the first
22 publication after the summons has been returned.

23 (e) Unless a cooperative is served with the summons, the
24 commissioner may not take a default against a cooperative for
25 involuntary dissolution earlier than 30 days after the first
26 publication of notice.

27 Sec. 10.16.505. APPOINTMENT OF PROVISIONAL DIRECTOR. (a) If
28 the ground for the complaint for involuntary dissolution of the co-
29 operative is a deadlock in the board under AS 10.16.483(b)(2), the

1 court may appoint a provisional director.

2 (b) A provisional director must be an impartial person, who is
3 not a member or a creditor of the cooperative or related according to
4 the common law by consanguinity or affinity within the third degree to
5 a director of the cooperative or to a judge of the court that appoints
6 the provisional director. A provisional director has all the rights
7 and powers of a director until the deadlock in the board is broken, or
8 until the provisional director is removed by the court or by approval
9 of a majority of all of the members.

10 (c) Unless otherwise agreed by the parties, the court shall fix
11 the compensation of the provisional director.

12 Sec. 10.16.508. APPOINTMENT OF RECEIVER. (a) If after the
13 commissioner files a complaint for involuntary dissolution the court
14 has reasonable grounds to believe that unless a receiver of the
15 cooperative is appointed the interests of the cooperative and its
16 members will suffer pending determination of the complaint, the court
17 may, on the application of the plaintiff and after a hearing on notice
18 to the cooperative that the court directs, appoint a receiver to
19 manage the affairs of the cooperative and to preserve its property
20 pending determination of the complaint for dissolution.

21 (b) A receiver must be a citizen of the United States or a
22 corporation authorized to act as receiver. A corporate receiver may
23 be a domestic cooperative or a foreign cooperative authorized to
24 transact business in the state. A receiver shall provide a bond and
25 provide the sureties required by the court.

26 (c) The court shall fix the compensation of the receiver, unless
27 otherwise agreed, and the compensation shall be paid from the assets
28 of the cooperative.

29 Sec. 10.16.510. FURTHER JUDICIAL RELIEF FOR WINDING UP AND
HB 581

1 DISSOLUTION. After a hearing, the court may order that a cooperative
2 be wound up and dissolved under AS 10.16.480, or, with or without
3 winding up and dissolution, order other relief including injunctions
4 that the court determines to be just and equitable.

5 Sec. 10.16.515. COMMENCEMENT AND CONDUCT OF INVOLUNTARY PROCEED-
6 INGS FOR WINDING UP. (a) Involuntary proceedings for winding up
7 begin when a court enters an order for winding up under AS 10.16.-
8 495(b) or 10.16.510.

9 (b) If an involuntary proceeding for winding up has begun, the
10 board shall conduct the winding up of the affairs of the cooperative,
11 subject to the supervision of the court, unless other persons are
12 appointed by the court to conduct the winding up. The directors or
13 other persons may, subject to restrictions imposed by the court,
14 exercise all their powers through the executive officers of the co-
15 operative without an order of the court.

16 (c) If an involuntary proceeding for winding up has begun, the
17 cooperative shall cease to carry on business except to the extent
18 necessary for the beneficial winding up of the business and except
19 during a period the board considers necessary to preserve the
20 cooperative's good will or going-concern value pending a total or
21 partial sale of the business or assets of the cooperative. The direc-
22 tors shall mail written notice of the beginning of the proceeding for
23 involuntary winding up to all members and to all known creditors and
24 claimants whose addresses appear on the records of the cooperative,
25 unless the court has stayed the order for winding up or has enjoined
26 the proceeding or the execution of the order.

27 Sec. 10.16.520. JURISDICTION OF COURT. If an involuntary pro-
28 ceeding for winding up has been started, the jurisdiction of the court
29 includes

1 (1) the determination of the validity of all claims and
2 demands against the cooperative, whether due or not yet due, contin-
3 gent, unliquidated, or for damages, and barring from participation
4 creditors and claimants that fail to make and present claims and proof
5 as required by the court;

6 (2) the compromise of all claims against the cooperative or
7 its property, and the determination of the amount of money or assets
8 required to be retained to pay or provide for the payment of claims;

9 (3) the determination of the rights of members in and to
10 the assets of the cooperative;

11 (4) the supervision of the presentation and filing of
12 intermediate and final accounts of the directors or other persons
13 appointed to conduct the winding up, the allowance, disallowance or
14 settlement of the accounts, and the discharge of the directors or the
15 other persons from their duties and liabilities;

16 (5) the appointment of a master to hear and determine
17 cooperative matters, with the power or authority the court considers
18 proper;

19 (6) the filling of vacancies on the board that the direc-
20 tors or members are unable to fill;

21 (7) the removal of a director if it appears that the direc-
22 tor has been guilty of dishonesty, misconduct, neglect, or abuse of
23 trust in conducting the winding up, or if the director is unable to
24 act; the court may order an election to fill the vacancies, and may
25 enjoin, for the time it considers proper, the reelection of the re-
26 moved director; the court, instead of ordering an election, may
27 appoint a director to fill the vacancy caused by the removal; a direc-
28 tor appointed by the court serves until the next annual meeting of
29 members or until a successor is elected or appointed;

1 (8) the staying of the prosecution of a suit, proceeding,
2 or action against the cooperative and requiring the parties to present
3 and prove their claims in the manner required of other creditors;

4 (9) the determination whether adequate provision has been
5 made for payment or satisfaction of all debts and liabilities not
6 actually paid;

7 (10) the withdrawal or termination of proceedings to wind
8 up and dissolve, subject to conditions for the protection of members
9 and creditors;

10 (11) the joining of new parties that the court considers
11 proper;

12 (12) after the allowance or settlement of the final ac-
13 counts of the directors or other persons, ordering that the coopera-
14 tive is legally wound up and is dissolved.

15 Sec. 10.16.523. CLAIMS AGAINST COOPERATIVE. (a) In a court-
16 directed winding up of a cooperative, the court may bar creditors and
17 claimants from participation in a distribution of the general assets
18 of the cooperative if they fail to make and present claims and proofs
19 within the time the court orders. The time in which to present claims
20 may not be less than four or more than six months after the first
21 publication of notice to creditors, unless it appears by affidavit
22 that there are no claims, in which case the time may not be less than
23 three months. If it is shown that a claimant did not receive notice
24 because of absence from the state or other good cause, the court may
25 allow the claimant to file or present a claim before distribution is
26 completed.

27 (b) Notice to creditors in a court-directed winding up shall be
28 published not less than once a week for three consecutive weeks in a
29 newspaper of general circulation in the judicial district where the

1 proceeding is pending or, if a newspaper is not published in that
2 judicial district, in a newspaper designated by the court. The notice
3 must direct creditors and claimants to make claims and proofs to the
4 person, at the place, and within the time specified in the notice. A
5 copy of the notice shall be mailed to the last known address of each
6 person shown as a creditor or claimant on the books of the coopera-
7 tive.

8 (c) A holder of a secured claim in a court-directed winding up
9 may submit a claim for the whole debt in order to secure payment of a
10 deficiency. If a creditor fails to present a claim, only the credi-
11 tor's right against the general assets is barred for a deficiency in
12 the amount realized on the creditor's security.

13 (d) Before the court orders a distribution in a court-directed
14 winding up, the amount of an unmatured, contingent, or disputed claim
15 against the cooperative that has been presented and has not been
16 disallowed, or the part of a claim to which the holder would be enti-
17 tled if the claim were due, established, or absolute, must, if pres-
18 ently reduced to cash, be paid to the commissioner of revenue. The
19 commissioner of revenue shall pay the party entitled to the amount
20 when the party becomes entitled or, if the party fails to establish a
21 claim, the amount shall be distributed with the other assets of the
22 cooperative; the court may make other provision for payment of a claim
23 that it considers adequate. A creditor who has a claim that has been
24 allowed but is not yet due is entitled to the present value of the
25 claim at the time of distribution.

26 (e) Assets of the cooperative that are subject to claims under
27 this section and are not reduced to cash shall be held pending dis-
28 tribution as creditors and claimants agree or as the court directs.

29 (f) In a non-court-directed winding up of a cooperative, the

1 assets distributable to a creditor or member who is unknown, cannot be
2 found, or is under a disability and without a legally competent person
3 to receive a distributive portion, shall be reduced to cash and depos-
4 ited with the commissioner of revenue. If a membership status is in
5 dispute, or if the existence or amount of a claim of a creditor or
6 member is contingent, contested, or not determined, the court shall
7 reduce the maximum amount of the claim to cash and deposit the cash
8 with the commissioner of revenue. The commissioner of revenue shall
9 pay the amount deposited with the commissioner of revenue under this
10 subsection to the creditor, member, or legal representative of the
11 member or creditor as the disputing parties agree or as the court
12 directs.

13 (g) A claimant whose claim has been rejected under (d) or (f) of
14 this section may bring an action against the cooperative. The
15 claimant shall begin the action within 30 days after written notice of
16 rejection is given to the claimant.

17 Sec. 10.16.525. ORDER DECLARING COOPERATIVE WOUND UP AND DIS-
18 SOLVED. (a) At the final settlement of the accounts of the directors
19 or other persons appointed under AS 10.16.505 and the determination
20 that the cooperative's affairs are in a condition appropriate for
21 dissolution, the court shall order that

22 (1) the cooperative is legally wound up, that the coopera-
23 tive has paid or secured the tax or penalty due under AS 10.16.728 -
24 10.16.753, and that the cooperative has paid or adequately provided
25 for the other known debts and liabilities of the cooperative or that
26 the cooperative has paid the taxes, penalties, debts, and liabilities
27 of the cooperative as far as the assets permit; if the cooperative has
28 made adequate provision for the payment of all of the known debts or
29 liabilities of the cooperative, the court shall state the provision

1 that has been made, setting out the name and address of the
2 cooperative, person, or governmental agency that has assumed or
3 guaranteed the payment, the name and address of the depository to
4 which the deposit has been made or other information that is necessary
5 to enable the creditor or other person to whom payment is to be made
6 to appear and claim payment of the debt or liability;

7 (2) the known assets of the cooperative have been distri-
8 buted to the persons entitled to the assets or that the cooperative
9 acquired no known assets;

10 (3) the accounts of directors or other person appointed
11 under AS 10.16.505 have been settled and that the directors or other
12 persons appointed under AS 10.16.505 are discharged from their duties
13 and liabilities to creditors and members;

14 (4) the cooperative is dissolved.

