CHAPTER 10-15
COOPERATIVE ASSOCIATIONS

10-15-01. Definitions.

As used in this chapter, unless the context requires otherwise, the term:

1. "Association" includes both cooperatives and foreign cooperatives.
2. "Cooperative" means an association incorporated under this chapter.
3. "Corporation" means all corporations not associations.
4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
   a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
   b. May be directly reproduced in paper form by the recipient through an automated process.
6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
   a. That a document meeting the applicable requirements of this chapter together with the fees provided in section 10-15-54 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
   b. That the secretary of state shall then:
      (1) Record the actual date on which the document is filed, and if different, the effective date of filing; and
      (2) Record the document in the office of the secretary of state.
9. "Foreign cooperative" means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative bases:
   a. Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of eight percent per annum.
   b. The foreign cooperative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members.
   c. The foreign cooperative distributes its proceeds according to either the law governing cooperatives of this state or the law of the state of its incorporation.
10. "Member" means a person who has been qualified and accepted for membership in an association.

10-15-01.1. Legal recognition of electronic records and electronic signatures.

1. For purposes of this chapter:
   a. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
   b. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
   c. If a provision requires a record to be in writing, then an electronic record satisfies the requirement; and
   d. If a provision requires a signature, then an electronic signature satisfies the requirement.
2. The provisions of this chapter relating to electronic records or electronic transactions do not limit or supersede any provision of chapter 9-16.

10-15-02. Purposes.

Cooperatives may be organized under this chapter for any lawful purpose except banking and insurance, but subject to statutes relating to the organization or operation of specified kinds of corporations or associations.

10-15-03. General powers.

Unless otherwise provided by its articles, a cooperative may:

1. Exist perpetually.
2. Sue and be sued.
3. Have a seal.
4. Make contracts, incur liabilities, and borrow money; issue certificates representing indebtedness, or representing equity interests in its assets; acquire property; and dispose of, mortgage, pledge, lease, or otherwise use in any manner any of its property, or any interest therein, wherever situated.
5. Invest its funds, lend money for its purposes, and hold any property as security for repayment.
6. Conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country.
7. Elect officers and appoint agents, define their duties, and fix their compensation.
8. Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.
9. Make donations for charitable, scientific, educational, or religious purposes.
10. Indemnify any present or former director, officer, agent, or manager against actual expenses necessarily incurred in defense of any proceeding in which the person is a party because the person is or was a director, officer, agent, or manager. This subsection does not apply to those proceedings in which the person is adjudged liable for gross or willful negligence or gross or willful misconduct in the performance of duty. Such indemnification is not exclusive of other rights to which the person may be entitled. For purposes of this subsection, "manager" means the person who was the most responsible for carrying out the policies and directives of the officers or the board of directors when the act or omission complained of occurred.
11. Cease its activities and surrender its franchise.
12. Exercise all powers necessary or convenient to effect its purposes.

10-15-04. Incorporators.

Five or more adults, one of whom must be a resident, may form a cooperative by signing, acknowledging, and filing articles of association.

10-15-05. Articles - Provisions.

The articles of association shall set forth:

1. The name of the cooperative.
2. The period of existence, unless perpetual. Cooperatives now organized under the provisions of chapter 4-07 or 10-15 are granted perpetual existence irrespective of the period of existence set forth in articles of incorporation. Any such cooperative may nevertheless amend its articles to provide for a limited period of existence.
3. The purposes for which organized. It is sufficient to state that the cooperative may engage in any activity within the purposes for which cooperatives may be organized, and all such activities shall then be deemed within its purposes, subject to express limitations.
4. Whether the cooperative is organized with or without capital stock.
5. The designation of classes of members, if more than one.
6. The number and par value of shares of each authorized class of stock. If more than one class is authorized, the designation, preferences, limitations, and relative rights of each class shall also be set forth.
7. Which classes of stock are membership stock.

8. As to each class of stock, the rate of dividend, or that the rate of dividend may be fixed by the board, or that no dividend will be paid.
9. Any reservation of a right to acquire or recall any stock.
10. The basis of distribution of assets in the event of liquidation.
11. The complete address where the cooperative's principal office is to be located.
12. If the address of the principal office is not located in North Dakota, the name and complete address in this state of the cooperative's registered agent.
13. The name and address of each incorporator.
14. The names and addresses of at least five incorporators who will act as the temporary board.
15. The effective date of the cooperative if a later date than that on which the certificate of association is issued by the secretary of state. A later effective date may not be later than ninety days after the date on which the certificate of association is issued.

10-15-06. Articles - Scope.

It is not necessary to set forth in the articles of association any of the powers granted by this chapter. The articles may include additional provisions, consistent with law, including provisions which are required or permitted to be set forth in the bylaws. Any provision required or permitted in the bylaws has equal force and effect if stated in the articles. Whenever a provision of the articles is inconsistent with a bylaw, the articles control.

10-15-07. Filing articles of association - Cooperative existence.

An original of the articles of association, duly signed and acknowledged, must be delivered to the secretary of state for filing. The legal corporate existence of a cooperative begins when the certificate of association is issued by the secretary of state or on a later date as specified in the articles of association. The secretary of state shall stamp on the articles of association the date of filing and provide to the cooperative a certificate of the filing.

10-15-08. Certificate of association.

Upon receipt of the articles of association and payment of the required fees, the secretary of state shall issue a certificate of association. The certificate of association shall be conclusive evidence, except as against the state in a proceeding to cancel or revoke such certificate, that all conditions precedent to corporate existence have been met.

10-15-08.1. Cooperative name.

