

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 202

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST 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, Alaska Rule
9 of Evidence 803(8), and Alaska Rules of Appellate
10 Procedure 204 and 609."

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

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

13 CHAPTER 16. ALASKA COOPERATIVE CORPORATIONS CODE.

14 ARTICLE 1. COOPERATIVE PURPOSES AND POWERS.

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

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

1 condition of membership or of doing business with the cooperative, are
2 not an unlawful restraint of trade, or a conspiracy or combination to
3 accomplish an improper or illegal purpose or act.

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

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

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

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

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

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

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

27 (7) make contracts and incur liabilities, borrow money at
28 the rates of interest the cooperative determines, issue notes, bonds,
29 certificates of indebtedness and other obligations, issue certificates

1 representing equity interests in its assets, and secure its obliga-
2 tions by mortgage or pledge of its property, franchise and 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 abbrevi-
21 ation 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

1 (2) immediately after making the distribution

2 (A) the sum of the assets of the cooperative, exclu-
3 sive of goodwill, capitalized research and development expenses,
4 evidences of debts owing from directors or officers, and deferred
5 charges, would be at least equal to one and one-fourth times the
6 liabilities of the cooperative, excluding deferred taxes, de-
7 ferred income, and other deferred credits; and

8 (B) the current assets of the cooperative would be

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

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

16 (b) For the purposes of this section,

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

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

28 (3) the cooperative shall base the amount of a distribution
29 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 under (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;

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

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

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

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

29 (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 under (a) of this section. Notwithstanding (c) or (e) of this
3 section, disinterested, noninvolved directors acting as the board or a
4 duly 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.

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

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

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

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

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

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

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

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

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

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

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

16 (1) declare a dividend or distribution;

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

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

22 (4) amend the bylaws;

23 (5) capitalize retained earnings;

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

27 (7) authorize or approve the issuance or sale of shares, or
28 a contract to issue or sell shares, or designate the terms of a series
29 of a class of shares, unless the board, having made a general

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

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

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

26 Sec. 10.16.270. MEETINGS OF BOARD. (a) A regular or special
27 meeting of the board or a committee of the board may be called by the
28 chairman of the board, the president, a vice-president, the secretary,
29 or two directors, and may be held in or out of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (1) a director who votes for or assents to a distribution

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

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

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

24 (b) A director against whom a claim is asserted under this
25 section for the distribution of assets of the cooperative is entitled
26 to contribution from members who accepted or received the assets
27 knowing the distribution to have been made in violation of this chap-
28 ter, in proportion to the amounts received by them. A director
29 against whom a claim is asserted under this section for the extension

1 of a loan is entitled to contribution from the person receiving the
2 loan.

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

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

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

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

26 (d) Subject to the provisions of AS 10.16.017, a note, mortgage,
27 evidence of indebtedness, contract, share certificate, conveyance, or
28 other instrument in writing, or an assignment or endorsement of these
29 items, executed or entered into between the cooperative and another

1 person, if signed by two individuals, one of whom is the chairman of
2 the board, the president, or a vice-president and the other of whom is
3 the secretary, assistant secretary, treasurer, or assistant treasurer
4 of the cooperative, is not invalidated for the cooperative if the
5 signing officers lacked authority to execute the instrument, unless
6 the other person had actual knowledge that the signing officers did
7 not have authority to execute the instrument.

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

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

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

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

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

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

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

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

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

1 presumption that the person did not act in good faith or in a manner
2 that the person reasonably believed to be in, or not opposed to, the
3 best interest of the cooperative, or, with respect to a criminal
4 action or proceeding, that the person had reasonable cause to believe
5 that the conduct was unlawful.

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

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

1 attorney fees actually and reasonably incurred in connection with the
2 defense.

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

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

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

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

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

18 (3) by approval of the members.

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

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

27 (2) the director, officer, employee, or agent furnishes the
28 cooperative with a written, unlimited general undertaking, executed
29 personally or on behalf of the individual, to repay the advance if it

1 is ultimately determined that an applicable standard of conduct was
2 not met; and

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

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

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

24 ARTICLE 7. COOPERATIVE CONTRACTS.

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

28 (1) sell, market, or deliver to or through the cooperative,
29 or facilities furnished by the cooperative, all or a specified part of

1 products produced by or under the member's control;

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

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

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

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

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

25 Sec. 10.16.305. LIQUIDATED DAMAGES CLAUSE. A contract under
26 AS 10.16.300 may fix and require that liquidated damages be paid by
27 the member to the cooperative if the member breaches the contract.
28 Liquidated damages may be fixed as a specific sum, a percentage of the
29 value of the products, goods, or services involved in the breach, or a

1 specific amount per unit of the products, goods, or services involved
2 in the breach.

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

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

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

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

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

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

24 Sec. 10.16.325. EFFECT OF RECORDING CONTRACT. Recording under
25 AS 10.16.313 - 10.16.333 gives constructive notice to all persons of
26 the existence and contents of the contract. A right, title, interest
27 or lien created in or on the products covered by the contract after
28 the recording is subject to the cooperative's right, title, or inter-
29 est under the contract. If the member creates a mortgage on the

1 products after the recording of the contract, and if the member and
2 the mortgagee jointly notify the cooperative in writing of the exist-
3 tence and amount of the mortgage, the cooperative shall make all
4 payments from the cooperative to the member that become due after the
5 notice because the cooperative sells or otherwise handles the
6 products, to the mortgagee until the full amount of the mortgage has
7 been paid, and to the member after the mortgage has been paid in full.

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

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

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

27 (b) A person who, with knowledge that a contract exists, induces
28 or attempts to induce a member to breach the contract with a coopera-
29 tive, or who assists in a breach of the contract, is liable to the

1 cooperative for damages caused by the interference. The cooperative
2 is also entitled to an injunction to prevent interference or further
3 interference with the contract.

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

13 ARTICLE 8. AMENDMENTS AND NONORGANIC CHANGES.

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

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

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

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

27 (2) giving written notice setting out the proposed amend-
28 ment or summary of the changes to be effected by the amendment to each
29 member of record in the time and manner provided in this chapter for

1 the giving of notice of meetings of members; if the meeting is an
2 annual meeting, the proposed amendment or the summary may be included
3 in the notice of the annual meeting; and

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

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

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

12 (1) deletion of the names and addresses of the initial
13 directors; or

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

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

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

28 (1) the name of the cooperative;

29 (2) if an amendment changes the articles, an identification

1 by reference or description of the affected provision and a statement
2 of the text after amendment;

3 (3) if an amendment strikes or deletes a provision of the
4 articles, an identification by reference or description of the
5 provision stricken or deleted and a statement that it is stricken or
6 deleted;

7 (4) if the amendment is an addition to the articles, a
8 statement of that fact and the full text of the provision added;

9 (5) the date of the adoption of the amendment by the mem-
10 bers; and

11 (6) the number of members voting for the amendment and the
12 number of members voting against the amendment.

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

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

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

26 Sec. 10.16.370. RESTATED ARTICLES OF INCORPORATION. A domestic
27 cooperative may, by resolution adopted by the board, restate its
28 articles of incorporation as amended to the time of restatement. The
29 president, or a vice-president, and the secretary or assistant

1 secretary of the cooperative shall execute the restated articles and
2 one of the officers signing the articles shall verify the restated
3 articles. The restated articles must set out all of the operative
4 provisions of the articles as amended to that time together with a
5 statement that the restated articles correctly set out without change
6 the corresponding provisions of the articles as amended to that time
7 and that the restated articles supersede the original articles and all
8 amendments to the original articles.

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

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

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

28 (b) Amendments to the articles may include

29 (1) changing the name, period of duration, or purposes of

1 the cooperative;

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

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

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

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

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

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

28 ARTICLE 9. ORGANIC CHANGE.

29 Sec. 10.16.400. MERGER AND CONSOLIDATION. Two or more

1 cooperatives may merge or consolidate under a plan of merger or
2 consolidation adopted under AS 10.16.405 - 10.16.410.

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

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

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

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

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

17 (5) other necessary or desirable provisions for the pro-
18 posed merger or consolidation.