15 (b) The court may make additional orders and grant further
16 relief that it considers proper on the evidence submitted.

17 (c) Corporate existence ceases when the court orders that the
18 cooperative is dissolved, except for the purpose of further winding up
19 that is needed, and the directors or other persons appointed under
20 AS 10.16.505 are discharged from their duties and liabilities except
21 as needed to complete the winding up.

22 Sec. 10.16.530. FILING OF ORDER OF DISSOLUTION. The clerk of
23 the court shall file with the commissioner a certified copy of a court
24 order dissolving a cooperative. The commissioner may not charge a fee
25 for the filing of an order of dissolution.

26 Sec. 10.16.535. POWERS AND DUTIES OF DIRECTORS IN DISSOLUTION
27 PROCEEDINGS. The powers and duties of the directors or other person
28 appointed by the court under AS 10.16.505 and officers after commence-
29 ment of a dissolution proceeding include the following acts performed

1 in the name and on behalf of the cooperative:

2 (1) the election of officers and employment of agents and
3 attorneys to liquidate or wind up the affairs of the cooperative;

4 (2) the conduct of the business of the cooperative that is
5 necessary for the disposal or winding up of the business of the co-
6 operative;

7 (3) the performance of contracts and the collection, pay-
8 ment, compromise, and settlement of debts and claims by or against the
9 cooperative;

10 (4) the defense of suits brought against the cooperative;

11 (5) the bringing of suit, in the name of the cooperative,
12 for sums due or owing to the cooperative or to recover the property of
13 the cooperative;

14 (6) the collection of amounts remaining unpaid to the
15 cooperative by its members or the recovery of unlawful distributions;

16 (7) the selling at public or private sale, the exchange,
17 conveyance, or other disposition of all or part of the assets of the
18 cooperative for cash in an amount considered reasonable by the board
19 with or without compliance with the provisions of AS 10.16.425 and
20 10.16.427, without dissenters' rights under AS 10.16.430 - 10.16.440,
21 and on the terms, conditions, and other considerations the board
22 considers reasonable or expedient;

23 (8) the execution of bills of sale and deeds of conveyance
24 in the name of the cooperative;

25 (9) the making of contracts and the doing of those things
26 in the name of the cooperative that are proper or convenient for the
27 purposes of winding up, settling, or liquidating the affairs of the
28 cooperative.

29 Sec. 10.16.540. PROCEEDING TO DETERMINE IDENTITY OF DIRECTORS OR

1 TO APPOINT DIRECTORS. If the identity of a director or the right of a
2 director to hold office is in doubt, if a director is dead or unable
3 to act, if a director fails or refuses to act, or if the cooperative
4 cannot ascertain a director's whereabouts, an interested person may
5 petition the superior court to determine the identity of the director
6 or, if there are no directors, to appoint directors to wind up the
7 affairs of the cooperative after a hearing on the notice required by
8 the court.

9 Sec. 10.16.543. DISTRIBUTION OF CORPORATE ASSETS AMONG MEMBERS.
10 After determining that a cooperative in the process of winding up has
11 paid or adequately provided for all of the known debts and liabilities
12 of the cooperative, the board shall distribute the remaining corporate
13 assets among the members or, if there are no members, to the persons
14 entitled to the assets. If the winding up is by court proceeding or
15 subject to court supervision, the board may not make the distribution
16 until after the expiration of the period set by the court for the
17 presentation of claims.

18 Sec. 10.16.545. PROVISION FOR PAYMENT OF DEBT OR LIABILITY. The
19 payment of a debt or liability, whether the whereabouts of the credi-
20 tor is known or unknown, is adequately provided for if

21 (1) one or more financially responsible corporations or
22 other persons, the United States government, or an agency of the
23 United States government assumes or guarantees in good faith the
24 payment of the debt or liability, and the board determines in good
25 faith and with reasonable care that the provision is adequate at the
26 time of a distribution of the assets by the board under AS 10.16.450 -
27 10.16.560; or

28 (2) the amount of the debt or liability is deposited as
29 provided in AS 10.16.523.

1 Sec. 10.16.550. DISTRIBUTION OF ASSETS. A cooperative may
2 distribute assets in money, property, or securities, and in install-
3 ments, if the cooperative makes the distribution fairly, ratably, and
4 in conformity with the articles and the rights of the members. The
5 cooperative shall distribute the assets as soon as is reasonably
6 consistent with the beneficial liquidation of the assets of the co-
7 operative.

8 Sec. 10.16.555. RECOVERY OF AMOUNTS IMPROPERLY DISTRIBUTED. (a)
9 If a distribution of assets has been made in the process of winding up
10 a cooperative without a court order and without prior payment or
11 adequate provision for payment of the debts and liabilities of the
12 cooperative, the cooperative may recover the amount improperly dis-
13 tributed to a member. Members who receive an improper distribution
14 may be joined as parties in the same action.

15 (b) A creditor of the cooperative may bring a suit in the name
16 of the cooperative to enforce the liability under (a) of this section
17 against a member receiving an improper distribution, whether or not
18 the creditor has reduced the claim of the creditor to judgment.

19 (c) A member who satisfies a liability under this section has a
20 right to ratable contribution from other distributees who are similar-
21 ly liable. A member who has been compelled to return to the coopera-
22 tive more than the member's ratable share of the amount needed to pay
23 the debts and liabilities of the cooperative may require that the
24 cooperative recover from the other distributees that proportion of the
25 amounts improperly distributed that is necessary to satisfy the right
26 to contribution of members held liable under this section and to make
27 the distribution of the assets fair and ratable, according to the
28 respective rights and preferences of the shares, after payment or
29 adequate provision for payment of all the debts and liabilities of the

1 cooperative.

2 (d) In this section, "process of winding up" includes
3 proceedings under AS 10.16.453 - 10.16.543 and other distributions of
4 assets to members made in contemplation of termination or abandonment
5 of the business of the cooperative.

6 Sec. 10.16.560. CONTINUED EXISTENCE OF DISSOLVED COOPERATIVES.

7 (a) A cooperative that is dissolved voluntarily or involuntarily
8 continues to exist for the purpose of winding up its affairs, pros-
9 ecuting and defending actions by or against it, and enabling it to
10 collect and discharge obligations, dispose of and convey its property,
11 and collect and divide its assets. A dissolved cooperative continues
12 to exist to do business only to the extent necessary to wind up its
13 business.

14 (b) An action or proceeding to which a cooperative is a party
15 does not abate because the cooperative dissolves or because proceed-
16 ings for winding up and dissolving the cooperative have begun.

17 (c) Assets inadvertently or otherwise omitted from the winding
18 up continue as assets of the dissolved cooperative for the benefit of
19 persons entitled to the assets at the dissolution of the cooperative,
20 and the assets shall be distributed to the persons entitled to them
21 when the existence of the assets is determined.

22 (d) The directors of the cooperative on the date of the
23 dissolution of the cooperative, or the directors determined under
24 AS 10.16.540, shall exercise and enjoy the powers necessary to act
25 under this section.

26 ARTICLE 11. FOREIGN COOPERATIVES.

27 Sec. 10.16.605. ADMISSION OF FOREIGN COOPERATIVE. A foreign
28 cooperative may not transact business in the state until the commis-
29 sioner has issued a certificate of authority to the foreign coopera-

1 tive. The commissioner may not issue a certificate of authority to a
2 foreign cooperative to transact a business in the state that a
3 cooperative organized under this chapter may not transact in the
4 state. The commissioner may not deny a certificate of authority to a
5 foreign cooperative because the laws of the state or country governing
6 organization and internal affairs of the foreign cooperative differ
7 from the laws of this state.

8 Sec. 10.16.608. APPLICATION TO COOPERATIVES AUTHORIZED TO
9 TRANSACT BUSINESS IN THE STATE. A foreign cooperative that has a
10 member residing in the state, and that distributes its proceeds and
11 savings according to this chapter or the law of the state where it is
12 organized, is entitled to all the rights, exemptions, and privileges
13 of a cooperative organized under this chapter and is subject to the
14 limitations, restrictions, liabilities, and duties prescribed in this
15 chapter for a foreign cooperative holding a certificate of authority
16 to transact business in the state under this chapter.

17 Sec. 10.16.610. LIABILITY FOR TRANSACTING BUSINESS WITHOUT
18 CERTIFICATE OF AUTHORITY. A foreign cooperative that transacts busi-
19 ness in the state without a certificate of authority is liable to the
20 state for transacting business in the state without a certificate of
21 authority, in an amount equal to all of the fees and corporation taxes
22 that would have been imposed by this chapter on the cooperative if it
23 had applied for and received a certificate of authority to transact
24 business in the state under this chapter and had filed all reports
25 required by this chapter. Liability includes all penalties imposed by
26 this chapter for failure to pay the fees and taxes, plus a penalty of
27 up to \$10,000 a year for each year the cooperative transacted business
28 in the state without a certificate of authority. The attorney general
29 shall recover the amounts due the state under this section.

1 Sec. 10.16.613. TRANSACTING BUSINESS WITHOUT CERTIFICATE OF
2 AUTHORITY AS A BAR TO COURT ACTION. A foreign cooperative transacting
3 business in the state without a certificate of authority may not
4 maintain an action, suit, or proceeding in a court of the state until
5 it obtains a certificate of authority. A successor or assignee of a
6 foreign cooperative transacting business in the state without a
7 certificate of authority may not maintain an action, suit, or
8 proceeding in the state on a right, claim, or demand arising out of
9 the transaction of business by the cooperative in the state until a
10 certificate of authority is obtained by the cooperative or by another
11 cooperative that has obtained all or substantially all of the assets
12 of the foreign cooperative.

13 Sec. 10.16.615. EFFECT OF TRANSACTING BUSINESS WITHOUT CERTIFI-
14 CATE OF AUTHORITY. The failure of a foreign cooperative to obtain a
15 certificate of authority to transact business in the state does not
16 impair the validity of a contract or act of the foreign cooperative,
17 and does not prevent the foreign cooperative from defending an action,
18 suit, or proceeding in the courts of the state.