1. The cooperative name:
   a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
   b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.
   c. May not contain a word or phrase indicating or implying it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.
   d. Must be distinguishable in the records of the secretary of state from the name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles of association of a domestic cooperative or the application for authority of a foreign cooperative, a record in compliance with subsection 2 of:
      (1) Another cooperative association;
      (2) A corporation;
      (3) A limited liability company;
      (4) A limited liability partnership;
      (5) A limited partnership;
      (6) A limited liability limited partnership;

(7) A name the right to which is, at the time of organization, in some manner reserved;
(8) A fictitious name registered with the secretary of state as provided in chapter 45-11;
(9) A trade name registered with the secretary of state as provided in chapter 47-25; or
(10) A trademark or service mark registered in the manner provided in chapter 47-22.

2. If the secretary of state determines a cooperative name is indistinguishable from another name for purposes of this chapter, then the cooperative name may not be used unless there is filed with the articles of association or application for authority:
   a. A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, limited liability limited partnership, or limited partnership authorized to do business in this state having an indistinguishable name, or the holder of a reserved name, registered trade name, fictitious name, or trademark or service mark; or
   b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
3. The secretary of state shall determine whether a cooperative name is distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
4. This section and section 10-15-08.2 do not:
   a. Abrogate or limit:
      (1) The law of unfair competition or unfair practices;
      (2) Chapter 47-25;
      (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      (4) Any other rights to the exclusive use of names or symbols; or
   b. Derogate the common law or the principles of equity.
5. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-53.2 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-53.3 or by refiling articles of association, unless the name has been adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.
6. A cooperative that files its articles of association with an effective date later than the date of filing as provided in section 10-15-07 shall maintain the right to the name until the effective date.

10-15-08.2. Reserved name.

1. The exclusive right to the use of a name otherwise permitted by section 10-15-08.1 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-15-54. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a cooperative name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-15-54.
4. The right to the exclusive use of a cooperative name reserved under this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing

with the secretary of state a notice of the cancellation, with the fees provided in section 10-15-54.

5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name which is the same size as the original document and which meets all other requirements of this section.
6. The secretary of state may destroy all reserved name requests and the reserved name requests index one year after expiration.

10-15-09. Organization meetings - Temporary board.

After articles have been filed, an organization meeting of the temporary board shall be held at the call of a majority of the incorporators or of a majority of the temporary directors for the adoption of bylaws, election of temporary officers, and transaction of other business.

10-15-10. Members' first meeting.

The first meeting of the members shall be called by the temporary president or a majority of the temporary directors. Such meeting shall be held as soon as reasonably possible after the organization meeting of the temporary board but not later than six months after filing the articles. Failure to hold such meeting within the time specified does not affect the validity of organization.

10-15-11. Bylaws.

The initial bylaws of a cooperative may be adopted by the temporary board. Thereafter, bylaws may be adopted and amended only by the members, unless the members adopt a bylaw that permits the board to make and amend specified bylaws. Any bylaw adopted or amended by the board shall be reported at the next regular member meeting. Any such bylaw shall be at any time subject to amendment or repeal by the members. Unless the bylaws provide otherwise, any bylaw may be adopted, amended, or repealed by a majority of the members present at a meeting, provided that the members voting must be sufficient in number to constitute a quorum as provided in this chapter or the bylaws.

10-15-12. Principal office - Registered agent.

1. A cooperative shall maintain in this state either:
   a. Its principal office; or
   b. A registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office in this state.
2. The board may establish a registered agent and address of the registered agent or change the location of the principal office by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53 or, if only a change of address of the principal office is required, an amendment need not be filed; however, the change of address of the principal office must then be reported on the annual report filed after the change. If a written statement is filed, the statement shall set forth the name of the cooperative, the name and address of the registered agent as established, and the location of its principal office as changed. For the purposes of this chapter, the post-office address of an existing cooperative becoming subject to this chapter, as set forth in the articles for its business office, shall be considered its registered office and the secretary of the cooperative shall be considered its registered agent unless the articles are amended otherwise.
3. The board may establish a registered agent as provided in chapter 10-01.1 by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53. Such statement shall set forth:
   a. The name of the cooperative; and
   b. The name of the registered agent as provided in chapter 10-01.1, and if a noncommercial registered agent, the address of the registered office.
4. As provided in chapter 10-01.1:
   a. The board may change:
      (1) A registered agent;

(2) The address of a registered agent; or
(3) The name of a registered agent.

b. A registered agent may resign.

10-15-12.1. Change of registered office or registered agent - Change of name of registered agent.

Repealed by S.L. 2007, ch. 99, § 85.

10-15-13. Service of process.

Any process, notice, or demand required or permitted by law to be served upon the cooperative or its directors may be served as provided in chapter 10-01.1.

10-15-14. Promotion expense - Limitation.

No cooperative funds may be used, nor any stock issued, in payment of any promotion expenses in excess of ten percent of the paid-up capital stock or membership fees. No commission or expenses shall be paid on the sale of stock in excess of ten percent of the par value thereof, and the commission or expense shall be added to the selling price of the stock.

10-15-15. Membership.

A cooperative may have one or more classes of members. Provisions for qualifications, requirements, method of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the bylaws. Any person, including a partnership, incorporated or unincorporated association, corporation, or body politic, may become a member in accordance with the bylaws.

10-15-16. Voting.

Except as permitted in this section, no person other than a member may vote at any member meeting.

1. A person who has not fully paid for membership may not vote except as expressly permitted in the bylaws. If the cooperative permits two or more persons to hold one membership, the bylaws may provide how such member vote is to be cast.
2. At any member meeting of a cooperative composed of individual members and member associations, each such individual member or association member shall be entitled to only one vote. In the case of a cooperative composed only of member associations, such member associations shall have only one vote, except that the articles may permit either or both:
   a. A member association to cast additional votes not exceeding a number equal to its membership.
   b. A cooperative whose member-patrons include other associations to base voting in whole or in part on a patronage basis.
3. A member owning membership stock gains no additional vote thereby.
4. Voting by proxy shall not be allowed in any cooperative, except the bylaws may provide for representation of members by delegates apportioned territorially. A delegate shall cast the votes to which members represented by the delegate are entitled.
5. An absent member may submit a signed vote if the absent member has been previously notified in writing of the exact motion or resolution upon which the vote is taken. The bylaws may limit use of signed votes.
6. In the absence of written notice that some person has been designated to represent a member who is other than a natural person, such member may be represented by any of its principal officers. Unless the bylaws provide otherwise, an individual may represent more than one such member, and may also vote as an individual if the individual is a member.
7. The bylaws may set forth provisions, not inconsistent with this chapter, relating to the methods and procedures for voting.