19 Sec. 10.16.410. NOTICE TO AND APPROVAL BY MEMBERS. (a) When
20 the board of a cooperative approves a plan of merger or consolidation,
21 the board shall by resolution direct that the plan be submitted to a
22 vote of members at an annual or special meeting. The cooperative
23 shall give written notice of the vote to each member in the manner
24 provided in this chapter for meetings of members; the notice must
25 state that a purpose of the meeting is to consider the proposed plan
26 of merger or consolidation. The cooperative shall include a copy or
27 summary of the plan of merger or consolidation and a copy of AS 10.-
28 16.430 and 10.16.433 with the notice.

29 (b) The plan is approved if it receives the affirmative vote of

1 a majority of all the members of the cooperative.

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

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

12 (b) The articles of merger or the articles of consolidation must
13 include

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

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

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

28 (b) When the merger or consolidation becomes effective

- 29 (1) the several cooperatives that are parties to the plan

1 of merger or consolidation are a single cooperative; in a merger, the
2 single cooperative is that cooperative designated in the plan of
3 merger as the surviving cooperative, and, in the case of a consolida-
4 tion, the single cooperative is the new cooperative identified in the
5 plan of consolidation;

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

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

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

27 (5) in the case of a merger, the articles of the surviving
28 cooperative are amended to the extent that the plan of merger changes
29 its articles; in the case of a consolidation, the statements set out

1 in the articles of consolidation that this chapter requires or permits
2 to be set out in the articles of cooperatives organized under this
3 chapter are the original articles of the new cooperative.

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

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

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

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

25 (B) an irrevocable appointment of the commissioner as
26 the agent of the surviving or new cooperative to accept service
27 of process in a proceeding described in (2)(A) of this subsec-
28 tion; and

29 (C) an agreement that it will promptly pay to the

1 dissenting members of a domestic cooperative that is a party to
2 the merger or consolidation the amount to which they are entitled
3 under provisions of this chapter regarding the rights of
4 dissenting members.

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

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

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

28 Sec. 10.16.427. APPROVAL OF TRANSACTION BY MEMBERS. At a
29 meeting for which notice is given under AS 10.16.425(b) the members

1 shall vote on the recommended sale, lease, exchange, or other disposi-
2 tion of the property of the cooperative, and the members may fix or
3 authorize the board to fix, the terms and conditions, including the
4 consideration to be received by the cooperative. The transaction is
5 approved if the members of the cooperative approve the recommendation
6 of the board by an affirmative vote of a majority of all of the
7 members.

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

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

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

29 (b) Within 10 days after the members' vote authorizing the

1 action, the cooperative shall give written notice of the authorization
2 to each member who filed written objection or from whom written ob-
3 jection was not required. The cooperative may consider that a member
4 who voted for the proposed action has elected not to enforce a right
5 to dissent under this chapter, and need not give notice to that mem-
6 ber.

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

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

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

27 (f) The dissenting member may withdraw a notice of election to
28 dissent before the member accepts under AS 10.16.435(f), but no later
29 than 60 days from the date of consummation of the action, except that

1 the time for withdrawing a notice of election is extended for 60 days
2 from the date an offer is made, if the cooperative fails to make a
3 timely offer under AS 10.16.435. After the time for withdrawal has
4 expired, withdrawal of a notice of election requires the written
5 consent of the cooperative. In order for the withdrawal of a notice
6 of election to be effective, the member shall return the advance
7 payment made to the member as provided in AS 10.16.435. If a member
8 withdraws a notice of election, if the corporate action is rescinded,
9 if a court determines that the member is not entitled to the right to
10 dissent, or if the member otherwise loses the right to dissent, the
11 member does not have the right to receive payment otherwise required
12 by this chapter and the cooperative shall reinstate the member to all
13 rights as a member that were effective on the date of the consummation
14 of the action. The rights to which the member is reinstated include
15 the right to payment of intervening distributions by the cooperative.

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

27 Sec. 10.16.435. OFFER AND PAYMENT TO DISSENTING MEMBERS. (a)
28 Within 15 days after the expiration of the period within which members
29 may file their notice of election to dissent under AS 10.16.433, or

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

8 (b) The cooperative shall accompany the offer required by (a) of
9 this section by

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

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

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

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

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

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

27 (2) a statement to a member who has not submitted evidence
28 of membership interest that advance payment of the amount offered
29 under (a) of this section will be made by the cooperative promptly

1 when the member has submitted the evidence of membership.

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

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

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

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

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

1 (2) a statement that a dissenting member has an option to
2 (A) withdraw the member's notice of election to dis-
3 sent, and the cooperative will consider that the withdrawal was
4 made with the written consent of the cooperative; or

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

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

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

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

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

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

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

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

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

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

29 (1) the fair value of the interest materially exceeds the

1 amount that the cooperative offered to pay;
2 (2) an offer or required advance payment required by
3 AS 10.16.435 was not made by the cooperative;
4 (3) the cooperative failed to institute the special pro-
5 ceeding within the period specified in (a) of this section; or
6 (4) the action of the cooperative in complying with its
7 obligations under this chapter was arbitrary, vexatious, or otherwise
8 in bad faith.

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

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

26 ARTICLE 10. DISSOLUTION.

27 Sec. 10.16.450. VOLUNTARY DISSOLUTION. (a) A cooperative may
28 elect voluntarily to wind up and dissolve by

29 (1) the vote of members taken at a special or annual

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

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

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

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

16 (3) a cooperative that has no members.

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

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

25 (c) The certificate must include

26 (1) the name of the cooperative, the names and addresses of
27 its officers, and the names and addresses of its directors;

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

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

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

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

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

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

20 (b) The cooperative shall state in the certificate

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

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

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

29 (4) a copy of the written consent signed by all members of

1 the cooperative if the members made the election to revoke by written
2 consent;

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

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

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

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

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

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

29 Sec. 10.16.465. JUDICIAL SUPERVISION OF WINDING UP. If a

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

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

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

26 (3) the cooperative has distributed its known assets to its
27 members or, if there are no members, to the persons entitled to the
28 assets, or has wholly applied or deposited its assets to its debts and
29 liabilities, or that it had no known assets;

1 (4) the cooperative is dissolved.

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

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

11 Sec. 10.16.483. INVOLUNTARY DISSOLUTION BY VERIFIED COMPLAINT.

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

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

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

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

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

22 (b) The grounds for involuntary dissolution are

23 (1) the cooperative has abandoned its business for more
24 than one year;

25 (2) the cooperative has an even number of directors who are
26 equally divided and cannot agree on the management of its affairs, so
27 that either the cooperative can no longer conduct its business to
28 advantage or there is danger that the property and business of the
29 cooperative will be impaired or lost, and the members are so divided

1 into factions that they cannot elect a board consisting of an uneven
2 number;

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

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

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

18 (6) the period for which the cooperative was formed has
19 terminated without extension.

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

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

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

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

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

1 action of the court.

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

10 Sec. 10.16.490. INVOLUNTARY DISSOLUTION BY THE COMMISSIONER.

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

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

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

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

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

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

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

27 (7) the cooperative is 90 days delinquent in filing a
28 notice of change of an officer or director as required by this chap-
29 ter.

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

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

23 (d) If a cooperative has given cause for involuntary dissolution
24 and has failed to correct the neglect, omission, delinquency, or
25 noncompliance as provided in this section, and if the superior court
26 has not made an order preventing the commissioner from dissolving the
27 cooperative, the commissioner shall dissolve the cooperative by issu-
28 ing a certificate of involuntary dissolution containing a statement
29 that the cooperative has been dissolved, the date, and the reason for

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

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

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

27 (g) The assignee of a contract assigned by a cooperative dis-
28 solved under this section may bring an action on the assigned contract
29 in the name of the assignee. The plaintiff shall state the fact of

1 assignment and purchase by the plaintiff in the complaint or other
2 process. The defendant may assert a defense that would otherwise have
3 been available against the assigning cooperative, including the prohi-
4 bition against assignment in AS 10.16.300(c) and the defense that the
5 subject matter of the contract is not suitable for a present, opera-
6 tive assignment.