19 Sec. 10.16.618. ACTIVITIES NOT CONSTITUTING TRANSACTION OF
20 BUSINESS IN THE STATE. Transacting business in the state by a foreign
21 cooperative does not include

22 (1) maintaining, defending, or settling an action, suit, or
23 administrative arbitration proceeding, or settling a claim or dispute;

24 (2) holding a meeting of directors or shareholders of the
25 foreign cooperative, or carrying on other activities concerning the
26 internal affairs of the foreign cooperative;

27 (3) maintaining bank accounts;

28 (4) maintaining an office or agency for the transfer,
29 exchange, and registration of securities of the foreign cooperative,

1 or appointing and maintaining a trustee or depository for the secu-
2 rities of the foreign cooperative;

3 (5) making sales through independent contractors;

4 (6) soliciting or procuring orders by mail, through employ-
5 ees, agents, or otherwise, if the orders require acceptance outside
6 the state before becoming binding contracts;

7 (7) creating, as a borrower or lender, or acquiring indebt-
8 edness or mortgages or other security interests in real or personal
9 property;

10 (8) securing or collecting debts, or enforcing rights in
11 property securing debts;

12 (9) transacting business in interstate commerce;

13 (10) conducting an isolated transaction that is completed
14 within a period of 30 days and that is not conducted in the course of
15 repeated transactions of like nature.

16 Sec. 10.16.620. NAME OF FOREIGN COOPERATIVE. The commissioner
17 may not issue a certificate of authority to a foreign cooperative
18 unless the name of the foreign cooperative

19 (1) contains the word "cooperative," or for use in the
20 state, adds at the end of its name "cooperative";

21 (2) does not contain a word or phrase that implies that it
22 is organized for a purpose other than the purpose contained in the
23 articles of incorporation or that it is authorized or empowered to
24 conduct the business of banking or insurance;

25 (3) does not contain the word "city," "borough," or "vil-
26 lage" or imply that the foreign cooperative is a municipality; the
27 name of a city, borough, or village may be used in the name of the
28 foreign cooperative;

29 (4) is not the same as, or deceptively similar to, the name

1 of a domestic cooperative existing under the laws of the state or a
2 foreign cooperative authorized to transact business in the state, a
3 name that another corporation has exclusively reserved under this
4 title, or the name of a cooperative that has in effect a current
5 registration of its name under this chapter.

6 Sec. 10.16.623. ASSUMED COOPERATIVE NAME. (a) If a foreign
7 cooperative applying for a certificate of authority under this chapter
8 has a name that is impermissible under AS 10.16.620, the foreign
9 cooperative shall select an assumed name, acceptable under AS 10.16.-
10 620 to use to do business in the state.

11 (b) The commissioner shall maintain records that cross-reference
12 the actual and assumed names of all foreign cooperatives authorized to
13 transact business in the state.

14 Sec. 10.16.625. CHANGE OF NAME BY FOREIGN COOPERATIVE. If a
15 foreign cooperative authorized to transact business in the state
16 changes its name to one that would prevent the cooperative from re-
17 ceiving a certificate of authority in the state, the certificate of
18 authority of the foreign cooperative is suspended, and the foreign
19 cooperative may not transact business in the state until it has
20 changed its name to a name available to it under the laws of the
21 state.

22 Sec. 10.16.627. APPLICATION FOR CERTIFICATE OF AUTHORITY. To
23 receive a certificate of authority to transact business in the state,
24 a foreign cooperative shall apply to the commissioner.

25 Sec. 10.16.630. CONTENTS OF APPLICATION. The application of a
26 foreign cooperative for a certificate of authority under this chapter
27 must include

28 (1) the actual and assumed names of the cooperative and the
29 state or country under whose laws the cooperative is incorporated;

1 and, if the name of the cooperative does not contain the word
2 "cooperative" or an abbreviation of "cooperative," the name of the
3 cooperative that it elects to use in the state to comply with
4 AS 10.16.620;

5 (2) the date of incorporation and the period of duration of
6 the foreign cooperative;

7 (3) the address of the principal office of the foreign
8 cooperative in the state or country under whose laws it is incorporat-
9 ed;

10 (4) the address of the proposed registered office of the
11 foreign cooperative in the state, and the name of its proposed regis-
12 tered agent in the state at that address;

13 (5) the purpose the foreign cooperative plans to pursue in
14 the transaction of business in the state and the identification codes
15 under AS 10.16.790 that most closely describe the activities of the
16 foreign cooperative in the state;

17 (6) the names and addresses of the directors and officers
18 of the foreign cooperative;

19 (7) a statement of the aggregate number of shares that the
20 foreign cooperative may issue, itemized by class, par value, shares
21 without par value, and series within a class;

22 (8) a statement of the aggregate number of issued shares
23 itemized by class, par value, shares without par value, and series
24 within a class;

25 (9) a statement expressed in dollars of the amount of
26 stated capital of the foreign cooperative;

27 (10) an estimate expressed in dollars of

28 (A) the value of all property the foreign cooperative
29 expects to own the following year;

1 (B) the value of the property of the foreign coopera-
2 tive to be located in the state during the following year;

3 (C) the gross amount of all business that the foreign
4 cooperative expects to transact during the following year; and

5 (D) the gross amount of business that the foreign
6 cooperative expects to transact at or from places of business in
7 the state during the following year;

8 (11) additional information determined necessary or appro-
9 priate by the commissioner to determine whether the foreign coopera-
10 tive is entitled to a certificate of authority and to determine and
11 assess the cooperative fees and taxes to be paid by the foreign
12 cooperative under this chapter.

13 Sec. 10.16.633. EXECUTION AND FILING OF APPLICATION FOR CERTIFI-
14 CATE OF AUTHORITY. The foreign cooperative shall apply for a
15 certificate of authority on the forms prescribed and furnished by the
16 commissioner. The president or vice-president of the foreign
17 cooperative and its secretary or an assistant secretary shall execute
18 the application, and one of the signing officers shall verify the
19 application. The foreign cooperative shall deliver the original
20 application and an exact copy of it to the commissioner for processing
21 and for issuance of a certificate of authority.

22 Sec. 10.16.635. EFFECT OF CERTIFICATE OF AUTHORITY. When the
23 commissioner issues a certificate of authority, the foreign coopera-
24 tive may transact business in the state for the purpose set out in the
25 application, subject to the right of the state under this chapter to
26 suspend or revoke the certificate of authority.

27 Sec. 10.16.638. AMENDED CERTIFICATE OF AUTHORITY. (a) A for-
28 eign cooperative authorized to transact business in the state shall
29 obtain an amended certificate of authority if it changes its corporate

1 name, or desires to pursue in the state other or additional purposes
2 than those set out in its application for a certificate of authority.

3 (b) The form, content, manner of execution, and filing of an
4 application for an amended certificate of authority, and the issuance
5 and effect of an amended certificate of authority are the same as for
6 an original application for a certificate of authority.

7 Sec. 10.16.640. POWERS OF A FOREIGN COOPERATIVE. A foreign
8 cooperative that has received a certificate of authority enjoys, until
9 the commissioner has issued a certificate of revocation or of
10 withdrawal under this chapter, the same rights and privileges as a
11 domestic cooperative organized for the same purposes and, except as
12 otherwise provided in this chapter, is subject to the duties,
13 restrictions, penalties, and liabilities now or hereafter imposed on a
14 domestic cooperative of like character under this chapter.

15 Sec. 10.16.643. REVOCATION OF CERTIFICATE OF AUTHORITY. The
16 commissioner may revoke a certificate of authority of a foreign co-
17 operative to transact business in the state when

18 (1) the foreign cooperative fails to file its biennial
19 report within the time required by this chapter, or fails to pay the
20 fees, taxes, or penalties prescribed in this chapter when due and
21 payable;

22 (2) the foreign cooperative fails to appoint and maintain a
23 registered agent in the state;

24 (3) the foreign cooperative fails, after changing its
25 registered office or registered agent, to file with the commissioner a
26 statement of the change required by this chapter;

27 (4) the foreign cooperative fails to file with the depart-
28 ment an amendment to its articles of merger within the time set by
29 this chapter;

1 (5) the foreign cooperative has misrepresented a material
2 matter in an application, report, affidavit, or other document submit-
3 ted under this chapter; or

4 (6) the foreign cooperative is a party to an illegal com-
5 bination in restraint of trade.

6 Sec. 10.16.645. LIMITATIONS ON REVOCATION OF CERTIFICATE OF
7 AUTHORITY. The commissioner may not revoke a certificate of authority
8 of a foreign cooperative unless

9 (1) the commissioner has given the foreign cooperative at
10 least 60 days' notice by certified mail addressed to its registered
11 office in the state; and

12 (2) the foreign cooperative fails before revocation to file
13 the biennial report, to pay the fees, cooperative taxes, or penalties,
14 to file the required statement of change of registered agent or regis-
15 tered office, to file the articles of merger, or to correct the mis-
16 representation.

17 Sec. 10.16.648. ISSUANCE OF CERTIFICATE OF REVOCATION. When
18 revoking a certificate of authority, the commissioner shall

19 (1) issue a certificate of revocation in duplicate;

20 (2) file one of the certificates of revocation in the
21 commissioner's office; and

22 (3) mail one of the certificates of revocation to the
23 foreign cooperative at its registered office in the state.

24 Sec. 10.16.650. EFFECT OF CERTIFICATE OF REVOCATION. When the
25 commissioner issues a certificate of revocation, the authority of the
26 foreign cooperative to transact business in the state ceases.

27 Sec. 10.16.652. APPEAL FROM REVOCATION OF CERTIFICATE OF AUTHOR-
28 ITY. If the commissioner revokes a certificate of authority of a
29 foreign cooperative to transact business in the state under this

1 chapter, the foreign cooperative may appeal to the superior court by
2 filing with the clerk of the court a petition setting out a copy of
3 its certificate of authority and a copy of the notice of revocation
4 given by the commissioner. The superior court shall try the matter de
5 novo and shall either sustain the action of the commissioner or direct
6 the commissioner to take action the court considers proper.

7 Sec. 10.16.654. REGISTERED OFFICE AND REGISTERED AGENT FOR
8 FOREIGN COOPERATIVE. A foreign cooperative authorized to transact
9 business in the state shall continuously maintain in the state

10 (1) a registered office that may be the same as its place
11 of business in the state; and

12 (2) a registered agent, who may be either an individual
13 resident of the state whose business office is identical to the
14 registered office, or a domestic cooperative or a foreign cooperative
15 authorized to transact business in the state that has a business
16 office identical to the registered office.