8. Whenever the articles require the vote of a greater proportion of the members than required by this chapter, the articles control.

10-15-17. Member meetings.

1. Unless the bylaws provide otherwise, member meetings shall be held at the principal office or such other place as the board may determine.
2. An annual member meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within six months after the close of the fiscal year at the call of the president or board.
3. Special member meetings may be called by the president, board, or members having one-fifth of the votes entitled to be cast at such meeting.
4. Written notice, stating the place, day, and hour, and in case of a special member meeting the purposes for which the meeting is called, shall be given not less than ten nor more than thirty days before the meeting at the direction of the person calling the meeting.
5. At any meeting at which members are to be represented by delegates, notice to such members may be given by notifying such delegates and their alternates. Notice may consist of a notice to all members or may be in the form of an announcement at the meeting at which such delegates or alternates were elected.
6. Action without a meeting may be taken pursuant to section 10-15-28.

10-15-18. Quorum.

A quorum at a member meeting shall be ten percent of the first one hundred members plus five percent of additional members, present in person or represented by delegates. Unless the bylaws fix a larger number of members to constitute a quorum, a quorum shall never be more than fifty members nor less than five members, or a majority of all members, whichever is smaller. Members represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken. The provisions of this section shall not apply to an electric generation or transmission cooperative as provided in subsection 10 of section 10-13-03 and a quorum for such cooperative at a meeting of its membership shall be as provided in its bylaws.

10-15-19. Notice - Waiver.

Whenever notice is required by this chapter to be given to any person, such notice shall be given either personally or by mail. If mailed, such notice is given when deposited in the United States mail, with postage prepaid thereon, addressed to such person at the person's address as it appears on the records of the cooperative.

A signed waiver is equivalent to personal notice to the person so signing.

10-15-20. Stock - Authorization, control, use, right.

1. A cooperative organized with capital stock may issue the amount of stock stated in its articles. The stock may be divided into two or more classes with the designations, preferences, limitations, and relative rights as stated in the articles, except that:
   a. Stock as such has no voting power.
   b. Stock without par value may not be authorized or issued.
   c. The rate of dividends upon stock may not exceed eight percent of its par value for any year, and dividends may not be cumulative.
2. The articles may require that members own one or more shares of membership stock. Such stock shall be issued or transferred only to a person eligible to become a member and only when such person satisfies other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.
3. Unless the articles provide otherwise, a cooperative may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the cooperative a prior right to acquire any stock offered for

sale, or a right to recall the stock of any stockholder, or both of said rights. The consideration paid for stock recalled by the cooperative shall be its par value and accrued unpaid dividends; provided, that if the book value of such stock is less than the par value, the consideration shall be such book value. The cooperative may set off obligations of the stockholder to it. If the remaining assets would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, no stock shall be acquired, recalled, exchanged, or redeemed for a consideration other than stock or certificates of equity interest of equal or subordinate rank.

4. When stock is acquired, recalled, exchanged, or redeemed by the cooperative, such stock is restored to the status of authorized but unissued stock.
5. Stockholders as such have no pre-emptive right to purchase additional stock.

10-15-21. Stock certificates.

No stock certificate may be issued except upon payment of at least the par value of the stock it represents. No cooperative may issue stock or bonds except for money, labor done, or money or property actually received. All fictitious increases of stock or indebtedness are void. If payment for stock is not in money, the board shall determine the value of the consideration and the determination, if made in good faith, is conclusive.

Each certificate for stock must bear the manual or facsimile signature of a principal officer and must state:

1. The name of the cooperative; the number, par value, and class of the shares represented by the certificate; and whether or not it is membership stock.
2. Any restrictions on the issuance or transfer of the stock, including those provided by law and the articles.
3. If more than one class of stock is authorized, the designation of the several classes and their respective preferences, limitations, and relative rights. In lieu of the full statement, this information may be given in summary form or the certificate may state that the cooperative will, upon request, furnish the information required by this subsection.

10-15-22. Stock subscriptions - Liability.

A subscription for stock of a cooperative is irrevocable for six months unless otherwise provided by the subscription agreement or unless all subscribers consent to the revocation.

A stockholder or subscriber is under no obligation to any person with respect to the stockholder's or subscriber's stock or subscription other than the obligation to pay to the cooperative the full consideration for which such stock was to be issued.

10-15-23. Missing securities or records.

1. When a security issued by a cooperative is missing, the cooperative shall issue a duplicate security if the owner so requests and furnishes an indemnity acceptable to the cooperative.
2. When records showing ownership of securities or apportionment of equity interest in the assets are missing and the information therein contained is necessary to a proposed redemption of the interest, the cooperative may give notice and redeem as follows:
   a. The cooperative shall set aside an amount equal to the value of the interests to be redeemed.
   b. The cooperative shall give notice of such redemption to all owners of interests of which the cooperative has knowledge.
   c. If there are interests, the ownership of which is unknown to the cooperative, it shall publish notice of the redemption at least once a month for four months both in a publication circulated among members of cooperatives in the area, if any, and in a newspaper of general circulation in the area.

d. Any unclaimed outstanding interest represented by the missing records may then be terminated in accordance with section 10-15-34.1.

10-15-24. Liability of cooperative for wrongful transfers of its securities.