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

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

15 (1) procured its certificate of incorporation through
16 fraud;

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

19 (3) committed a serious violation of a statute regulating
20 corporations; or

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

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

28 Sec. 10.16.500. JURISDICTION AND PROCESS FOR COMMISSIONER'S
29 ACTION. (a) The commissioner shall begin an action for the

1 involuntary dissolution of a cooperative under AS 10.16.495 in the
2 superior court.

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

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

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

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

24 Sec. 10.16.505. APPOINTMENT OF PROVISIONAL DIRECTOR. (a) If
25 the ground for the complaint for involuntary dissolution of the co-
26 operative is a deadlock in the board under AS 10.16.483(b)(2), the
27 court may appoint a provisional director.

28 (b) A provisional director must be an impartial person, who is
29 not a member or a creditor of the cooperative or related according to

1 the common law by consanguinity or affinity within the third degree to
2 a director of the cooperative or to a judge of the court that appoints
3 the provisional director. A provisional director has all the rights
4 and powers of a director until the deadlock in the board is broken, or
5 until the provisional director is removed by the court or by approval
6 of a majority of all of the members.

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

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

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

23 (c) The court shall fix the compensation of the receiver, unless
24 otherwise agreed, and the compensation shall be paid from the assets
25 of the cooperative.

26 Sec. 10.16.510. FURTHER JUDICIAL RELIEF FOR WINDING UP AND
27 DISSOLUTION. After a hearing, the court may order that a cooperative
28 be wound up and dissolved under AS 10.16.480, or, with or without
29 winding up and dissolution, order other relief including injunctions

1 that the court determines to be just and equitable.

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

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

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

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

27 (1) the determination of the validity of all claims and
28 demands against the cooperative, whether due or not yet due, contin-
29 gent, unliquidated, or for damages, and barring from participation

1 creditors and claimants that fail to make and present claims and proof
2 as required by the court;

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

6 (3) the determination of the rights of members in and to
7 the assets of the cooperative;

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

13 (5) the appointment of a master to hear and determine
14 cooperative matters, with the power or authority the court considers
15 proper;

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

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

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

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

4 (10) the withdrawal or termination of proceedings to wind
5 up and dissolve, subject to conditions for the protection of members
6 and creditors;

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

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

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

24 (b) Notice to creditors in a court-directed winding up shall be
25 published not less than once a week for three consecutive weeks in a
26 newspaper of general circulation in the judicial district where the
27 proceeding is pending or, if a newspaper is not published in that
28 judicial district, in a newspaper designated by the court. The notice
29 must direct creditors and claimants to make claims and proofs to the

1 person, at the place, and within the time specified in the notice. A
2 copy of the notice shall be mailed to the last known address of each
3 person shown as a creditor or claimant on the books of the coopera-
4 tive.

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

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

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

26 (f) If a membership status is in dispute, if the existence of a
27 claim of a creditor or member is contingent or contested, or if the
28 amount of a claim of a creditor or member is contingent, contested, or
29 not determined, the court shall reduce the maximum amount of the claim

1 to cash and deposit the cash with the commissioner of revenue. The
2 commissioner of revenue shall pay the amount deposited with the
3 commissioner of revenue under this subsection to the creditor, member,
4 or legal representative of the member or creditor, as the disputing
5 parties agree or as the court directs.

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

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

15 (1) the cooperative is legally wound up, that the coopera-
16 tive has paid or secured the tax or penalty due under AS 10.16.728 -
17 10.16.753, and that the cooperative has paid or adequately provided
18 for the other known debts and liabilities of the cooperative or that
19 the cooperative has paid the taxes, penalties, debts, and liabilities
20 of the cooperative as far as the assets permit; if the cooperative has
21 made adequate provision for the payment of all of the known debts or
22 liabilities of the cooperative, the court shall state the provision
23 that has been made, setting out the name and address of the
24 cooperative, person, or governmental agency that has assumed or
25 guaranteed the payment, the name and address of the depository to
26 which the deposit has been made or other information that is necessary
27 to enable the creditor or other person to whom payment is to be made
28 to appear and claim payment of the debt or liability;

29 (2) the known assets of the cooperative have been

1 distributed to the persons entitled to the assets or that the coopera-
2 tive acquired no known assets;

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

7 (4) the cooperative is dissolved.

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

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

15 Sec. 10.16.530. FILING OF ORDER OF DISSOLUTION. The clerk of
16 the court shall file with the commissioner a certified copy of a court
17 order dissolving a cooperative. The commissioner may not charge a fee
18 for the filing of an order of dissolution.

19 Sec. 10.16.535. POWERS AND DUTIES OF DIRECTORS IN DISSOLUTION
20 PROCEEDINGS. The powers and duties of the directors or other person
21 appointed by the court under AS 10.16.505 and officers after commence-
22 ment of a dissolution proceeding include the following acts performed
23 in the name and on behalf of the cooperative:

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

26 (2) the conduct of the business of the cooperative that is
27 necessary for the disposal or winding up of the business of the co-
28 operative;

29 (3) the performance of contracts and the collection,

1 payment, compromise, and settlement of debts and claims by or against
2 the cooperative;

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

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

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

9 (7) the selling at public or private sale, the exchange,
10 conveyance, or other disposition of all or part of the assets of the
11 cooperative for cash in an amount considered reasonable by the board
12 with or without compliance with the provisions of AS 10.16.425 and
13 10.16.427, without dissenters' rights under AS 10.16.430 - 10.16.440,
14 and on the terms, conditions, and other considerations the board
15 considers reasonable or expedient;

16 (8) the execution of bills of sale and deeds of conveyance
17 in the name of the cooperative;

18 (9) the making of contracts and the doing of those things
19 in the name of the cooperative that are proper or convenient for the
20 purposes of winding up, settling, or liquidating the affairs of the
21 cooperative.

22 Sec. 10.16.540. PROCEEDING TO DETERMINE IDENTITY OF DIRECTORS OR
23 TO APPOINT DIRECTORS. If the identity of a director or the right of a
24 director to hold office is in doubt, if a director is dead or unable
25 to act, if a director fails or refuses to act, or if the cooperative
26 cannot ascertain a director's whereabouts, an interested person may
27 petition the superior court to determine the identity of the director
28 or, if there are no directors, to appoint directors to wind up the
29 affairs of the cooperative after a hearing on the notice required by

1 the court.

2 Sec. 10.16.543. DISTRIBUTION OF CORPORATE ASSETS AMONG MEMBERS.

3 After determining that a cooperative in the process of winding up has
4 paid or adequately provided for all of the known debts and liabilities
5 of the cooperative, the board shall distribute the remaining corporate
6 assets among the members or, if there are no members, to the persons
7 entitled to the assets. If the winding up is by court proceeding or
8 subject to court supervision, the board may not make the distribution
9 until after the expiration of the period set by the court for the
10 presentation of claims.

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

14 (1) one or more financially responsible corporations or
15 other persons, the United States government, or an agency of the
16 United States government assumes or guarantees in good faith the
17 payment of the debt or liability, and the board determines in good
18 faith and with reasonable care that the provision is adequate at the
19 time of a distribution of the assets by the board under AS 10.16.450 -
20 10.16.560; or

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

23 Sec. 10.16.550. DISTRIBUTION OF ASSETS. A cooperative may
24 distribute assets in money, property, or securities, and in install-
25 ments, if the cooperative makes the distribution fairly, ratably, and
26 in conformity with the articles and the rights of the members. The
27 cooperative shall distribute the assets as soon as is reasonably
28 consistent with the beneficial liquidation of the assets of the co-
29 operative.

1 **Sec. 10.16.555. RECOVERY OF AMOUNTS IMPROPERLY DISTRIBUTED. (a)**
2 If a distribution of assets has been made in the process of winding up
3 a cooperative without a court order and without prior payment or
4 adequate provision for payment of the debts and liabilities of the
5 cooperative, the cooperative may recover the amount improperly dis-
6 tributed to a member. Members who receive an improper distribution
7 may be joined as parties in the same action.

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

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

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

28 **Sec. 10.16.560. CONTINUED EXISTENCE OF DISSOLVED COOPERATIVES.**

29 (a) A cooperative that is dissolved voluntarily or involuntarily

1 continues to exist for the purpose of winding up its affairs, pros-
2 ecuting and defending actions by or against it, and enabling it to
3 collect and discharge obligations, dispose of and convey its property,
4 and collect and divide its assets. A dissolved cooperative continues
5 to exist to do business only to the extent necessary to wind up its
6 business.