17 Sec. 10.16.656. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT
18 OF FOREIGN COOPERATIVE. A foreign cooperative authorized to transact
19 business in the state may change its registered office or registered
20 agent by filing with the commissioner a statement stating

21 (1) the name of the foreign cooperative;

22 (2) the address of the foreign cooperative's registered
23 office;

24 (3) the address of the new registered office if the address
25 of the registered office is to be changed;

26 (4) the name of the foreign cooperative's registered agent;

27 (5) the name of the foreign cooperative's new registered
28 agent if the foreign cooperative's registered agent is to be changed;

29 (6) that the address of the foreign cooperative's

1 registered office and the address of the business office of the
2 registered agent, as changed, will be identical; and

3 (7) that the change is authorized by resolution adopted by
4 the board.

5 Sec. 10.16.658. FILING OF STATEMENT OF CHANGE. The president or
6 a vice-president of the foreign cooperative shall execute and verify a
7 statement of change under AS 10.16.656 and the foreign cooperative
8 shall deliver the statement of change to the commissioner. If the
9 commissioner finds that the statement conforms to the provisions of
10 this chapter, the commissioner shall file the statement in the office
11 of the commissioner. The change in the statement becomes effective
12 when the commissioner files the statement.

13 Sec. 10.16.660. SERVICE OF PROCESS ON FOREIGN COOPERATIVE. The
14 registered agent appointed by a foreign cooperative authorized to
15 transact business in the state shall be an agent of the foreign co-
16 operative for the service of process, notice, or demand required or
17 permitted by law to be served on the foreign cooperative.

18 Sec. 10.16.663. SERVICE ON COMMISSIONER. (a) The commissioner
19 is an agent for service of process, notice or demand for a foreign
20 cooperative when

21 (1) a foreign cooperative that is authorized to transact
22 business in the state, or a foreign cooperative that is not authorized
23 to transact business in the state but is doing so, fails to appoint or
24 maintain a registered agent in the state;

25 (2) a registered agent cannot with reasonable diligence be
26 found at the registered office; or

27 (3) the certificate of authority of a foreign cooperative
28 is suspended or revoked.

29 (b) Service under this section is made on the commissioner as

1 provided in AS 10.16.077(b).

2 Sec. 10.16.665. RECORDS KEPT BY COMMISSIONER. The commissioner
3 shall keep a record of all processes, notices, or demands served on
4 the commissioner under AS 10.16.663 and shall record the time of
5 service and action taken by the commissioner on the service.

6 Sec. 10.16.668. PROCEDURE NOT EXCLUSIVE. AS 10.16.658 - 10.16.-
7 665 do not limit or affect the right to serve a process, notice, or
8 demand required or permitted by law to be served on a foreign coopera-
9 tive in another matter.

10 Sec. 10.16.670. ORGANIC CHANGE OF FOREIGN COOPERATIVE. (a) If
11 a foreign cooperative authorized to transact business in the state is
12 a party to an organic change permitted by the laws of the state or
13 country where it is incorporated, and the foreign cooperative is the
14 surviving cooperative, the surviving foreign cooperative shall, within
15 30 days after the change becomes effective, file with the commissioner
16 a copy of the articles of merger, consolidation, exchange, or reorga-
17 nization authenticated by the proper office of the state or country
18 under whose laws the organic change was carried out.

19 (b) It is not necessary for the surviving foreign cooperative to
20 obtain a new or amended certificate of authority to transact business
21 in the state unless the name of the surviving foreign cooperative is
22 changed or the surviving foreign cooperative desires to pursue in the
23 state other or additional purposes than those that it is authorized to
24 transact in the state.

25 Sec. 10.16.673. WITHDRAWAL OF A FOREIGN COOPERATIVE. A foreign
26 cooperative authorized to transact business in the state may withdraw
27 from the state by obtaining from the commissioner a certificate of
28 withdrawal. To obtain a certificate of withdrawal, the foreign co-
29 operative shall deliver to the commissioner an application for

1 withdrawal and pay the fees and penalties required under AS 10.16.733.

2 Sec. 10.16.675. CONTENTS OF APPLICATION FOR WITHDRAWAL. In an
3 application for withdrawal the foreign cooperative shall state

4 (1) the name of the foreign cooperative and the state or
5 country of incorporation;

6 (2) that the foreign cooperative is not transacting busi-
7 ness in the state;

8 (3) that the foreign cooperative surrenders its authority
9 to transact business in the state;

10 (4) that the foreign cooperative revokes the authority of
11 its registered agent in the state to accept service of process and
12 consents that service of process in an action, suit, or proceeding
13 based on a cause of action arising in the state during the time the
14 foreign cooperative was authorized to transact business in the state
15 may be made on the foreign cooperative by serving the commissioner;

16 (5) a post office address to which the commissioner may
17 mail a copy of a process against the foreign cooperative that may be
18 served on the commissioner;

19 (6) a statement of the aggregate number of shares that the
20 foreign cooperative may issue, itemized by class, par value, shares
21 without par value, and series within a class, on the date of the
22 application;

23 (7) a statement of the aggregate number of issued shares,
24 itemized by class, par value, shares without par value, and series
25 within a class, on the date of the application;

26 (8) a statement, expressed in dollars, of the amount of
27 stated capital of the foreign cooperative, on the date of application;

28 (9) additional information that the commissioner determines
29 necessary or appropriate to determine and assess unpaid fees or

1 cooperative taxes payable under this chapter.

2 Sec. 10.16.678. FORM OF APPLICATION FOR WITHDRAWAL. A foreign
3 cooperative shall apply for withdrawal on forms prescribed and fur-
4 nished by the commissioner. The president or vice-president and the
5 secretary or an assistant secretary of the foreign cooperative shall
6 execute the application for withdrawal. One of the officers of the
7 foreign cooperative signing the application shall verify the applica-
8 tion. If the foreign cooperative is in the hands of a receiver or
9 trustee, the receiver or trustee shall execute and verify the applica-
10 tion on behalf of the foreign cooperative.

11 Sec. 10.16.680. FILING OF APPLICATION FOR WITHDRAWAL. The
12 foreign cooperative shall deliver an original and exact copy of an
13 application for withdrawal to the commissioner for processing and for
14 issuance of a certificate of withdrawal.

15 Sec. 10.16.685. EFFECT OF CERTIFICATE OF WITHDRAWAL. When the
16 commissioner issues a certificate of withdrawal, the authority of a
17 foreign cooperative to transact business in the state ceases.

18 ARTICLE 12. REPORTS, FEES, AND PENALTIES.

19 Sec. 10.16.705. BIENNIAL REPORT OF DOMESTIC AND FOREIGN COOPERA-
20 TIVES. A domestic cooperative and a foreign cooperative authorized to
21 transact business in the state shall file a biennial report within the
22 time prescribed by this chapter.

23 Sec. 10.16.708. CONTENTS OF BIENNIAL REPORT. A biennial report
24 must include

25 (1) the name of the cooperative and the state or country of
26 incorporation;

27 (2) the address of the registered office of the cooperative
28 in the state, the name of the cooperative's registered agent in the
29 state at that address, and the address of the principal office of the

1 foreign cooperative in the state or country of incorporation;

2 (3) a brief statement of the character of the business of
3 the cooperative in the state and the identification codes under
4 AS 10.16.795 that most closely describe the activities of the coopera-
5 tive in the state;

6 (4) the names and addresses of the directors and officers
7 of the cooperative;

8 (5) a statement of the aggregate number of shares that a
9 foreign cooperative is authorized to issue, itemized by class, par
10 value, shares without par value, and series within a class;

11 (6) a statement of the aggregate number of issued shares
12 itemized by class, par value, shares without par value, and series
13 within a class;

14 (7) the name and address of each person owning at least
15 five percent of the shares, or five percent of a class of shares on
16 September 30 of the second year of the biennial reporting period, and
17 the percentage of the shares or class of shares owned by that person.

18 Sec. 10.16.710. FILING OF BIENNIAL REPORT. (a) A domestic
19 cooperative or foreign cooperative shall file a biennial report with
20 the department before January 2 of the filing year. A domestic co-
21 operative filing articles of incorporation and a foreign cooperative
22 receiving a certificate of authority during an even-numbered year
23 shall file the biennial report each odd-numbered year. A domestic
24 cooperative filing articles of incorporation and a foreign cooperative
25 receiving a certificate of authority during an odd-numbered year shall
26 file the biennial report each even-numbered year. A biennial report
27 is delinquent if not filed on or before February 1 of each odd or even
28 year as provided in this section. Delinquent returns are subject to
29 the penalty in AS 10.16.715.

1 (b) Proof to the satisfaction of the commissioner that a cooper-
2 ative deposited a biennial report on or before February 1 of the year
3 when it was due in the United States mail in a sealed envelope, prop-
4 erly addressed with postage prepaid, is compliance with (a) of this
5 section.

6 (c) The commissioner shall file the biennial report of a
7 cooperative if it satisfies the requirements of this chapter. If the
8 commissioner finds that the biennial report does not satisfy the
9 requirements of this chapter, the commissioner shall promptly return
10 the biennial report to the cooperative for necessary corrections. If
11 the cooperative corrects the biennial report to satisfy the
12 requirements of this chapter and returns the biennial report to the
13 commissioner in sufficient time to be filed before April 1 of the year
14 when the report is due, the penalties under AS 10.16.715 for failure
15 to file the report within the time provided do not apply.

16 (d) After receiving the forms from the commissioner, a domestic
17 cooperative or foreign cooperative shall file an initial report
18 containing the information required for a biennial report within six
19 months after original incorporation or authorization to transact
20 business in the state.

21 Sec. 10.16.713. FILING NOTICE OF CHANGE OF OFFICERS, DIRECTORS,
22 AND FIVE PERCENT SHAREHOLDERS. (a) If an officer or director of a
23 domestic cooperative or foreign cooperative changes during the first
24 year of the biennial reporting period, or the five percent sharehold-
25 ers of a foreign cooperative change before September 30 of the first
26 year of the biennial reporting period, the cooperative shall file a
27 notice of change amending the biennial report of the cooperative
28 before the following January 2.

29 (b) The cooperative shall file the notice of change with the

1 commissioner. The notice of change must state the name and current
2 mailing address of each director, officer, or five percent shareholder
3 not included in the cooperative's last filed biennial report, the name
4 of the person replaced, and the office held. The president or vice-
5 president of the cooperative shall sign the notice of change.