1. A cooperative is not liable for acting upon wrongful transfers of its securities unless it has notice that the certificate was not transferred by a proper person or has notice that the transfer was wrongful.
2. As used in this section:
   a. "Proper person" means the registered owner or last prior transferee, whether or not described as fiduciary for another, or the person's authorized agent, legal representative, or successor to the person's interest by operation of law.
   b. "Transfer" includes a redemption or recall of stock.
   c. "Wrongful transfer" means a transfer which is in excess of the authorization or capacity of the transferor, or which is made in breach of the transferor's fiduciary duty.

10-15-25. Directors - Number, election, removal, and vacancies.

1. The business and affairs of a cooperative shall be managed by a board of directors. Every director shall be a member or a representative of a member who is other than a natural person. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified territorial districts.
2. The number of directors shall not be less than five, provided that in a cooperative with less than fifty members, the number of directors shall not be less than three. However, the number of directors required of a cooperative association shall never be greater than the number of members of the association. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws.
3. The directors constituting the temporary board, named in the articles, shall hold office until the first member meeting. At that meeting and thereafter, directors shall be elected by the members at a member meeting in the manner and for the terms provided in the bylaws. If the bylaws provide that directors be from specified territorial districts, the articles may limit voting for any director to members from within the territorial district from which such director is to be elected. Unless the bylaws provide otherwise, a director's term of office shall be one year. Each director shall hold office for the term for which elected and until a successor takes office. The bylaws may permit selection of alternates to take the place of directors absent at a meeting of the board.
4. Unless the bylaws provide otherwise, a director may be removed upon a majority vote of all members.
5. Unless the bylaws provide otherwise, any vacancy existing in the board may be filled until the next annual meeting by appointment by a majority vote of the directors then in office.

10-15-26. Directors - Meetings, quorum, and waiver of notice.

1. Meetings of the board shall be held at such place and upon such notice as is prescribed in or pursuant to the bylaws.
2. Unless a greater number is required in the bylaws, a majority of the directors in office shall constitute a quorum for transaction of business. Unless a greater number is required in the bylaws, an act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board.
3. A signed waiver of notice of a board meeting is equivalent to personal notice to the person so signing. Attendance at a meeting is a waiver of notice of such meeting, except when a director attends the meeting and objects thereat to the transaction of business because the meeting was not lawfully convened.
4. Unless the bylaws provide otherwise, the purposes of any meeting of the board need not be specified in the notice or waiver of notice of such meeting.

10-15-27. Executive committee.

If the bylaws so provide, the board may elect an executive committee to consist of three or more directors. When the board is not in session, such committee shall have all powers of the board except in respect to:

1. Powers reserved by the board to itself.
2. Apportionment or distribution of proceeds.
3. Election of officers.
4. Filling of vacancies in the board.
5. Amendments to the bylaws.

The board may elect other directors as alternates for members of the executive committee.

10-15-28. Action without meeting by directors or members.

Any action which may be taken at a member meeting may be taken without a meeting if a writing setting forth and approving the action taken shall be signed by a majority of the members entitled to vote on such action. Any action which may be taken at a meeting of the directors or executive committee may be taken without a meeting if a writing setting forth and approving the action taken shall be signed by all of the directors or executive committee members entitled to vote on such action. In such cases, such consent shall have the same force and effect as if a meeting had been held.

10-15-29. Officers.

1. The principal officers of a cooperative are a president, one or more vice presidents and a treasurer as prescribed in the bylaws, and a secretary. They shall be elected annually by the board at such time and in such manner as the bylaws provide. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person. If the bylaws provide, the board of directors may also elect from its number a chairman and one or more vice chairmen, in which case the president and vice presidents need not be directors or stockholders.
2. Any other officer may be chosen by the board or as provided in the bylaws.
3. All officers shall have such authority and perform such duties as the bylaws provide or as the board may determine not inconsistent with the bylaws. Any officer may be removed by the board whenever in its judgment the best interests of the cooperative will be served thereby. Election or appointment shall not of itself create contract rights.

10-15-30. Compensation and benefits to directors, officers, and employees.

1. Unless the bylaws provide otherwise, only the members may establish compensation or other benefits for a director, not available generally to officers and employees, for services as a director.
2. Unless the bylaws provide otherwise, for prior or future services of any officer or employee, the board may provide reasonable compensation, pension, bonuses, or other benefits to such officer or employee, and pension or other benefits to family members or beneficiaries of an officer or employee. No officer or employee who is a director may take part in the vote on that person's salary for services rendered the cooperative.

10-15-31. Liability of directors and members.

1. Directors, trustees, and officers, and the manager who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.
2. Members, stockholders, and patrons of a cooperative are neither obligated to pay, nor liable upon, any cooperative obligation.

10-15-32. Disposition of assets - Right to secure debts.

1. Except as authorized by the members, the board may not dispose of all or substantially all of a cooperative's fixed assets. At any meeting the members may authorize the disposition of all or substantially all of a cooperative's fixed assets if:
   a. Notice that such disposition will be considered at such meeting has been given to all persons entitled to vote thereon.
   b. Such disposition has been approved by three-fourths of those voting at the meeting.
2. Unless the bylaws provide otherwise, the board may secure payment of a cooperative's debts by mortgaging the cooperative's rights, privileges, authority and franchises, revenues, and other property.

10-15-33. Apportionment and distribution of proceeds.