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

10 (c) Assets inadvertently or otherwise omitted from the winding
11 up continue as assets of the dissolved cooperative for the benefit of
12 persons entitled to the assets at the dissolution of the cooperative,
13 and the assets shall be distributed to the persons entitled to them
14 when the existence of the assets is determined.

15 (d) The directors of the cooperative on the date of the
16 dissolution of the cooperative, or the directors determined under
17 AS 10.16.540, shall exercise and enjoy the powers necessary to act
18 under this section.

19 ARTICLE 11. FOREIGN COOPERATIVES.

20 Sec. 10.16.605. ADMISSION OF FOREIGN COOPERATIVE. A foreign
21 cooperative may not transact business in the state until the commis-
22 sioner has issued a certificate of authority to the foreign coopera-
23 tive. The commissioner may not issue a certificate of authority to a
24 foreign cooperative to transact a business in the state that a
25 cooperative organized under this chapter may not transact in the
26 state. The commissioner may not deny a certificate of authority to a
27 foreign cooperative because the laws of the state or country governing
28 organization and internal affairs of the foreign cooperative differ
29 from the laws of this state.

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

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

23 Sec. 10.16.613. TRANSACTING BUSINESS WITHOUT CERTIFICATE OF
24 AUTHORITY AS A BAR TO COURT ACTION. A foreign cooperative transacting
25 business in the state without a certificate of authority may not
26 maintain an action, suit, or proceeding in a court of the state until
27 it obtains a certificate of authority. A successor or assignee of a
28 foreign cooperative transacting business in the state without a
29 certificate of authority may not maintain an action, suit, or

1 proceeding in the state on a right, claim, or demand arising out of
2 the transaction of business by the cooperative in the state until a
3 certificate of authority is obtained by the cooperative or by another
4 cooperative that has obtained all or substantially all of the assets
5 of the foreign cooperative.

6 Sec. 10.16.615. EFFECT OF TRANSACTING BUSINESS WITHOUT CERTIFI-
7 CATE OF AUTHORITY. The failure of a foreign cooperative to obtain a
8 certificate of authority to transact business in the state does not
9 impair the validity of a contract or act of the foreign cooperative,
10 and does not prevent the foreign cooperative from defending an action,
11 suit, or proceeding in the courts of the state.

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

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

17 (2) holding a meeting of directors or shareholders of the
18 foreign cooperative, or carrying on other activities concerning the
19 internal affairs of the foreign cooperative;

20 (3) maintaining bank accounts;

21 (4) maintaining an office or agency for the transfer,
22 exchange, and registration of securities of the foreign cooperative,
23 or appointing and maintaining a trustee or depository for the secu-
24 rities of the foreign cooperative;

25 (5) making sales through independent contractors;

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

29 (7) creating, as a borrower or lender, or acquiring

1 indebtedness or mortgages or other security interests in real or
2 personal property;

3 (8) securing or collecting debts, or enforcing rights in
4 property securing debts;

5 (9) transacting business in interstate commerce;

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

9 Sec. 10.16.620. NAME OF FOREIGN COOPERATIVE. The commissioner
10 may not issue a certificate of authority to a foreign cooperative
11 unless the name of the foreign cooperative

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

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

18 (3) does not contain the word "city," "borough," or "vil-
19 lage" or imply that the foreign cooperative is a municipality; the
20 name of a city, borough, or village may be used in the name of the
21 foreign cooperative;

22 (4) is not the same as, or deceptively similar to, the name
23 of a domestic cooperative existing under the laws of the state or a
24 foreign cooperative authorized to transact business in the state, a
25 name that another corporation has exclusively reserved under this
26 title, or the name of a cooperative that has in effect a current
27 registration of its name under this chapter.

28 Sec. 10.16.623. ASSUMED COOPERATIVE NAME. (a) If a foreign
29 cooperative applying for a certificate of authority under this chapter

1 has a name that is impermissible under AS 10.16.620, the foreign
2 cooperative shall select an assumed name, acceptable under AS 10.16.-
3 620, to use to do business in the state.

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

7 Sec. 10.16.625. CHANGE OF NAME BY FOREIGN COOPERATIVE. If a
8 foreign cooperative authorized to transact business in the state
9 changes its name to one that would prevent the cooperative from re-
10 ceiving a certificate of authority in the state, the certificate of
11 authority of the foreign cooperative is suspended, and the foreign
12 cooperative may not transact business in the state until it has
13 changed its name to a name available to it under the laws of the
14 state.

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

18 Sec. 10.16.630. CONTENTS OF APPLICATION. The application of a
19 foreign cooperative for a certificate of authority under this chapter
20 must include

21 (1) the actual and assumed names of the cooperative and the
22 state or country under whose laws the cooperative is incorporated;
23 and, if the name of the cooperative does not contain the word
24 "cooperativa" or an abbreviation of "cooperativa," the name of the
25 cooperative that it elects to use in the state to comply with
26 AS 10.16.620;

27 (2) the date of incorporation and the period of duration of
28 the foreign cooperative;

29 (3) the address of the principal office of the foreign

1 cooperative in the state or country under whose laws it is incorporat-
2 ed;

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

6 (5) the purpose the foreign cooperative plans to pursue in
7 the transaction of business in the state and the identification codes
8 under AS 10.16.790 that most closely describe the activities of the
9 foreign cooperative in the state;

10 (6) the names and addresses of the directors and officers
11 of the foreign cooperative;

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

15 (8) a statement of the aggregate number of issued shares
16 itemized by class, par value, shares without par value, and series
17 within a class;

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

20 (10) an estimate expressed in dollars of

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

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

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

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

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

6 Sec. 10.16.633. EXECUTION AND FILING OF APPLICATION FOR CERTIFI-
7 CATE OF AUTHORITY. The foreign cooperative shall apply for a
8 certificate of authority on the forms prescribed and furnished by the
9 commissioner. The president or vice-president of the foreign
10 cooperative and its secretary or an assistant secretary shall execute
11 the application, and one of the signing officers shall verify the
12 application. The foreign cooperative shall deliver the original
13 application and an exact copy of it to the commissioner for processing
14 and for issuance of a certificate of authority.

15 Sec. 10.16.635. EFFECT OF CERTIFICATE OF AUTHORITY. When the
16 commissioner issues a certificate of authority, the foreign coopera-
17 tive may transact business in the state for the purpose set out in the
18 application, subject to the right of the state under this chapter to
19 suspend or revoke the certificate of authority.

20 Sec. 10.16.638. AMENDED CERTIFICATE OF AUTHORITY. (a) A for-
21 eign cooperative authorized to transact business in the state shall
22 obtain an amended certificate of authority if it changes its corporate
23 name or desires to pursue in the state other or additional purposes
24 than those set out in its application for a certificate of authority.

25 (b) The form, content, manner of execution, and filing of an
26 application for an amended certificate of authority, and the issuance
27 and effect of an amended certificate of authority are the same as for
28 an original application for a certificate of authority.

29 Sec. 10.16.640. POWERS OF A FOREIGN COOPERATIVE. A foreign

1 cooperative that has received a certificate of authority enjoys, until
2 the commissioner has issued a certificate of revocation or of
3 withdrawal under this chapter, the same rights and privileges as a
4 domestic cooperative organized for the same purposes and, except as
5 otherwise provided in this chapter, is subject to the duties,
6 restrictions, penalties, and liabilities now or hereafter imposed on a
7 domestic cooperative of like character under this chapter.

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

11 (1) the foreign cooperative fails to file its biennial
12 report within the time required by this chapter, or fails to pay the
13 fees, taxes, or penalties prescribed in this chapter when due and
14 payable;

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

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

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

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

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

28 Sec. 10.16.645. LIMITATIONS ON REVOCATION OF CERTIFICATE OF
29 AUTHORITY. The commissioner may not revoke a certificate of authority

1 of a foreign cooperative unless

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

5 (2) the foreign cooperative fails before revocation to file
6 the biennial report, to pay the fees, cooperative taxes, or penalties,
7 to file the required statement of change of registered agent or regis-
8 tered office, to file the articles of merger, or to correct the mis-
9 representation.