6 Sec. 10.16.715. PENALTY FOR FAILURE TO FILE BIENNIAL REPORT. A
7 domestic cooperative or foreign cooperative that fails or refuses to
8 file a biennial report within the time set by this chapter is subject
9 to a penalty of 10 percent of the amount of the tax assessed against
10 the cooperative for the period for which the cooperative should have
11 filed the report. The commissioner shall assess the penalty at the
12 time of the assessment of the tax. If the commissioner adjusts the
13 amount of the tax as originally assessed, the commissioner shall also
14 adjust the amount of the penalty to 10 percent of the amount of the
15 adjusted tax. The commissioner shall separately state the amount of
16 the tax and the amount of the penalty in a notice to the cooperative.

17 Sec. 10.16.718. INTERROGATORIES BY COMMISSIONER. (a) The
18 commissioner may require a domestic cooperative or foreign cooperative
19 and an officer or director of a domestic or foreign cooperative to
20 answer interrogatories reasonably necessary and proper for the commis-
21 sioner to determine whether the cooperative has complied with the
22 provisions of this chapter.

23 (b) The commissioner or designee of the commissioner shall send
24 interrogatories to

- 25 (1) a domestic cooperative by complying with AS 10.16.077;
26 (2) a foreign cooperative by complying with AS 10.16.660;
27 (3) an individual officer or director of a domestic co-
28 operative or foreign cooperative by mailing by certified mail a copy
29 of the interrogatories addressed to the person at the place of

1 business of the person in the state, or, if the person does not have a
2 place of business in the state, to the principal office or place of
3 business of the person.

4 (c) The recipient shall answer interrogatories within 30 days of
5 receipt or within additional time allowed by the commissioner or the
6 superior court. The recipient shall answer the interrogatories fully
7 and completely, in writing and under oath. If the interrogatories are
8 directed to an individual, that person shall answer them; if directed
9 to a cooperative, the president, vice-president, secretary, or
10 assistant secretary of the cooperative or, in the instance of a
11 foreign cooperative, the person functioning as a comparable officer
12 under the laws of the state or country of incorporation shall answer
13 the interrogatories.

14 (d) A petition stating good cause to extend the date for answer-
15 ing, modifying, or setting aside the interrogatories required by the
16 commissioner, or to enforce compliance with AS 10.16.720, may be filed
17 in the superior court before the expiration of the 30 days allowed in
18 this section for answering the interrogatories.

19 Sec. 10.16.720. CONFIDENTIALITY OF INFORMATION DISCLOSED BY
20 INTERROGATORIES. Interrogatories and answers under AS 10.16.718 are
21 not open to public inspection and the commissioner may not disclose
22 the facts or information obtained from the interrogatories unless the
23 official duty of the commissioner requires the disclosure or unless
24 criminal proceedings or other action by the state requires the use of
25 the interrogatories or answers.

26 Sec. 10.16.723. FAILURE TO ANSWER INTERROGATORIES. Unless
27 otherwise provided by an order of court issued in response to a peti-
28 tion filed under AS 10.16.718(d),

29 (1) a domestic cooperative or foreign cooperative and each

1 officer or director of a domestic or foreign cooperative that fails or
2 refuses to answer truthfully and fully the interrogatories required by
3 the commissioner within the time prescribed by AS 10.16.718(c) is
4 guilty of a class A misdemeanor; and

5 (2) the commissioner need not file a document to which the
6 interrogatories relate until the interrogatories are properly answered
7 or if the answers disclose that the document does not conform to the
8 requirements of this chapter.

9 Sec. 10.16.725. PENALTIES IMPOSED ON OFFICERS AND DIRECTORS. An
10 officer or director of a domestic cooperative or foreign cooperative
11 who signs articles, or a statement, report, application, or other
12 document filed with the commissioner that is known to the officer or
13 director to be false in a material respect, is guilty of a class A
14 misdemeanor.

15 Sec. 10.16.728. INCORPORATION OR FILING FEES. A domestic co-
16 operative that is required to file articles or amendatory articles
17 with the department, except a cooperative organized under AS 10.20 and
18 a foreign cooperative organized under the laws of the United States, a
19 state or territory of the United States, or a foreign country for the
20 same purposes as those allowed under AS 10.20, shall pay the commis-
21 sioner a filing fee established by the department by regulation. The
22 filing fee must be uniform and fixed without reference to the amount
23 of authorized shares.

24 Sec. 10.16.730. FEES FOR APPOINTMENT OR REVOCATION OF
25 APPOINTMENT OF AGENT OR CHANGE OF AGENT'S ADDRESS. (a) A foreign
26 cooperative filing with the department a certificate of the
27 appointment and consent of an agent residing in the state, or a
28 certificate of revocation of the appointment of a resident agent,
29 shall pay to the commissioner a fee established by the department by

1 regulation.

2 (b) For filing a statement of change of address of registered
3 agent under AS 10.16.075(a) and (b), the agent shall pay the commis-
4 sioner a fee established by the department by regulation.

5 Sec. 10.16.733. FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF
6 FOREIGN COOPERATIVE. A foreign cooperative authorized to transact
7 business in the state that wants to withdraw from the state shall pay
8 to the commissioner all biennial taxes and penalties due at the time
9 of desired withdrawal and the fee established by the department by
10 regulation for filing the application for withdrawal.

11 Sec. 10.16.735. FEES ON DISSOLUTION OF DOMESTIC COOPERATIVE. A
12 domestic cooperative shall pay to the commissioner a fee established
13 by the department by regulation for filing the documents required by
14 this chapter for the dissolution of a domestic cooperative.

15 Sec. 10.16.740. TAXES, PENALTIES, AND FEES ON FILING CERTIFICATE
16 OF DISSOLUTION OF FOREIGN COOPERATIVE. If a foreign cooperative wants
17 to file a certificate of dissolution from the state of its
18 incorporation, the foreign cooperative shall file the certificate,
19 signed by the proper state officer, under seal, and pay all biennial
20 taxes and penalties due the state at the time of dissolution. The
21 department shall establish by regulation the filing fee for the
22 certificate of dissolution.

23 Sec. 10.16.745. FEES FOR CERTIFIED COPIES OF DOCUMENT. The
24 department shall establish by regulation the fee for furnishing a
25 certified copy of a document.

26 Sec. 10.16.750. OTHER FILING FEES. (a) The department shall
27 establish by regulation the filing fee for a document not otherwise
28 provided in this chapter.

29 (b) The department may by regulation charge a cooperative

1 subject to this chapter a fixed fee in place of the fees specified in
2 this chapter, and for routine administrative services rendered by the
3 department. The department may not include the fees required under
4 AS 10.16.055 and 10.16.728 in a fixed fee established under this
5 subsection.

6 Sec. 10.16.753. BIENNIAL COOPERATIVE TAX. (a) A domestic
7 cooperative and a foreign cooperative doing business in the state or
8 having its articles of incorporation on file with the department
9 shall, before January 2 of the cooperative's filing year, pay to the
10 commissioner a biennial cooperative tax of \$100 for a domestic
11 cooperative and \$200 for a foreign cooperative. A cooperative that
12 fails to pay the biennial cooperative tax before February 1 of the
13 filing year shall pay to the commissioner a penalty of \$25 for each
14 year or part of a year of delinquency.

15 (b) Proof to the satisfaction of the commissioner that the
16 cooperative deposited the tax on or before February 1 of the filing
17 year in the United States mail in a sealed envelope, properly
18 addressed, with postage prepaid, is compliance with (a) of this sec-
19 tion.

20 (c) Cooperatives organized under AS 10.20 and foreign
21 cooperatives organized under the laws of the United States, a state or
22 territory of the United States, or a foreign country for the same
23 purposes as those allowed under AS 10.20 are exempt from payment of
24 the biennial cooperative tax imposed by this section.

25 Sec. 10.16.755. FAILURE TO PAY TAX OR MAKE REPORT PRECLUDING
26 SUIT BY COOPERATIVE. A domestic cooperative or foreign cooperative
27 may not commence or maintain a suit, action, or proceeding in a court
28 in the state without alleging and proving that it has paid its bienni-
29 al cooperative tax last due and has filed its biennial report for the

1 last reporting period. A certificate of the payment of the biennial
2 cooperative tax and filing of the biennial report is prima facie
3 evidence of the payment of the tax and filing of the biennial report.
4 The commissioner shall issue the certificate or a duplicate for a fee
5 established by the department by regulation.

6 Sec. 10.16.760. COMMISSIONER TO INSTITUTE SUITS TO COMPEL PAY-
7 MENT. The commissioner may institute a suit in the name of the state
8 to enforce the payment of a biennial cooperative tax.

9 Sec. 10.16.765. FAILURE TO PAY TAX AS EVIDENCE OF INSOLVENCY.
10 Failure of a cooperative to pay the biennial cooperative tax for a
11 period of one year after the date payment first becomes due is prima
12 facie evidence of the inability of a cooperative to meet maturing
13 debts and liabilities.

14 Sec. 10.16.770. PAYMENTS TO BE MADE IN ADVANCE. A cooperative
15 may pay in advance the fees and charges required by this chapter,
16 including the biennial cooperative tax.

17 Sec. 10.16.775. ACCOUNTING FOR AND DISPOSITION OF TAXES AND FEES
18 PAID. The department shall account for all fees and taxes paid under
19 this chapter and shall deposit them in the state treasury.

20 Sec. 10.16.780. CANCELLATION OF CERTIFICATES ISSUED AND FILINGS
21 ACCEPTED. The commissioner may, within one year after a filing, and
22 after written notice to the cooperative or individual making the
23 filing, cancel a certificate issued or filing accepted under this
24 chapter, on a ground existing at the time of issuance or filing for
25 which the commissioner could have originally refused to issue the
26 certificate or accept the filing. The commissioner shall state the
27 reason for the cancellation in the notice. A cooperative or individu-
28 al may request a hearing before the commissioner within 90 days after
29 receipt of notice of cancellation. Cancellation becomes final if the

1 cooperative or individual does not request a hearing within 90 days
2 after receipt of notice of cancellation. The commissioner shall send
3 the notice of cancellation by certified mail with return receipt
4 requested. If the department does not receive the return receipt
5 within a reasonable time and has made diligent inquiry into the ad-
6 dress of the cooperative, the department may give the notice by pub-
7 lication in a newspaper of general circulation in the vicinity of the
8 registered office of the cooperative or the address of the individual
9 who made the filing, and the cancellation becomes final 60 days after
10 publication of the notice if the person or cooperative does not re-
11 quest a hearing.