At least once annually the directors shall determine and distribute net proceeds as follows:

1. There shall be deducted from total proceeds:
   a. All operating expenses and costs.
   b. The cost of supplies, commodities, equipment, and other property or services procured or sold for patrons.
   c. The cost of services performed for patrons.
   d. All taxes and all other expenses.
   e. Reasonable and necessary reserves for depreciation, depletion, and obsolescence of physical property, doubtful accounts, and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices.
2. The remainder of the total proceeds are net proceeds and shall be distributed and paid as follows:
   a. An amount, not to exceed five percent thereof, may be set aside as an educational fund to be used in teaching or promoting cooperative organization or principles when approved by a majority of the members voting at any annual meeting. Such fund shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative. Such funds shall not be used in any political activity. Such educational funds shall not be paid to any other cooperative, mutual aid corporation, or other general farm organization unless such cooperative, mutual aid corporation, or general farm organization receiving such funds provides in its bylaws or articles that officers and directors shall be elected by secret ballot and that only active or retired farmers and ranchers, their spouses, and their children, are eligible to vote on the affairs of the cooperative, mutual aid corporation, or general farm organization.
   b. A share of the net proceeds may be set aside for or paid to employees. Such amount shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative.
   c. In a cooperative organized with capital stock, such dividend may be paid upon capital stock as is authorized by the articles. No dividend may be paid if the capital is impaired or if payment of such dividend would result in an impairment of capital.
3. Unless the articles or bylaws otherwise expressly provide, none of the remainder of the net proceeds shall constitute income of the cooperative but all thereof shall be distributed and paid to patrons, whether members or not, as follows:
   a. Reasonable reserves for necessary purposes may be created, which shall be credited to patrons in accordance with the ratio which their patronage bears to total patronage.
   b. All the remainder of the net proceeds shall be distributed and paid to patrons in accordance with the ratio which their patronage bears to total patronage.
   c. There shall be no distinction between the persons entitled thereto, but such reserves and distribution may be based upon business done with particular

departments or in particular commodities, supplies, or services, or upon classification of business according to the type or nature thereof.

4. If the articles or bylaws so provide:
   a. Any of the net proceeds may be credited to allocated or unallocated surplus or reserves of the cooperative.
   b. None of the remainder shall constitute income to the cooperative, but all thereof shall be distributed and paid in accordance with the ratio which individual patronage bears to total patronage, either to all patrons, to member patrons only, or to all patrons with nonmembers receiving a lower proportion than members, as the bylaws may provide. There shall be no other distinction between members and nonmembers, but distribution may be based on business done with particular departments, or in particular commodities, supplies, or services, or upon classification of business according to type or nature thereof.
5. The distribution and payment of net proceeds under subsections 3 and 4 may be in cash, credits, stock, membership interests, certificates of interest, revolving fund certificates, letters of advice, or other certificates or securities of the cooperative or of other associations, corporations, or limited liability companies, in other property, or in any combination thereof.
6. All or any part of the net proceeds may be applied to losses incurred in prior years, and the bylaws may also include any reasonable provisions for the apportionment of losses.
7. When authorized by a majority of the members voting at any annual meeting, the directors may provide for the deduction from patronage dividends of membership dues in any other cooperative, mutual aid corporation, or other general farm organization.

10-15-34. Unclaimed distributions, redemptions, or payments.

Repealed by S.L. 1977, ch. 75, § 4.

10-15-34.1. Unclaimed distributions, redemptions, or payments.

1. Any distribution of proceeds or redemption of, or payment based upon, any security by a domestic cooperative, excluding all credit unions, which remains unclaimed six years after the date authorized for retirement or payment in cash or other property, may be forfeited by the board. Any amount forfeited shall revert to the domestic cooperative, as contributed capital, if, at least six months prior to the declared date of forfeiture, notice that such payment is available has been mailed to the last-known address of the person shown by the records to be entitled thereto, or if the address is unknown, notice is published under section 10-15-23.
2. This section applies to all such payments authorized before or after July 1, 1979.

10-15-35. Books and records - Penalty for refusal to produce.

1. A cooperative shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of meetings of its members, board, and executive committee. The cooperative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each and of ownership of equity interests. At any reasonable time, any member or stockholder, or the agent or attorney of either, upon written notice delivered or sent to the cooperative at least one week in advance, may examine any books or records for a purpose that is proper and specified in the notice.
2. In any proceedings, or upon petition, any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the cooperative's books or records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to be brought within this state. The documents must be kept at the place and for the time and purposes the order designates. Any cooperative failing to comply with the order is subject to dissolution, and its directors and officers are guilty of contempt of court.

10-15-36. Annual reports - Filing thereof - Fees - Penalties.

Repealed by S.L. 2015, ch. 86, § 24.

10-15-37. Amendments to articles.

At any member meeting, a cooperative may adopt any amendment to its articles which is lawful under section 10-15-05 if a statement of the nature of the amendment was contained in the notice of the meeting.

An amendment is adopted when approved by members holding a majority of the member votes cast thereon.

10-15-38. Filing amendments - Limitation of action.

1. Amendments to articles must be signed and acknowledged by an officer of the cooperative and set forth:
   a. The name of the cooperative.
   b. The amendments and date of adoption.
   c. The number of members.
   d. The number of members voting for and against the amendment.
2. One copy of the amendment must be retained in the records of the association, and one copy must be filed in the office of the secretary of state.
3. No amendment may affect any existing claim for relief or proceedings to which the cooperative is a party or existing rights of persons other than members or stockholders.
4. No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within two years after the date of filing.
5. A cooperative that amends its name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

10-15-39. Restated articles.

A cooperative may, by action taken in the manner required for an amendment, adopt restated articles which shall state they supersede existing articles and amendments. Restated articles shall meet all requirements of original articles except:

1. Incorporators constituting the temporary board and the names and addresses of the incorporators may be omitted.
2. The location of the principal office, or the complete address of the present registered agent, shall be set forth as of the time of adoption of the restated articles. The name of a new registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state may be set forth in lieu of the location of the principal office.

10-15-40. Amendments by bankruptcy court.

Certified copies of any order of a court of the United States, in proceedings under the bankruptcy laws, shall be filed as an amendment if the order affects an amendment to the articles. The principal officers of a cooperative shall cause each order to be promptly filed after it becomes final.

10-15-41. Merger and consolidation.