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

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

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

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

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

20 Sec. 10.16.652. APPEAL FROM REVOCATION OF CERTIFICATE OF AUTHOR-
21 ITY. If the commissioner revokes a certificate of authority of a
22 foreign cooperative to transact business in the state under this
23 chapter, the foreign cooperative may appeal to the superior court by
24 filing with the clerk of the court a petition setting out a copy of
25 its certificate of authority and a copy of the notice of revocation
26 given by the commissioner. The superior court shall try the matter de
27 novo and shall either sustain the action of the commissioner or direct
28 the commissioner to take action the court considers proper.

29 Sec. 10.16.654. REGISTERED OFFICE AND REGISTERED AGENT FOR

1 FOREIGN COOPERATIVE. A foreign cooperative authorized to transact
2 business in the state shall continuously maintain in the state

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

5 (2) a registered agent, who may be either an individual
6 resident of the state whose business office is identical to the
7 registered office, or a domestic cooperative or a foreign cooperative
8 authorized to transact business in the state that has a business
9 office identical to the registered office.

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

14 (1) the name of the foreign cooperative;

15 (2) the address of the foreign cooperative's registered
16 office;

17 (3) the address of the new registered office if the address
18 of the registered office is to be changed;

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

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

22 (6) that the address of the foreign cooperative's regis-
23 tered office and the address of the business office of the registered
24 agent, as changed, will be identical; and

25 (7) that the change is authorized by resolution adopted by
26 the board.

27 Sec. 10.16.658. FILING OF STATEMENT OF CHANGE. The president or
28 a vice-president of the foreign cooperative shall execute and verify a
29 statement of change under AS 10.16.656 and the foreign cooperative

1 shall deliver the statement of change to the commissioner. If the
2 commissioner finds that the statement conforms to the provisions of
3 this chapter, the commissioner shall file the statement in the office
4 of the commissioner. The change in the statement becomes effective
5 when the commissioner files the statement.

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

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

14 (1) a foreign cooperative that is authorized to transact
15 business in the state, or a foreign cooperative that is not authorized
16 to transact business in the state but is doing so, fails to appoint or
17 maintain a registered agent in the state;

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

20 (3) the certificate of authority of a foreign cooperative
21 is suspended or revoked.

22 (b) Service under this section is made on the commissioner as
23 provided in AS 10.16.077(b).

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

28 Sec. 10.16.668. PROCEDURE NOT EXCLUSIVE. AS 10.16.658 - 10.16.-
29 665 do not limit or affect the right to serve a process, notice, or

1 demand required or permitted by law to be served on a foreign coopera-
2 tive in another matter.

3 Sec. 10.16.670. ORGANIC CHANGE OF FOREIGN COOPERATIVE. (a) If
4 a foreign cooperative authorized to transact business in the state is
5 a party to an organic change permitted by the laws of the state or
6 country where it is incorporated, and the foreign cooperative is the
7 surviving cooperative, the surviving foreign cooperative shall, within
8 30 days after the change becomes effective, file with the commissioner
9 a copy of the articles of merger, consolidation, exchange, or reorga-
10 nization authenticated by the proper office of the state or country
11 under whose laws the organic change was carried out.

12 (b) It is not necessary for the surviving foreign cooperative to
13 obtain a new or amended certificate of authority to transact business
14 in the state unless the name of the surviving foreign cooperative is
15 changed or the surviving foreign cooperative desires to pursue in the
16 state other or additional purposes than those that it is authorized to
17 transact in the state.

18 Sec. 10.16.673. WITHDRAWAL OF A FOREIGN COOPERATIVE. A foreign
19 cooperative authorized to transact business in the state may withdraw
20 from the state by obtaining from the commissioner a certificate of
21 withdrawal. To obtain a certificate of withdrawal, the foreign co-
22 operative shall deliver to the commissioner an application for with-
23 drawal and pay the fees and penalties required under AS 10.16.733.

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

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

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

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

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

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

12 (6) a statement of the aggregate number of shares that the
13 foreign cooperative may issue, itemized by class, par value, shares
14 without par value, and series within a class, on the date of the
15 application;

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

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

21 (9) additional information that the commissioner determines
22 necessary or appropriate to determine and assess unpaid fees or co-
23 operative taxes payable under this chapter.

24 Sec. 10.16.678. FORM OF APPLICATION FOR WITHDRAWAL. A foreign
25 cooperative shall apply for withdrawal on forms prescribed and fur-
26 nished by the commissioner. The president or vice-president and the
27 secretary or an assistant secretary of the foreign cooperative shall
28 execute the application for withdrawal. One of the officers of the
29 foreign cooperative signing the application shall verify the

1 application. If the foreign cooperative is in the hands of a receiver
2 or trustee, the receiver or trustee shall execute and verify the
3 application on behalf of the foreign cooperative.

4 Sec. 10.16.680. FILING OF APPLICATION FOR WITHDRAWAL. The
5 foreign cooperative shall deliver an original and exact copy of an
6 application for withdrawal to the commissioner for processing and for
7 issuance of a certificate of withdrawal.

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

11 ARTICLE 12. REPORTS, FEES, AND PENALTIES.

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

16 Sec. 10.16.708. CONTENTS OF BIENNIAL REPORT. A biennial report
17 must include

18 (1) the name of the cooperative and the state or country of
19 incorporation;

20 (2) the address of the registered office of the cooperative
21 in the state, the name of the cooperative's registered agent in the
22 state at that address, and the address of the principal office of the
23 foreign cooperative in the state or country of incorporation;

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

28 (4) the names and addresses of the directors and officers
29 of the cooperative;

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

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

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

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

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

28 (c) The commissioner shall file the biennial report of a
29 cooperative if it satisfies the requirements of this chapter. If the

1 commissioner finds that the biennial report does not satisfy the
2 requirements of this chapter, the commissioner shall promptly return
3 the biennial report to the cooperative for necessary corrections. If
4 the cooperative corrects the biennial report to satisfy the
5 requirements of this chapter and returns the biennial report to the
6 commissioner in sufficient time to be filed before April 1 of the year
7 when the report is due, the penalties under AS 10.16.715 for failure
8 to file the report within the time provided do not apply.

9 (d) After receiving the forms from the commissioner, a domestic
10 cooperative or foreign cooperative shall file an initial report
11 containing the information required for a biennial report within six
12 months after original incorporation or authorization to transact
13 business in the state.

14 Sec. 10.16.713. FILING NOTICE OF CHANGE OF OFFICERS, DIRECTORS,
15 AND FIVE PERCENT SHAREHOLDERS. (a) If an officer or director of a
16 domestic cooperative or foreign cooperative changes during the first
17 year of the biennial reporting period, or the five percent sharehold-
18 ers of a foreign cooperative change before September 30 of the first
19 year of the biennial reporting period, the cooperative shall file a
20 notice of change amending the biennial report of the cooperative
21 before the following January 2.

22 (b) The cooperative shall file the notice of change with the
23 commissioner. The notice of change must state the name and current
24 mailing address of each director, officer, or five percent shareholder
25 not included in the cooperative's last filed biennial report, the name
26 of the person replaced, and the office held. The president or vice-
27 president of the cooperative shall sign the notice of change.

28 Sec. 10.16.715. PENALTY FOR FAILURE TO FILE BIENNIAL REPORT. A
29 domestic cooperative or foreign cooperative that fails or refuses to

1 file a biennial report within the time set by this chapter is subject
2 to a penalty of 10 percent of the amount of the tax assessed against
3 the cooperative for the period for which the cooperative should have
4 filed the report. The commissioner shall assess the penalty at the
5 time of the assessment of the tax. If the commissioner adjusts the
6 amount of the tax as originally assessed, the commissioner shall also
7 adjust the amount of the penalty to 10 percent of the amount of the
8 adjusted tax. The commissioner shall separately state the amount of
9 the tax and the amount of the penalty in a notice to the cooperative.

10 Sec. 10.16.718. INTERROGATORIES BY COMMISSIONER. (a) The
11 commissioner may require a domestic cooperative or foreign cooperative
12 and an officer or director of a domestic or foreign cooperative to
13 answer interrogatories reasonably necessary and proper for the commis-
14 sioner to determine whether the cooperative has complied with the
15 provisions of this chapter.