12 Sec. 10.16.785. FORMS TO BE FURNISHED BY THE COMMISSIONER. The
13 department shall prescribe and furnish the forms for the reports
14 required by this chapter to be filed with the department or the com-
15 missioner. The commissioner shall furnish on request forms for other
16 documents to be filed with the department or the commissioner, but the
17 use of those forms, unless otherwise required by this chapter, is not
18 mandatory.

19 Sec. 10.16.790. IDENTIFICATION CODE. The commissioner of com-
20 merce and economic development and the commissioner of revenue shall
21 jointly establish and adopt a coded list of business activities and
22 shall make the list available to the public.

23 ARTICLE 13. MISCELLANEOUS PROVISIONS.

24 Sec. 10.16.805. PROCESSING OF WRITINGS FILED WITH THE COMMIS-
25 SIONER. If a writing delivered to the commissioner under this chapter
26 for filing conforms to law and if all fees and cooperative taxes
27 prescribed in this chapter have been paid, the commissioner shall

28 (1) endorse on each original and an exact copy the word
29 "filed" and the date of the filing;

- 1 (2) file the exact copy in the commissioner's office;
2 (3) return to the cooperative or its representative the
3 original of the writing attached to the writing that the commissioner
4 may issue.

5 Sec. 10.16.810. DISAPPROVAL OF WRITING BY COMMISSIONER. If the
6 commissioner fails to approve articles of incorporation, amendment,
7 merger, consolidation, or dissolution, or other document required by
8 this chapter to be approved by the commissioner, the commissioner
9 shall, within 10 days after the delivery of the document to the
10 commissioner, give written notice of disapproval to the person,
11 domestic cooperative, or foreign cooperative delivering the document.
12 The commissioner shall specify in the notice the reasons for
13 disapproval. The person or cooperative may appeal from the
14 disapproval to the superior court by filing with the clerk of the
15 court a petition setting out a copy of the document sought to be filed
16 and a copy of the written disapproval. The superior court shall try
17 the matter de novo and shall either sustain the action of the
18 commissioner or direct the commissioner to take action the court
19 considers proper.

20 Sec. 10.16.815. CORRECTIONS OF WRITINGS. A cooperative may
21 correct a writing relating to a cooperative filed by the commissioner
22 under this chapter if it contains an error apparent on the face of the
23 writing or a defect in the execution of the writing, including matter
24 not permitted to be stated in the writing. The cooperative shall
25 deliver to the commissioner a certificate entitled "Certificate of
26 Correction of... (correct title of writing and name of domestic
27 cooperative or foreign cooperative)," that has been signed, verified,
28 or acknowledged in the same manner as the original writing. The
29 certificate shall state the name of the cooperative, the date the

1 (2) file the exact copy in the commissioner's office;
2 (3) return to the cooperative or its representative the
3 original of the writing attached to the writing that the commissioner
4 may issue.

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8 this chapter to be approved by the commissioner, the commissioner
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10 commissioner, give written notice of disapproval to the person,
11 domestic cooperative, or foreign cooperative delivering the document.
12 The commissioner shall specify in the notice the reasons for
13 disapproval. The person or cooperative may appeal from the
14 disapproval to the superior court by filing with the clerk of the
15 court a petition setting out a copy of the document sought to be filed
16 and a copy of the written disapproval. The superior court shall try
17 the matter de novo and shall either sustain the action of the
18 commissioner or direct the commissioner to take action the court
19 considers proper.

20 Sec. 10.16.815. CORRECTIONS OF WRITINGS. A cooperative may
21 correct a writing relating to a cooperative filed by the commissioner
22 under this chapter if it contains an error apparent on the face of the
23 writing or a defect in the execution of the writing, including matter
24 not permitted to be stated in the writing. The cooperative shall
25 deliver to the commissioner a certificate entitled "Certificate of
26 Correction of... (correct title of writing and name of domestic
27 cooperative or foreign cooperative)," that has been signed, verified,
28 or acknowledged in the same manner as the original writing. The
29 certificate shall state the name of the cooperative, the date the

1 writing to be corrected was filed by the commissioner, the provision
2 in the writing corrected or eliminated and, if the execution was
3 defective, the proper execution. The filing of the certificate by the
4 commissioner does not alter the effective date of the writing being
5 corrected and does not affect a right or liability accrued or incurred
6 before the filing of the correction. A cooperative may not change or
7 correct a corporate name under this section.

8 Sec. 10.16.820. WRITINGS AS EVIDENCE. (a) All courts, public
9 offices, and official bodies shall receive in evidence a writing filed
10 by the commissioner relating to a domestic cooperative or a foreign
11 cooperative containing statements of fact required or permitted by
12 law, and a certificate by the commissioner of the absence of a filing,
13 as prima facie evidence of the facts in the writing and of the execu-
14 tion of the writing.

15 (b) If, under the laws of a jurisdiction other than this state,
16 a writing by an officer in that jurisdiction or a copy of a writing by
17 an officer certified or exemplified by the officer may be received as
18 prima facie evidence of the incorporation, existence, or capacity of a
19 foreign cooperative incorporated in that jurisdiction, the writing
20 when exemplified shall be received by all courts, public offices, and
21 official bodies of the state as prima facie evidence with the same
22 force as in the other jurisdiction. If the writing is not exem-
23 plified, the writing or certified copy of the writing shall be re-
24 ceived if certified by the secretary of state or official performing
25 the equivalent function for corporate records in the other juris-
26 diction.

27 Sec. 10.16.825. CORPORATE SEAL AS EVIDENCE. The presence of a
28 corporate seal on a writing purporting to be executed by authority of
29 a cooperative is prima facie evidence that the parties who executed

1 the writing had the authority of the cooperative to do so.

2 Sec. 10.16.830. WAIVER OF NOTICE. If the provisions of this
3 chapter or the provisions of the articles or bylaws of the cooperative
4 require notice to be given to a member or director of a cooperative, a
5 waiver of the notice in writing signed by the person entitled to
6 notice, whether before or after the time stated for notice, is equiva-
7 lent to the giving of notice.

8 ARTICLE 14. GENERAL PROVISIONS.

9 Sec. 10.16.900. POWERS OF COMMISSIONER. The commissioner has
10 the power and authority reasonably necessary to enable the commission-
11 er to administer this chapter and to perform the duties imposed on the
12 commissioner by this chapter.

13 Sec. 10.16.905. POWERS OF DEPARTMENT. The department has the
14 power and authority reasonably necessary to administer this chapter
15 and to perform the duties imposed by this chapter.

16 Sec. 10.16.910. REGULATIONS. To the extent provided by explicit
17 reference in this chapter, the department shall adopt regulations
18 referred to in this chapter in accordance with the Administrative
19 Procedure Act (AS 44.62).

20 Sec. 10.16.915. APPLICATION. This chapter applies to the extent
21 provided in AS 10.16.010, 10.16.017, 10.16.065, 10.16.125, 10.16.-
22 228(g), 10.16.230, 10.16.245(c), 10.16.605 - 10.16.790 to a foreign
23 cooperative authorized to do or doing business in the state.

24 Sec. 10.16.920. PROVISIONS CONSTRUED AS RESTATEMENTS AND CONTIN-
25 UATIONS. If a provision of this chapter is substantially the same as
26 a statutory provision in former AS 10.15 as it existed on the day
27 before the effective date of this chapter, the provision of this
28 chapter shall be construed as a restatement and continuation of
29 AS 10.15, and not as a new enactment.

1 Sec. 10.16.930. SIGNATURE. A signature includes a mark when the
2 signer cannot write. A witness shall write the signer's name near the
3 mark and the witness' own name near the signer's name. A signature by
4 mark can be acknowledged or can serve as a signature to a sworn state-
5 ment.

6 Sec. 10.16.935. RULES OF CONSTRUCTION AND INTERPRETATION.
7 Unless the express language or context of a provision of this chapter
8 requires otherwise, the following general provisions and rules of
9 construction govern this chapter:

10 (1) a power granted to or a duty imposed on a public
11 officer by this chapter, may be exercised by a deputy of the officer or
12 a person authorized under law by the officer;

13 (2) a notice, report, statement, or record required or
14 authorized by this chapter shall be made in writing in a manner
15 reasonably calculated to communicate the notice, report, statement, or
16 record to the recipient.

17 (3) subject to a specific accounting treatment required by
18 a particular provision of this chapter

19 (A) a reference in this chapter to a financial state-
20 ment, balance sheet, income statement, statement of change in
21 financial position of a cooperative, assets, liabilities, earn-
22 ings, retained earnings, or similar accounting item of a coopera-
23 tive means an item prepared fairly and reasonably to present the
24 purported matters;

25 (B) a financial statement prepared or determined in
26 accordance with generally accepted accounting principles then
27 applicable is fair and reasonable;

28 (C) in the case of a cooperative that has subsid-
29 iaries, references to financial statements mean consolidated

1 statements of the cooperative and its subsidiaries, and refer-
2 ences to accounting items mean items determined on a consolidated
3 basis in accordance with consolidated financial statements;

4 (4) a reference in this chapter to the time a notice is
5 given or sent means the time when

6 (A) a written notice by mail is deposited in the
7 United States mail, postage prepaid;

8 (B) a written notice is personally delivered to the
9 recipient or is delivered to a common carrier for transmission,
10 or actually transmitted by electronic means to the recipient by
11 the person giving the notice; or

12 (C) an oral notice is communicated in person or by
13 electronic means to the recipient or to a person at the office of
14 the recipient whom the giver of the notice has reason to believe
15 will promptly communicate it to the recipient.