If otherwise lawful, any two or more associations may merge or consolidate under this chapter or under the law of the state where the surviving or new association will exist. Before a cooperative may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board or the members for that purpose. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on all members and stockholders of the cooperative. In case of

consolidation, the plan shall also contain the articles of the new association. The members shall approve the plan in the manner provided in section 10-15-37 for amendments to the articles.

10-15-42. Articles of merger or consolidation - Effect.

1. Articles of merger or consolidation shall set forth the approved plan and such other information as is required by section 10-15-38. They shall be signed by two principal officers of each association merging or consolidating, sealed with the seal of each such association if any, and filed as an amendment to the articles. Unless otherwise specified in the plan, the merger or consolidation is effective when the articles are so filed.
2. After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.
3. The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without the creditor's consent.
4. The articles of the surviving association are deemed amended to the extent provided in the plan of merger.

10-15-43. Division of a cooperative.

1. Any cooperative may divide itself into two or more cooperatives under this chapter. A written plan of division shall be prepared by the board or by a committee selected by the board for that purpose. Such plan shall set forth all the terms of the division and the proposed effect thereof on all members and stockholders of the cooperative. The plan shall also contain the articles of each new cooperative being formed and any amendments to the articles of the remaining cooperative.
2. The members shall approve the plan in the manner provided in section 10-15-37 for amendments to articles.
3. Articles of division shall set forth the approved plan and such other information as is required by section 10-15-38 and shall be filed as an amendment to the articles. Each part of the plan which contains the articles of a new cooperative shall be separately filed as articles of association for such new cooperative.

10-15-44. Conversion of corporation.

A corporation may convert itself into a cooperative by adopting an amendment to its articles by which it elects to become subject to this chapter, together with changes in its articles required by this chapter and other desirable changes permitted by this chapter. Such amendment shall be adopted and filed in the manner provided by the law then applicable to the corporation.

10-15-45. Voluntary dissolution.

1. At any member meeting, whether or not a quorum is present, a cooperative may dissolve if:
   a. Notice that a resolution for dissolution will be considered and acted upon has been given to all members and to all other persons entitled by the articles to vote thereon.
   b. Such resolution is adopted by members holding three-fourths of the member votes cast thereon. The articles may permit stockholders to vote on the resolution for dissolution.
2. When the resolution is adopted, either a committee designated by the resolution or the board shall liquidate all assets and pay the net proceeds of such liquidation available for distribution to all persons entitled to the same by law, the articles, and the bylaws.

3. Articles of dissolution shall be signed by a majority of directors or of committee members and shall be sealed with the cooperative's seal, if any. They shall set forth:
   a. The name of the cooperative.
   b. The name and address of each director or committee member.
   c. The date of adoption of the resolution of dissolution.
   d. A statement that all liquidation activities have been completed.
4. The articles of dissolution shall be filed as provided in section 10-15-53, and thereupon the existence of the cooperative ceases.

10-15-46. Involuntary dissolution.

1. A cooperative may be dissolved involuntarily by a decree of the district court where the principal office or registered agent is located in an action commenced by the attorney general when any of the following is established:
   a. The cooperative's certificate of association was procured through fraud.
   b. The cooperative has continued to exceed or abuse the authority conferred upon it by this chapter.
   c. The cooperative failed to comply with a court order for the production of books, records, or other documents of the cooperative as provided in section 10-15-35.
2. If the cooperative cures its defaults under subdivision c of subsection 1 prior to the entry of the court's final decree and pays all penalties and court costs that have accrued, the claim for relief with respect to the defaults so cured will abate.

10-15-47. Liquidation under court supervision.

1. The district court of the county where the principal office or registered agent of the cooperative is located may liquidate the assets and business of such cooperative when an action for that purpose is filed by or on behalf of:
   a. A majority of the designated committee or directors when a resolution is adopted pursuant to section 10-15-45.
   b. The attorney general when a decree of dissolution has been obtained pursuant to section 10-15-46.
   c. A judgment creditor whose execution is returned unsatisfied when it is established that the cooperative is unable to pay its debts as they become due in the usual course of its business.
   d. Any creditor when it is established that the cooperative is dissolving pursuant to section 10-15-45 without making adequate provision for payment of all creditors.
2. Upon filing of any such action, the court acquires exclusive jurisdiction of all matter pertaining to the liquidation of such cooperative and the distribution of its assets to persons entitled thereto and may determine and order paid the expense of such liquidation proceeding. The court has power to issue injunctions, appoint receivers with such duties and powers as the court may direct, and take any other action necessary to the cooperative's liquidation. A receiver appointed in such proceeding has authority to sue and be sued as receiver for the cooperative.
3. The court shall fix the time within which creditors may file claims and shall prescribe the notice to be given to interested persons. Creditors who do not file their claims within the time limit may not participate in any distribution thereafter made, unless the court upon good cause shown extends their time for filing.
4. When the court approves the final distribution of a cooperative's assets, it shall enter a decree in the nature of articles of dissolution which shall be filed in the secretary of state's office.
5. The filing of an action under this section operates as a stay of all other proceedings against the cooperative until such time as the court issues its final judgment or directs otherwise.
6. The court upon proper cause shown may at any time order the proceedings dismissed upon such terms and conditions as the court may impose.

10-15-48. Property omitted from final distribution.

1. Upon filing the articles or decree of dissolution, title to any property omitted from the final distribution vests in the surviving directors or committee members who signed the articles, as trustees. They have all the powers of the cooperative with respect to such property and shall distribute the property or its proceeds to the persons beneficially entitled thereto.
2. When no trustee can be found, the district court of the county where the property is located has power to appoint trustees upon application of any person having an interest in such property or its disposition.
3. Any trustee may at any time make application to the proper district court for supervision of liquidation pursuant to section 10-15-47.

10-15-49. Amounts due unknown persons.