16 (b) The commissioner or designee of the commissioner shall send
17 interrogatories to

18 (1) a domestic cooperative by complying with AS 10.16.077;

19 (2) a foreign cooperative by complying with AS 10.16.660;

20 (3) an individual officer or director of a domestic co-
21 operative or foreign cooperative by mailing by certified mail a copy
22 of the interrogatories addressed to the person at the place of bus-
23 iness of the person in the state, or, if the person does not have a
24 place of business in the state, to the principal office or place of
25 business of the person.

26 (c) The recipient shall answer interrogatories within 30 days of
27 receipt or within additional time allowed by the commissioner or the
28 superior court. The recipient shall answer the interrogatories fully
29 and completely, in writing and under oath. If the interrogatories are

1 directed to an individual, that person shall answer them; if directed
2 to a cooperative, the president, vice-president, secretary, or
3 assistant secretary of the cooperative or, in the instance of a
4 foreign cooperative, the person functioning as a comparable officer
5 under the laws of the state or country of incorporation shall answer
6 the interrogatories.

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

12 Sec. 10.16.720. CONFIDENTIALITY OF INFORMATION DISCLOSED BY
13 INTERROGATORIES. Interrogatories and answers under AS 10.16.718 are
14 not open to public inspection and the commissioner may not disclose
15 the facts or information obtained from the interrogatories unless the
16 official duty of the commissioner requires the disclosure or unless
17 criminal proceedings or other action by the state requires the use of
18 the interrogatories or answers.

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

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

27 (2) the commissioner need not file a document to which the
28 interrogatories relate until the interrogatories are properly answered
29 or if the answers disclose that the document does not conform to the

1 requirements of this chapter.

2 Sec. 10.16.725. PENALTIES IMPOSED ON OFFICERS AND DIRECTORS. An
3 officer or director of a domestic cooperative or foreign cooperative
4 who signs articles, or a statement, report, application, or other
5 document filed with the commissioner that is known to the officer or
6 director to be false in a material respect, is guilty of a class A
7 misdemeanor.

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

17 Sec. 10.16.730. FEES FOR APPOINTMENT OR REVOCATION OF
18 APPOINTMENT OF AGENT OR CHANGE OF AGENT'S ADDRESS. (a) A foreign
19 cooperative filing with the department a certificate of the
20 appointment and consent of an agent residing in the state, or a
21 certificate of revocation of the appointment of a resident agent,
22 shall pay to the commissioner a fee established by the department by
23 regulation.

24 (b) For filing a statement of change of address of registered
25 agent under AS 10.16.075(a) or resignation under AS 10.16.175(b), the
26 agent shall pay the commissioner a fee established by the department
27 by regulation.

28 Sec. 10.16.733. FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF
29 FOREIGN COOPERATIVE. A foreign cooperative authorized to transact

1 business in the state that wants to withdraw from the state shall pay
2 to the commissioner all biennial taxes and penalties due at the time
3 of desired withdrawal and the fee established by the department by
4 regulation for filing the application for withdrawal.

5 Sec. 10.16.735. FEES ON DISSOLUTION OF DOMESTIC COOPERATIVE. A
6 domestic cooperative shall pay to the commissioner a fee established
7 by the department by regulation for filing the documents required by
8 this chapter for the dissolution of a domestic cooperative.

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

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

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

23 (b) The department may by regulation charge a cooperative sub-
24 ject to this chapter a fixed fee in place of the fees specified in
25 this chapter, and for routine administrative services rendered by the
26 department. The department may not include the fees required under
27 AS 10.16.055 and 10.16.728 in a fixed fee established under this
28 subsection.

29 Sec. 10.16.753. BIENNIAL COOPERATIVE TAX. (a) A domestic

1 cooperative and a foreign cooperative doing business in the state or
2 having its articles of incorporation on file with the department
3 shall, before January 2 of the cooperative's filing year, pay to the
4 commissioner a biennial cooperative tax of \$100 for a domestic
5 cooperative and \$200 for a foreign cooperative. A cooperative that
6 fails to pay the biennial cooperative tax before February 1 of the
7 filing year shall pay to the commissioner a penalty of \$25 for each
8 year or part of a year of delinquency.

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

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

19 Sec. 10.16.755. FAILURE TO PAY TAX OR MAKE REPORT PRECLUDING
20 SUIT BY COOPERATIVE. A domestic cooperative or foreign cooperative
21 may not commence or maintain a suit, action, or proceeding in a court
22 in the state without alleging and proving that it has paid its bienni-
23 al cooperative tax last due and has filed its biennial report for the
24 last reporting period. A certificate of the payment of the biennial
25 cooperative tax and filing of the biennial report is prima facie
26 evidence of the payment of the tax and filing of the biennial report.
27 The commissioner shall issue the certificate or a duplicate for a fee
28 established by the department by regulation.

29 Sec. 10.16.760. COMMISSIONER TO INSTITUTE SUITS TO COMPEL

1 **PAYMENT.** The commissioner may institute a suit in the name of the
2 state to enforce the payment of a biennial cooperative tax.

3 **Sec. 10.16.765. FAILURE TO PAY TAX AS EVIDENCE OF INSOLVENCY.**
4 Failure of a cooperative to pay the biennial cooperative tax for a
5 period of one year after the date payment first becomes due is prima
6 facie evidence of the inability of a cooperative to meet maturing
7 debts and liabilities.

8 **Sec. 10.16.770. PAYMENTS TO BE MADE IN ADVANCE.** A cooperative
9 may pay in advance the fees and charges required by this chapter,
10 including the biennial cooperative tax.

11 **Sec. 10.16.775. ACCOUNTING FOR AND DISPOSITION OF TAXES AND FEES**
12 **PAID.** (a) The department shall account for all fees and taxes paid
13 under this chapter and shall deposit them in the general fund.

14 (b) The commissioner of administration shall separately account
15 for all fees and taxes collected under this chapter that the depart-
16 ment deposits in the general fund. The annual estimated balance in
17 the account may be used by the legislature to make appropriations to
18 the department to carry out the purposes of this chapter.

19 **Sec. 10.16.780. CANCELLATION OF CERTIFICATES ISSUED AND FILINGS**
20 **ACCEPTED.** The commissioner may, within one year after a filing, and
21 after written notice to the cooperative or individual making the
22 filing, cancel a certificate issued or filing accepted under this
23 chapter, on a ground existing at the time of issuance or filing for
24 which the commissioner could have originally refused to issue the
25 certificate or accept the filing. The commissioner shall state the
26 reason for the cancellation in the notice. A cooperative or individu-
27 al may request a hearing before the commissioner within 90 days after
28 receipt of notice of cancellation. Cancellation becomes final if the
29 cooperative or individual does not request a hearing within 90 days

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

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

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

22 ARTICLE 13. MISCELLANEOUS PROVISIONS.

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

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

29 (2) file the exact copy in the commissioner's office;

1 (3) return to the cooperative or its representative the
2 original of the writing attached to the writing that the commissioner
3 may issue.

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

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

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

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

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

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

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

7 ARTICLE 14. GENERAL PROVISIONS.

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

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

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

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

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

29 Sec. 10.16.930. SIGNATURE. A signature includes a mark when the

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

5 Sec. 10.16.935. RULES OF CONSTRUCTION AND INTERPRETATION.

6 Unless the express language or context of a provision of this chapter
7 requires otherwise, the following general provisions and rules of
8 construction govern this chapter:

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

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

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

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

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

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

1 references to accounting items mean items determined on a
2 consolidated basis in accordance with consolidated financial
3 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. 10.16.990. 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 all the members" or "approved by all the
21 members" means approved by the affirmative vote of an absolute
22 majority of the members of a cooperative entitled to vote on the
23 subject matter or the affirmative vote of a greater proportion of the
24 members if the articles or this chapter requires an affirmative vote
25 by a greater proportion;

26 (3) "approval of the board" or "approved by the board"
27 means approved or ratified by the vote of the board or committee
28 authorized to exercise the powers of the board, except for a matter
29 that is not within 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 Mariana Islands, Guam, the

1 Virgin Islands, American Samoa, the Trust Territory of the Pacific
2 Islands, 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. 10.16.995. SHORT TITLE. This chapter may be cited as the
16 Alaska Cooperative Corporations Code.