16 Sec. 10.16.980. DEFINITIONS. In this chapter, unless the con-
17 text requires otherwise

18 (1) "acknowledged" means that a document is accompanied by
19 a certificate of acknowledgement as provided in AS 09.63;

20 (2) "approval of" or "approved by" all the members means
21 approved by the affirmative vote of an absolute majority of the mem-
22 bers of a cooperative entitled to vote on the subject matter or the
23 affirmative vote of a greater proportion of the members if the arti-
24 cles or this chapter requires an affirmative vote by a greater propor-
25 tion;

26 (3) "approval of" or "approved by" the board means approved
27 or ratified by the vote of the board or committee authorized to exer-
28 cise the powers of the board, except for a matter that is not within
29 the competence of the committee under AS 10.16.265;

1 (4) "approval of the members" or "approved by the members"
2 means approved or ratified by the affirmative vote of a majority of
3 the members present and entitled to vote at a duly held meeting at
4 which a quorum is present, by the written consent of members, or by
5 the affirmative vote or written consent of a greater proportion of the
6 members if the articles or this chapter requires an affirmative vote
7 by a greater proportion;

8 (5) "articles" or "articles of incorporation" means the
9 original or restated articles of incorporation of a cooperative in-
10 cluding articles of merger and all amendments to the articles;

11 (6) "board" means the board of directors of a cooperative;

12 (7) "commissioner" means the commissioner of the Department
13 of Commerce and Economic Development or a designee of the commission-
14 er;

15 (8) "cooperative" or "cooperative corporation" means a
16 cooperative corporation subject to the provisions of this chapter;

17 (9) "cooperative tax" means the biennial cooperative tax
18 imposed under this chapter on cooperatives;

19 (10) "court" means the superior court;

20 (11) "department" means the Department of Commerce and
21 Economic Development;

22 (12) "director" means a natural person designated in the
23 articles of incorporation or elected by the incorporators as a direc-
24 tor and includes a natural person and successor of that person who is
25 designated, elected, or appointed by another name or title to act as a
26 director;

27 (13) "distribution" means the transfer of cash or property
28 by a cooperative or its subsidiary to members without consideration,
29 whether by dividend or other method; the time of a distribution is the

1 date when the cooperative transfers the cash or property whether or
2 not under a contract of an earlier date;

3 (14) "entire board" means the total number of directors of
4 the cooperative when there are no vacancies;

5 (15) "filed" means filed in the office of the commissioner;

6 (16) "five percent shareholder" means a person that owns
7 five percent or more of the shares or of a class of shares of a co-
8 operative;

9 (17) "foreign cooperative" means a cooperative organized
10 under laws other than the laws of this state;

11 (18) "identification code" means a business activity code
12 established under AS 10.16.790;

13 (19) "independent accountant" means a certified public
14 accountant or a public accountant who is independent of the coopera-
15 tive according to generally accepted auditing standards and who is
16 engaged to audit financial statements of the cooperative or to perform
17 other accounting services for the cooperative;

18 (20) "mail" or "mailing" means sent by first-class mail,
19 postage prepaid, unless certified mail is specified; certified mail
20 includes registered mail;

21 (21) "member" means a person who has been qualified and
22 accepted for membership in a cooperative;

23 (22) "membership fee" means a fee that a cooperative im-
24 poses or requires for membership in the cooperative;

25 (23) "membership stock" means stock that a cooperative
26 requires for membership in the cooperative;

27 (24) "net assets" means the amount by which the total
28 assets of a cooperative exceed the total debts of the cooperative;

29 (25) "new cooperative" means the cooperative formed by the

1 consolidation of two or more foreign or domestic cooperatives;

2 (26) "oath" includes affirmation;

3 (27) "officers' certificate" means a certificate signed and
4 verified by the chairperson of the board, the president or a vice-
5 president, and by the secretary, treasurer, an assistant secretary, or
6 an assistant treasurer;

7 (28) "organic change" means a merger, consolidation, or
8 sale or other disposition of assets of a cooperative that is not in
9 the regular course of business of the cooperative;

10 (29) "paid-in capital" means the consideration actually
11 received by a cooperative for issuance of membership stock or for
12 payment of a membership fee;

13 (30) "parent" or "parent cooperative" means a cooperative
14 that is an affiliate of another cooperative and that controls the
15 other cooperative directly or indirectly through one or more inter-
16 mediaries;

17 (31) "person" means an individual, corporation, partner-
18 ship, association, joint-stock company, estate, trust if the interests
19 of the beneficiaries are evidenced by a security, unincorporated
20 association, government, political subdivision of a government, or a
21 combination of these entities;

22 (32) "retained earnings" means the account of the coopera-
23 tive representing undistributed and uncapitalized net profits, income,
24 gains, and losses from the date of incorporation;

25 (33) "shareholder" means a holder of shares of capital
26 stock of a cooperative other than a cooperative organized under this
27 chapter;

28 (34) "state" includes the District of Columbia, the
29 Commonwealth of Puerto Rico, the Northern Islands, Guam, the Virgin

1 Islands, American Samoa, the Trust Territory of the Pacific Islands,
2 or other territory or possession of the United States;

3 (35) "surviving corporation" means the cooperative into
4 which one or more other cooperatives are merged;

5 (36) "vacancy" on a board means an authorized position of
6 director that is not then filled by a duly elected director, whether
7 caused by death, resignation, removal, change in the authorized number
8 of directors or other cause;

9 (37) "verified" means that a document has been certified to
10 be true under AS 09.63.040;

11 (38) "vote" includes authorization by written consent
12 subject to the provisions of AS 10.16.220 and 10.16.280;

13 (39) "writing" includes a recorded message capable of
14 comprehension by ordinary visual means.

15 Sec. 10.16.990. SHORT TITLE: This chapter may be cited as the
16 Alaska Cooperative Corporations Code.

17 * Sec. 2. AS 16.10.265(c) is amended to read:

18 (c) The commissioner of revenue shall impose upon a fish proces-
19 sor, primary fish buyer, or cooperative corporation organized under
20 AS 10.16 [AS 10.15], a civil fine equal to the value of fish purchased
21 in violation of this section by (1) the fish processor or primary fish
22 buyer if the fish processor or primary fish buyer is not a corpora-
23 tion; or (2) a director, officer, or employee in a policy-making
24 position of the fish processor, of the primary fish buyer, or of the
25 cooperative corporation. Value is based on the average price paid to
26 fisherman at the time of the violation.

27 * Sec. 3. AS 16.10.268 is amended to read:

28 Sec. 16.10.268. NOTICE OF LIABILITY. (a) The commissioner of
29 labor shall print posters that contain notice of the requirements of

1 Islands, American Samoa, the Trust Territory of the Pacific Islands,
2 or other territory or possession of the United States;

3 (35) "surviving corporation" means the cooperative into
4 which one or more other cooperatives are merged;

5 (36) "vacancy" on a board means an authorized position of
6 director that is not then filled by a duly elected director, whether
7 caused by death, resignation, removal, change in the authorized number
8 of directors or other cause;

9 (37) "verified" means that a document has been certified to
10 be true under AS 09.63.040;

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25 cooperative corporation. Value is based on the average price paid to
26 fisherman at the time of the violation.

27 * Sec. 3. AS 16.10.268 is amended to read:

28 Sec. 16.10.268. NOTICE OF LIABILITY. (a) The commissioner of
29 labor shall print posters that contain notice of the requirements of

1 AS 16.10.265. The commissioner shall distribute the posters to fish
2 processors, primary fish buyers, and cooperative corporations or-
3 ganized under AS 10.16 [AS 10.15] for the purpose of buying fish.

4 (b) A fish processor, primary fish buyer, or cooperative corpo-
5 ration organized under AS 10.16 [AS 10.15] for the purpose of buying
6 fish shall display in a prominent place on its business premises
7 posters provided by the commissioner of labor under (a) of this sec-
8 tion.

9 * Sec. 4. AS 16.10.296(4) is amended to read:

10 (4) "primary fish buyer" means a person, other than a
11 cooperative corporation organized under AS 10.16 [AS 10.15], engaging
12 or attempting to engage in the business of originally purchasing or
13 buying any fishery resource in intrastate, interstate, or foreign
14 commerce.

15 * Sec. 5. AS 18.55.370 is amended to read:

16 Sec. 18.55.370. USE OF FUNDS. The funds appropriated or made
17 available under AS 18.55.300 - 18.55.470 may be used by the authority
18 to make:

19 (1) character loans, not exceeding \$500 for each dwelling,
20 to residents or cooperatives for the improvement, conversion, or
21 construction of dwellings in remote areas for occupancy by the resi-
22 dents or members of the cooperatives;

23 (2) loans for moderate-cost or rental housing facilities
24 and projects to public agencies, or private nonprofit or limited
25 dividend corporations, or private corporations or cooperatives or-
26 ganized under AS 10.16 that [AS 10.15.005 - 10.15.600 WHICH] are
27 regulated or restricted by the authority (until the termination of all
28 loan obligations to it) as to rents or sales, charges, capital struc-
29 ture, rate of return, and methods of operation to the extent and in

1 the manner that [WHICH] provides reasonable rentals to tenants and a
2 reasonable return on the investment; loans to cooperatives may be made
3 for up to 95 percent of the appraised value of the housing facility.

4 * Sec. 6. AS 34.35.391(a) is amended to read:

5 (a) A person who sells fish to a fish processor as defined in
6 AS 16.10.296, or to a primary fish buyer as defined in AS 16.10.296,
7 or to a cooperative corporation organized under AS 10.16 [AS 10.15],
8 and receives a fish ticket or a record of purchase as described in
9 AS 16.05.690 has a lien upon the property of the fish processor,
10 primary fish buyer, or cooperative corporation for the value of the
11 fish.

12 * Sec. 7. AS 44.81.010(a) is amended to read:

13 (a) There is established the Alaska Commercial Fishing and
14 Agriculture Bank. The exercise by the bank of the powers conferred by
15 this chapter is considered to be for a public purpose. Except as
16 otherwise provided in this chapter, and except that any filing fees
17 shall be waived, the bank is subject to the provisions of AS 10.16
18 [AS 10.15] (Alaska Cooperative Corporation Code [ACT]). The bank is
19 exempt from the provisions of AS 06.05 (Alaska Banking Code) in the
20 exercise of powers granted by this chapter.

21 * Sec. 8. AS 44.81.220 is amended to read:

22 Sec. 44.81.220. TRANSITION. Notwithstanding the provisions of
23 former AS 10.15.005, on [UPON] the repurchase of all the nonvoting,
24 preferred shares initially issued by the bank and purchased by
25 agencies of the state, the provisions of this chapter lapse and the
26 bank may proceed to operate solely as a private cooperative
27 corporation under the terms of its bylaws and the provisions of
28 AS 10.16 [AS 10.15.010 - 10.15.600].