Upon liquidation of a cooperative, the assets distributable to persons who are unknown or cannot be found may be reduced to cash and transferred to the commissioner of university and school lands and shall be treated as abandoned and unclaimed property under the escheat and abandoned property laws of the state.

10-15-50. Survival of remedy after dissolution.

Except as provided in section 10-15-47, the dissolution of a cooperative does not impair any remedy available to or against such cooperative, its directors, stockholders, or members for any claim existing or any liability incurred prior to such dissolution if a proceeding thereon is commenced within two years after the date of filing the articles or decree of dissolution.

10-15-51. Admission of foreign cooperatives.

A foreign cooperative is authorized to do business in this state when the secretary of state issues a certificate of authority. In order to procure such certificate, the foreign cooperative shall make application therefor to the secretary of state and file with a certificate of good standing or certificate of existence duly authenticated by the incorporating officer of the state or country of incorporation. The application must set forth:

1. The name of the cooperative and the state or country under the laws of which it is incorporated.
2. The date of incorporation and the period of duration of the corporation.
3. The address of the principal office of the cooperative.
4. As provided in chapter 10-01.1, the name of the registered agent, and if a noncommercial registered agent, the address of the noncommercial registered agent in this state.
5. The purpose or purposes of the cooperative which it proposes to pursue in the transaction of business in this state.
6. The names and respective addresses of the directors and officers of the cooperative.
7. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such cooperative is entitled to a certificate of authority to transact business in this state.

Such application must be made on forms prescribed by the secretary of state and must be executed by an officer of the cooperative.

10-15-51.1. Foreign cooperative - Name.

A foreign cooperative may apply for a certificate of authority under any name that would be available to a domestic cooperative, whether the name is the name under which it is authorized in its jurisdiction of origin. A trade name must be registered as provided in chapter 47-25 when applying for a certificate of authority under a name different from the name authorized in the jurisdiction of origin.

10-15-52. Foreign cooperative authority.

Upon issuance of the secretary of state's certificate of authority, a foreign cooperative is entitled to all rights, exemptions, and privileges of a cooperative organized for the same purposes under the laws of this state.

10-15-52.1. Merger of foreign cooperative authorized to transact business in this state.

Whenever a foreign cooperative authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is associated, and such cooperative is not the surviving cooperative, within thirty days after such merger becomes effective, the surviving cooperative shall file with the secretary of state a certificate of fact of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected.

10-15-52.2. Amendment to articles of association of foreign cooperatives.

Repealed by S.L. 1993, ch. 88, § 10.

10-15-52.3. Amended certificate of authority.

A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

10-15-52.4. Withdrawal of foreign cooperative.

A foreign cooperative authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign cooperative shall deliver to the secretary of state an application for withdrawal, which shall set forth:

1. The name of the cooperative and the state or country under the laws of which it is associated.
2. That the cooperative is not transacting business in this state.
3. That the cooperative surrenders its authority to transact business in this state.
4. That service of process in any action, suit, or proceeding based upon any claim for relief arising in this state during the time the cooperative was authorized to transact business in this state may thereafter be made on such cooperative by service as provided in section 10-01.1-13.
5. A post-office address to which the secretary of state may mail a copy of any process against the cooperative that may be served on the secretary of state.
6. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign cooperative.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the cooperative by its president or vice president and by its secretary or an assistant secretary or, if the cooperative is in the hands of a receiver or trustee, shall be executed on behalf of the cooperative by such receiver or trustee.

10-15-52.5. Filing of application for withdrawal for foreign cooperatives.

An application by a foreign cooperative for withdrawal must be delivered to the secretary of state. If the secretary of state finds that the application conforms to the provisions of section 10-15-52.4 and that all fees have been paid, the secretary of state shall endorse on the original application the word "filed", and the month, day, and year of the filing and issue a certificate of withdrawal to the cooperative or its representative. Upon the issuance of the certificate of withdrawal, the authority of the cooperative to transact business in this state ceases.

10-15-52.6. Change of registered office or registered agent of foreign cooperative.

As provided in section 10-01.1-11:

1. A foreign cooperative authorized to transact business in this state may change its registered office, its registered agent, or both; and
2. A registered agent of a foreign cooperative may resign.

10-15-52.7. Foreign cooperative - Revocation of certificate of authority.

1. The certificate of authority of a foreign cooperative to transact business in this state may be revoked by the secretary of state if:
   a. The foreign cooperative has failed to:
      (1) Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as provided in chapter 10-01.1;
      (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as provided in section 10-15-52.3;
      (3) File in the office of the secretary of state any merger as provided in section 10-15-52.1;
      (4) File in the office of the secretary of state an application for a certificate of withdrawal of its authority as provided in section 10-15-52.5 when the cooperative's existence has expired or the cooperative has been dissolved in the jurisdiction of origin; or
   b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign cooperative pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-15-53.2, no certificate of authority of a foreign cooperative may be revoked by the secretary of state unless:
   a. The secretary of state has given the foreign cooperative at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign cooperative fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
   b. During the sixty-day period, the foreign cooperative has failed to:
      (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      (2) File any amendment;
      (3) File any merger;
      (4) File an application for certificate of withdrawal; or
      (5) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign cooperative to transact business in this state ceases and the secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign cooperative failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign cooperative.

10-15-53. Secretary of state - Filing documents - Effective date.

1. A record authorized or required to be filed with the secretary of state under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees required by section 10-15-54 have been paid, then, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record, and for all records, except annual reports, send an image of the filed record to the person who filed the record.
2. Upon request and payment of the fee provided in section 10-15-54, the secretary of state shall send to the requester a certified copy of a requested record.
3. Except as otherwise provided in this chapter, a record filed with the secretary of state under this chapter may specify a delayed effective date that is no later than ninety days from the date of filing. If the record does not specify a delayed effective date, a record filed with the secretary of state is effective on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.