17 * Sec. 2. AS 16.10.265(a) is amended to read:

18 (a) It is unlawful for an individual while acting as a fish
19 processor or primary fish buyer, or as an agent, director, officer,
20 member, or employee of a fish processor, of a primary fish buyer, or
21 of a cooperative corporation organized under AS 10.16 [AS 10.15] to
22 intentionally or knowingly make an original purchase of fish from a
23 seller who, in violation of AS 16.43, does not hold a landing permit,
24 an entry permit, or an interim-use permit.

25 * Sec. 3. AS 16.10.265(c) is amended to read:

26 (c) The commissioner of revenue shall impose upon a fish proces-
27 sor, primary fish buyer, or cooperative corporation organized under
28 AS 10.16 [AS 10.15], a civil fine equal to the value of fish purchased
29 in violation of this section by (1) the fish processor or primary fish

1 buyer if the fish processor or primary fish buyer is not a corpora-
2 tion; or (2) a director, officer, or employee in a policy-making
3 position of the fish processor, of the primary fish buyer, or of the
4 cooperative corporation. Value is based on the average price paid to
5 fisherman at the time of the violation.

6 * Sec. 4. AS 16.10.268 is amended to read:

7 Sec. 16.10.268. NOTICE OF LIABILITY. (a) The commissioner of
8 labor shall print posters that contain notice of the requirements of
9 AS 16.10.265. The commissioner shall distribute the posters to fish
10 processors, primary fish buyers, and cooperative corporations or-
11 ganised under AS 10.16 [AS 10.15] for the purpose of buying fish.

12 (b) A fish processor, primary fish buyer, or cooperative corpo-
13 ration organized under AS 10.16 [AS 10.15] for the purpose of buying
14 fish shall display in a prominent place on its business premises
15 posters provided by the commissioner of labor under (a) of this sec-
16 tion.

17 * Sec. 5. AS 16.10.296(4) is amended to read:

18 (4) "primary fish buyer" means a person, other than a
19 cooperative corporation organized under AS 10.16 [AS 10.15], engaging
20 or attempting to engage in the business of originally purchasing or
21 buying any fishery resource in intrastate, interstate, or foreign
22 commerce.

23 * Sec. 6. AS 18.55.370 is amended to read:

24 Sec. 18.55.370. USE OF FUNDS. The funds appropriated or made
25 available under AS 18.55.300 - 18.55.470 may be used by the authority
26 to make

27 (1) character loans, not exceeding \$500 for each dwelling,
28 to residents or cooperatives for the improvement, conversion, or
29 construction of dwellings in remote areas for occupancy by the

1 residents or members of the cooperatives;
2 (2) loans for moderate-cost or rental housing facilities
3 and projects to public agencies, or private nonprofit or limited
4 dividend corporations, or private corporations or cooperatives or-
5 ganized under AS 10.16 [AS 10.15.005 - 10.15.600] that are regulated
6 or restricted by the authority (until the termination of all loan
7 obligations to it) as to rents or sales, charges, capital structure,
8 rate of return, and methods of operation to the extent and in the
9 manner that [WHICH] provides reasonable rentals to tenants and a
10 reasonable return on the investment; loans to cooperatives may be made
11 for up to 95 percent of the appraised value of the housing facility.

12 * Sec. 7. AS 34.08.010 is amended to read:

13 Sec. 34.08.010. APPLICABILITY GENERALLY. Except as provided in
14 AS 34.08.030, this chapter applies to each common interest community
15 created within the state after January 1, 1986. The provisions of
16 [AS 10.15 AND] AS 34.07 do not apply to common interest communities
17 created after January 1, 1986. The provisions of AS 10.16 do not
18 apply to common interest communities.

19 * Sec. 8. AS 34.35.391(a) is amended to read:

20 (a) A person who sells fish to a fish processor as defined in
21 AS 16.10.296, or to a primary fish buyer as defined in AS 16.10.296,
22 or to a cooperative corporation organized under AS 10.16 [AS 10.15],
23 and receives a fish ticket or a record of purchase as described in
24 AS 16.05.690 has a lien upon the property of the fish processor,
25 primary fish buyer, or cooperative corporation for the value of the
26 fish.

27 * Sec. 9. AS 44.81.010(a) is amended to read:

28 (a) There is established the Alaska Commercial Fishing and
29 Agriculture Bank. The exercise by the bank of the powers conferred by

1 this chapter is considered to be for a public purpose. Except as
2 otherwise provided in this chapter, and except that any filing fees
3 shall be waived, the bank is subject to the provisions of AS 10.16
4 [AS 10.15] (Alaska Cooperative Corporations Code [CORPORATION ACT]).
5 The bank is exempt from the provisions of AS 06.05 (Alaska Banking
6 Code) in the exercise of powers granted by this chapter.

7 * Sec. 10. AS 44.81.220 is amended to read:

8 Sec. 44.81.220. TRANSITION. Notwithstanding the provisions of
9 former AS 10.15.005, on [UPON] the repurchase of all the nonvoting,
10 preferred shares initially issued by the bank and purchased by
11 agencies of the state, the provisions of this chapter lapse and the
12 bank may proceed to operate solely as a private cooperative
13 corporation under the terms of its bylaws and the provisions of
14 AS 10.16 [AS 10.15.010 - 10.15.600].

15 * Sec. 11. AS 45.50.572(b) is amended to read:

16 (b) AS 45.50.562 - 45.50.596 do not forbid actions or arrange-
17 ments authorized or regulated under the laws of the United States that
18 [WHICH] exempt these actions or arrangements from application of the
19 antitrust laws of the United States or under the following statutes of
20 this state:

- 21 (1) AS 06.05.235;
22 (2) AS 10.16 [AS 10.15]; and
23 (3) AS 31.05.110.

24 * Sec. 12. AS 10.15 is repealed.

25 * Sec. 13. APPLICATION OF PROVISIONS TO DOMESTIC AND FOREIGN COOPERA-
26 TIVES. (a) Except as otherwise expressly provided in this Act, the pro-
27 visions of this Act apply on and after the effective date of this Act to

28 (1) a domestic cooperative corporation organized under former
29 AS 10.15 and existing on the effective date of this Act;

1 (2) a foreign cooperative corporation that is authorized or does
2 business in the state on or after the effective date of this Act;

3 (3) actions by a director, officer, or shareholder of a corpo-
4 ration described in (1) and (2) of this subsection on and after the effec-
5 tive date of this Act.

6 (b) The existence of a cooperative corporation formed or existing on
7 the date of enactment of this Act is not affected by the enactment of this
8 Act or by a change in the requirements for formation of cooperative
9 corporations.

10 (c) Except as otherwise expressly provided in this Act, a provision
11 of this Act governing acts, contracts, or other transactions by a
12 cooperative corporation or its directors, officers, or shareholders applies
13 only to acts, contracts, or transactions occurring on or after the
14 effective date of this Act and the provisions of former AS 10.15 govern
15 acts, contracts, or transactions occurring before the effective date of
16 this Act.

17 (d) Except as otherwise expressly provided in this Act, a vote or
18 consent by the directors or shareholders of a cooperative corporation
19 before the effective date of this Act in accordance with the provisions of
20 former AS 10.15 governs acts, contracts, or transactions occurring before
21 the effective date of this Act.

22 * Sec. 14. EXERCISE OF RESERVE POWER. In enacting AS 10.16.345 in
23 sec. 1 of this Act, it is the intent of the legislature to exercise to the
24 fullest extent the reserve power of the state over cooperative corporations
25 and to authorize a cooperative corporation to amend its articles of
26 incorporation as permitted under AS 10.16.345, enacted by sec. 1 of this
27 Act, regardless of whether the amendment was allowed at the time of the
28 original incorporation of the cooperative.