29 * Sec. 9. AS 45.50.572(b) is amended to read:

1 (b) AS 45.50.562 - 45.50.596 do not forbid actions or arrange-
2 ments authorized or regulated under the laws of the United States that
3 [WHICH] exempt these actions or arrangements from application of the
4 antitrust laws of the United States or under the following statutes of
5 this state:

- 6 (1) AS 06.05.235;
7 (2) AS 10.16 [AS 10.15]; and
8 (3) AS 31.05.110.

9 * Sec. 10. AS 10.15 is repealed.

10 * Sec. 11. APPLICATION OF PROVISIONS TO DOMESTIC AND FOREIGN COOPERA-
11 TIVES. (a) Except as otherwise expressly provided in this Act, the pro-
12 visions of this Act apply on and after the effective date of this Act to

13 (1) a domestic cooperative corporation organized under former
14 AS 10.15 and existing on the effective date of this Act;

15 (2) a foreign cooperative corporation that is authorized or does
16 business in the state on or after the effective date of this Act;

17 (3) actions by a director, officer, or shareholder of a corpo-
18 ration described in (1) and (2) of this subsection on and after the effec-
19 tive date of this Act.

20 (b) The existence of a cooperative corporation formed or existing on
21 the date of enactment of this Act is not affected by the enactment of this
22 Act or by a change in the requirements for formation of cooperative
23 corporations.

24 (c) Except as otherwise expressly provided in this Act, a provision
25 of this Act governing acts, contracts, or other transactions by a
26 cooperative corporation or its directors, officers, or shareholders applies
27 only to acts, contracts, or transactions occurring on or after the
28 effective date of this Act and the provisions of former AS 10.15 govern
29 acts, contracts, or transactions occurring before the effective date of

1 this Act.

2 (d) Except as otherwise expressly provided in this Act, a vote or
3 consent by the directors or shareholders of a cooperative corporation
4 before the effective date of this Act in accordance with the provisions of
5 former AS 10.15 governs acts, contracts, or transactions occurring before
6 the effective date of this Act.

7 * Sec. 12. EXERCISE OF RESERVE POWER. In enacting AS 10.16.345 in
8 sec. 1 of this Act, it is the intent of the legislature to exercise to the
9 fullest extent the reserve power of the state over cooperative corporations
10 and to authorize a cooperative corporation to amend its articles of
11 incorporation as permitted under AS 10.16.345, enacted by sec. 1 of this
12 Act, regardless of whether the amendment was allowed at the time of the
13 original incorporation of the cooperative.

14 * Sec. 13. APPLICATION TO ARTICLES OF EXISTING COOPERATIVES. (a) The
15 provisions of AS 10.16.085 and 10.16.090 enacted by sec. 1 of this Act
16 relating to the contents of articles of incorporation do not apply to
17 domestic cooperative corporations existing on the effective date of this
18 Act unless and until an amendment of the articles is filed stating that the
19 cooperative corporation elects to be governed by all of the provisions of
20 AS 10.16 enacted by sec. 1 of this Act not otherwise applicable to it under
21 this Act. If the amendment only conforms the statement of purposes and
22 powers in the articles to AS 10.16.085(2) or 10.16.090(1)(E), enacted by
23 sec. 1 of this Act, or deletes references to par value or location of
24 principal office, the cooperative may adopt the amendment by approval of
25 the board of directors of the cooperative corporation; otherwise the
26 cooperative corporation shall approve the amendment as provided by
27 AS 10.16.350 enacted in sec. 1 of this Act.

28 (b) A cooperative organized and existing under the provisions of
29 former AS 10.15 shall comply with AS 10.16.085 and 10.16.090 enacted in

1 sec. 1 of this Act within five years after the effective date of this Act.

2 * Sec. 14. AMENDMENT OF ARTICLES OF INCORPORATION. (a) The affirma-
3 tive vote by shareholders or members required by former AS 10.15.365 -
4 10.15.395 remains in effect after the effective date of this Act for
5 cooperatives existing before the effective date of this Act.

6 (b) Notwithstanding (a) of this section, a cooperative may elect to
7 be governed by the voting provisions of AS 10.16.345 - 10.16.390 enacted by
8 sec. 1 of this Act by amending the cooperative's articles of incorporation
9 under those sections. An election under this subsection requires the
10 affirmative vote of at least two-thirds of the shares entitled to vote
11 under former AS 10.15.365 - 10.15.395.

12 * Sec. 15. INDEMNIFICATION BY A COOPERATIVE CORPORATION. AS 10.16.298
13 enacted by sec. 1 of this Act applies to a proposed indemnification by a
14 cooperative after the effective date of this Act, whether the events on
15 which the indemnification is based occurred before or after the effective
16 date of this Act. A statement relating to indemnification contained in the
17 articles or bylaws of a cooperative on the effective date of this Act may
18 limit the indemnification permitted by AS 10.16.298.

19 * Sec. 16. TENURE OF OFFICERS RESERVED. If a person holds an office
20 under a law repealed by this Act, that person continues to hold the office
21 according to its former tenure if the office is continued by this Act.

22 * Sec. 17. EXISTING ACTION. This Act does not affect a cause of
23 action, liability, penalty, or special proceeding existing, incurred or
24 accrued on the effective date of this Act.

25 * Sec. 18. DISTRIBUTIONS AND REACQUISITION OF SHARES. A cooperative
26 corporation may make a distribution under a contract for the purchase or
27 redemption of shares entered into by the cooperative corporation before the
28 effective date of this Act if the distribution was allowed under former
29 AS 10.15 and other laws in effect at the time the contract was formed.

1 * Sec. 19. AS 10.16.015(a)(1), enacted by sec. 1 of this Act, amends
2 Alaska Rule of Civil Procedure 19 by making all parties to a contract
3 covered by AS 10.15.015(a)(1) indispensable parties to an action under
4 AS 10.15.015(a)(1).

5 * Sec. 20. AS 10.16.173(c), enacted by sec. 1 of this Act, amends
6 Alaska Rule of Civil Procedure 19 by allowing a member of a cooperative who
7 has received a prohibited distribution from the cooperative to join certain
8 other parties in a lawsuit against the member without using the criteria of
9 Alaska Rule of Civil Procedure 19.

10 * Sec. 21. AS 10.16.230, enacted by sec. 1 of this Act, amends Alaska
11 Rule of Civil Procedure 23.1 by changing the requirements for maintaining a
12 derivative action.

13 * Sec. 22. AS 10.16.230, enacted by sec. 1 of this Act, amends Alaska
14 Rule of Civil Procedure 82 by changing the criteria for awarding attorney
15 fees to the plaintiff in a derivative action.

16 * Sec. 23. AS 10.16.260, enacted by sec. 1 of this Act, amends Alaska
17 Rule of Civil Procedure 19 by requiring that a cooperative be made a party
18 to an action to remove an officer of the cooperative.

19 * Sec. 24. AS 10.16.335, enacted by sec. 1 of this Act, amends Alaska
20 Rule of Civil Procedure 65 by changing the procedure and criteria for
21 obtaining a temporary restraining order in the event of a breach or
22 threatened breach of a cooperative contract.

23 * Sec. 25. AS 10.16.440(b) enacted by sec. 1 of this Act amends Alaska
24 Rule of Civil Procedure 4 by allowing a cooperative in an action under
25 AS 10.16.440(b), enacted by sec. 1 of this Act to serve nonresident
26 dissenting members by certified mail and publication without satisfying the
27 conditions under which certified mail and publication can be used under
28 Alaska Rule of Civil Procedure 4.

29 * Sec. 26. AS 10.16.440(b), enacted by sec. 1 of this Act, amends

1 Alaska Rule of Civil Procedure 19 by making all qualified dissenting mem-
2 bers indispensable parties to an action covered by AS 10.16.440(b).

3 * Sec. 27. AS 10.16.440(e), enacted by sec. 1 of this Act, amends
4 Alaska Rule of Civil Procedure 82 by changing the criteria for awarding
5 attorney fees in an action to determine the value of a dissenting member's
6 interest in a cooperative.

7 * Sec. 28. AS 10.16.483, enacted by sec. 1 of this Act, amends Alaska
8 Rule of Civil Procedure 11 by requiring that a complaint for involuntary
9 dissolution of a cooperative under AS 10.16.483 be verified.

10 * Sec. 29. AS 10.16.483, enacted by sec. 1 of this Act, amends Alaska
11 Rule of Civil Procedure 24 by allowing a member or creditor of a
12 cooperative to intervene in an action for involuntary dissolution of the
13 cooperative under AS 10.16.483.

14 * Sec. 30. AS 10.16.485(b), enacted by sec. 1 of this Act, amends
15 Alaska Rule of Civil Procedure 65 by changing the criteria for enjoining
16 dissolution proceedings under AS 10.16.485.

17 * Sec. 31. AS 10.16.500, enacted by sec. 1 of this Act, amends Alaska
18 Rule of Civil Procedure 4 by changing the requirements for service of
19 process by publication when the commissioner of commerce and economic
20 development brings an action for involuntary dissolution of a cooperative.

21 * Sec. 32. AS 10.16.500(e), enacted by sec. 1 of this Act, amends
22 Alaska Rule of Civil Procedure 4 by changing how long a cooperative has to
23 respond to a complaint in an involuntary dissolution proceeding before the
24 commissioner of commerce and economic development may take a default
25 judgment against the cooperative.

26 * Sec. 33. AS 10.16.530, enacted by sec. 1 of this Act, amends Alaska
27 Rule of Civil Procedure 73 by requiring the clerk of the superior court to
28 send a copy of an order dissolving a cooperative to the commissioner of
29 commerce and economic development.

1 * Sec. 34. AS 10.16.555, enacted by sec. 1 of this Act, amends Alaska
2 Rule of Civil Procedure 20 by allowing the cooperative to join a member who
3 received an improper distribution in an action under AS 10.16.555 without
4 regard to the criteria for joinder in Alaska Rule of Civil Procedure 20.

5 * Sec. 35. AS 10.16.810, enacted by sec. 1 of this Act, amends Alaska
6 Rule of Civil Procedure 10 by requiring that certain documents be attached
7 to a complaint that appeals the disapproval of a writing made under
8 AS 10.16.810 by the commissioner of commerce and economic development.

9 * Sec. 36. AS 10.16.820, enacted by sec. 1 of this Act, amends Alaska
10 Rule of Evidence 803(8) by requiring the court to receive as evidence
11 certain public documents dealing with cooperative corporations.

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