29 * Sec. 15. APPLICATION TO ARTICLES OF EXISTING COOPERATIVES. (a) The

1 provisions of AS 10.16.085 and 10.16.090 enacted by sec. 1 of this Act
2 relating to the contents of articles of incorporation do not apply to
3 domestic cooperative corporations existing on the effective date of this
4 Act unless and until an amendment of the articles is filed stating that the
5 cooperative corporation elects to be governed by all of the provisions of
6 AS 10.16 enacted by sec. 1 of this Act not otherwise applicable to it under
7 this Act. If the amendment only conforms the statement of purposes and
8 powers in the articles to AS 10.16.085(2) or 10.16.090(1)(E), enacted by
9 sec. 1 of this Act, or deletes references to par value or location of
10 principal office, the cooperative may adopt the amendment by approval of
11 the board of directors of the cooperative corporation; otherwise the
12 cooperative corporation shall approve the amendment as provided by
13 AS 10.16.350 enacted in sec. 1 of this Act.

14 (b) A cooperative organized and existing under the provisions of
15 former AS 10.15 shall comply with AS 10.16.085 and 10.16.090 enacted in
16 sec. 1 of this Act within five years after the effective date of this Act.

17 * Sec. 16. AMENDMENT OF ARTICLES OF INCORPORATION. (a) The affirma-
18 tive vote by shareholders or members required by former AS 10.15.365 -
19 10.15.395 remains in effect after the effective date of this Act for
20 cooperatives existing before the effective date of this Act.

21 (b) Notwithstanding (a) of this section, a cooperative may elect to
22 be governed by the voting provisions of AS 10.16.345 - 10.16.390 enacted by
23 sec. 1 of this Act by amending the cooperative's articles of incorporation
24 under those sections. An election under this subsection requires the
25 affirmative vote of at least two-thirds of the shares entitled to vote
26 under former AS 10.15.365 - 10.15.395.

27 * Sec. 17. INDEMNIFICATION BY A COOPERATIVE CORPORATION. AS 10.16.298
28 enacted by sec. 1 of this Act applies to a proposed indemnification by a
29 cooperative after the effective date of this Act, whether the events on

1 which the indemnification is based occurred before or after the effective
2 date of this Act. A statement relating to indemnification contained in the
3 articles or bylaws of a cooperative on the effective date of this Act may
4 limit the indemnification permitted by AS 10.16.298.

5 * Sec. 18. TENURE OF OFFICERS RESERVED. If a person holds an office
6 under a law repealed by this Act, that person continues to hold the office
7 according to its former tenure if the office is continued by this Act.

8 * Sec. 19. EXISTING ACTION. This Act does not affect a cause of
9 action, liability, penalty, or special proceeding existing, incurred or
10 accrued before the effective date of this Act.

11 * Sec. 20. DISTRIBUTIONS AND REACQUISITION OF SHARES. A cooperative
12 corporation may make a distribution under a contract for the purchase or
13 redemption of shares entered into by the cooperative corporation before the
14 effective date of this Act if the distribution was allowed under former
15 AS 10.15 and other laws in effect at the time the contract was formed.

16 * Sec. 21. AS 10.16.015(a)(1), enacted by sec. 1 of this Act, amends
17 Alaska Rule of Civil Procedure 19 by making all parties to a contract
18 covered by AS 10.15.015(a)(1) indispensable parties to an action under
19 AS 10.15.015(a)(1).

20 * Sec. 22. AS 10.16.173(c), enacted by sec. 1 of this Act, amends
21 Alaska Rule of Civil Procedure 19 by allowing a member of a cooperative who
22 has received a prohibited distribution from the cooperative to join certain
23 other parties in a lawsuit against the member without using the criteria of
24 Alaska Rule of Civil Procedure 19.

25 * Sec. 23. AS 10.16.230, enacted by sec. 1 of this Act, amends Alaska
26 Rule of Civil Procedure 23.1 by changing the requirements for maintaining a
27 derivative action.

28 * Sec. 24. AS 10.16.230, enacted by sec. 1 of this Act, amends Alaska
29 Rule of Civil Procedure 82 by changing the criteria for awarding attorney

1 fees to the plaintiff in a derivative action.

2 * Sec. 25. AS 10.16.260, enacted by sec. 1 of this Act, amends Alaska
3 Rule of Civil Procedure 19 by requiring that a cooperative be made a party
4 to an action to remove a director of the cooperative.

5 * Sec. 26. AS 10.16.335, enacted by sec. 1 of this Act, amends Alaska
6 Rule of Civil Procedure 65 by changing the procedure and criteria for
7 obtaining a temporary restraining order in the event of a breach or
8 threatened breach of a cooperative contract.

9 * Sec. 27. AS 10.16.440(b), enacted by sec. 1 of this Act, amends
10 Alaska Rule of Civil Procedure 4 by allowing a cooperative in an action
11 under AS 10.16.440(b), enacted by sec. 1 of this Act, to serve nonresident
12 dissenting members by certified mail and publication without satisfying the
13 conditions under which certified mail and publication can be used under
14 Alaska Rule of Civil Procedure 4.

15 * Sec. 28. AS 10.16.440(b), enacted by sec. 1 of this Act, amends
16 Alaska Rule of Civil Procedure 19 by making all qualified dissenting mem-
17 bers indispensable parties to an action covered by AS 10.16.440(b).

18 * Sec. 29. AS 10.16.440(e), enacted by sec. 1 of this Act, amends
19 Alaska Rule of Civil Procedure 82 by changing the criteria for awarding
20 attorney fees in an action to determine the value of a dissenting member's
21 interest in a cooperative.

22 * Sec. 30. AS 10.16.483, enacted by sec. 1 of this Act, amends Alaska
23 Rule of Civil Procedure 11 by requiring that a complaint for involuntary
24 dissolution of a cooperative under AS 10.16.483 be verified.

25 * Sec. 31. AS 10.16.483, enacted by sec. 1 of this Act, amends Alaska
26 Rule of Civil Procedure 24 by allowing a member or creditor of a
27 cooperative to intervene in an action for involuntary dissolution of the
28 cooperative under AS 10.16.483.

29 * Sec. 32. AS 10.16.485(b), enacted by sec. 1 of this Act, amends

1 Alaska Rule of Civil Procedure 65 by changing the criteria for enjoining
2 dissolution proceedings under AS 10.16.485.

3 * Sec. 33. AS 10.16.500, enacted by sec. 1 of this Act, amends Alaska
4 Rule of Civil Procedure 4 by changing the requirements for service of
5 process by publication when the commissioner of commerce and economic
6 development brings an action for involuntary dissolution of a cooperative.

7 * Sec. 34. AS 10.16.500(e), enacted by sec. 1 of this Act, amends
8 Alaska Rule of Civil Procedure 4 by changing how long a cooperative has to
9 respond to a complaint in an involuntary dissolution proceeding before the
10 commissioner of commerce and economic development may take a default judg-
11 ment against the cooperative.

12 * Sec. 35. AS 10.16.530, enacted by sec. 1 of this Act, amends Alaska
13 Rule of Civil Procedure 73 by requiring the clerk of the superior court to
14 send a copy of an order dissolving a cooperative to the commissioner of
15 commerce and economic development.

16 * Sec. 36. AS 10.16.555, enacted by sec. 1 of this Act, amends Alaska
17 Rule of Civil Procedure 20 by allowing the cooperative to join a member who
18 received an improper distribution in an action under AS 10.16.555 without
19 regard to the criteria for joinder in Alaska Rule of Civil Procedure 20.

20 * Sec. 37. AS 10.16.810, enacted by sec. 1 of this Act, amends Alaska
21 Rule of Civil Procedure 10 by requiring that certain documents be attached
22 to a complaint that appeals the disapproval of a writing made under AS 10.-
23 16.810 by the commissioner of commerce and economic development.

24 * Sec. 38. AS 10.16.820, enacted by sec. 1 of this Act, amends Alaska
25 Rule of Evidence 803(8) by requiring the court to receive as evidence
26 certain public documents dealing with cooperative corporations.

27 * Sec. 39. AS 10.16.810, as enacted by sec. 1 of this Act, changes
28 Alaska Rule of Appellate Procedure 204 by specifying that certain documents
29 be included in the notice of appeal.

1 * Sec. 40. AS 10.16.810, as enacted by sec. 1 of this Act, changes
2 Alaska Rule of Appellate Procedure 609 by requiring that the appeal be
3 tried de novo by the superior court.