10-15-53.1. Secretary of state - Annual report to the secretary of state.

1. A cooperative and a foreign cooperative shall file an annual report signed by a principal officer or the general manager setting forth:
   a. Its name and complete address of its principal place of business.
   b. The names and addresses of its directors and principal officers.
   c. In the case of a domestic cooperative, a statement, by class and par value, of the amount of stock it has authority to issue and the amount issued.
   d. A statement as to the general type of business in which engaged during the prior year.
2. The annual report must be made on forms prescribed by the secretary of state and the information contained in the report must be given as of the date of the execution of the report. If the cooperative or foreign cooperative is in the hands of a receiver or trustee, the annual report must be signed on behalf of the cooperative or foreign cooperative by the receiver or trustee.
3. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
4. Except for the first annual report, the annual report of a cooperative or foreign cooperative must be delivered to the secretary of state with the fees provided in section 10-15-54 before April first of each year. The first annual report of a cooperative must be delivered before April first in the year following the calendar year of the effective date stated in the articles of association, and the first annual report of a foreign cooperative must be delivered before April first of the year following the calendar year in which the certificate of authority was issued by the secretary of state. The secretary of state shall file the report if the report conforms to the requirements of subsections 1 and 2.
   a. If the report does not conform to those requirements, the report must be returned to the cooperative or foreign cooperative for any necessary corrections.
   b. If the report is filed before the deadlines provided in this section, any penalty for the failure to file a report within the time provided does not apply if the report is corrected to conform to the requirements of subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for corrections.
5. After May first, the secretary of state shall notify any cooperative or foreign cooperative failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and may be dissolved or revoked as provided in section 10-15-53.2.

10-15-53.2. Secretary of state - Involuntary dissolution - Revocation of certificate of authority.

1. With respect to involuntary dissolution of a cooperative by the secretary of state:

a. A cooperative may be involuntarily dissolved by the secretary of state if:
   (1) The cooperative has failed to:
      (a) File with the secretary of state its annual report or any other record required to be filed with the secretary of state under this chapter together with the fees provided in section 10-15-54; or
      (b) Appoint and maintain a registered agent and registered office as provided in section 10-15-12; or
   (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the cooperative pursuant to this chapter.

b. A cooperative that fails to file its annual report, together with the fees provided in section 10-15-54, before April first of the year following the year it is found to be not in good standing ceases to exist and is considered involuntarily dissolved by operation of law.
   (1) The secretary of state shall note the dissolution of the certificate of incorporation of the cooperative on the records of the secretary of state and shall give notice of the action to the dissolved cooperative.
   (2) Notice by the secretary of state must be mailed to the cooperative to its principal office.
   (3) The decision of the secretary of state that the cooperative has been involuntarily dissolved under this subsection is final.
   (4) A cooperative that was dissolved for failure to file an annual report may be reinstated as provided in subsection 1 of section 10-15-53.3.

c. Except for dissolution of a cooperative for failure to file the annual report as provided in section 10-15-53.1, a cooperative may not be dissolved by the secretary of state unless:
   (1) The secretary of state has given the cooperative not less than sixty days' notice by mail addressed to its principal office; and
   (2) During the sixty-day period, the cooperative has failed to:
      (a) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      (b) File any other required record; or
      (c) Correct the misrepresentation.

d. Upon expiration of sixty days after the mailing of the notice, the existence of the cooperative ceases. The secretary of state shall issue a notice of dissolution and shall mail the notice to the cooperative to its principal office.

2. With respect to the revocation of a certificate of authority of a foreign cooperative by the secretary of state:
   a. The certificate of a foreign cooperative to transact business in this state may be revoked by the secretary of state if:
      (1) The foreign cooperative has failed to:
         (a) File with the secretary of state its annual report or any other record required to be filed with the secretary of state under this chapter together with the fees provided in section 10-15-54;
         (b) Appoint and maintain a registered agent and registered office as provided in section 10-15-12;
         (c) File with the secretary of state any amendment to its application for a certificate of authority as provided in section 10-15-52.3;
         (d) File with the secretary of state any merger as provided in section 10-15-52.1; or
         (e) File with the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-15-52.4 when the existence of the foreign cooperative has expired or the foreign cooperative has been dissolved in the jurisdiction of the foreign cooperative; or

(2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign cooperative pursuant to this chapter.

b. A foreign cooperative that fails to file its annual report, together with the fees provided in section 10-15-54, before April first of the year following the year it is found not to be in good standing forfeits its authority to transact business in this state and its certificate of authority is considered revoked by operation of law.

(1) The secretary of state shall note the revocation of the certificate of authority of the foreign cooperative on the records of the secretary of state and shall give notice of the action to the foreign cooperative.

(2) Notice by the secretary of state must be mailed to the last registered agent of the cooperative at its last registered office in this state or, if the cooperative failed to maintain a registered agent in this state, mailed to its principal office.

(3) The decision of the secretary of state that a certificate of authority must be revoked under this subsection is final.

(4) A foreign cooperative for which authority was forfeited by, and certificate of authority was revoked by the secretary of state for failure to file an annual report may be reinstated as provided in subsection 1 of section 10-15-53.3 and may appeal as provided in subsection 2 of section 10-15-53.3.

c. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-15-53.1, a certificate of authority of a foreign cooperative may not be revoked by the secretary of state unless:

(1) The secretary of state has given the foreign cooperative not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the cooperative failed to maintain a registered agent in this state, the notice must be mailed to its principal office; and

(2) During the sixty-day period, the foreign cooperative has failed to:

(a) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;

(b) File any amendment;

(c) File any merger;

(d) File an application for withdrawal;

(e) File any other required record; or

(f) Correct the misrepresentation.

d. Upon expiration of sixty days after the mailing of the notice, the authority of the foreign cooperative to transact business in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign cooperative failed to maintain a registered agent in this state, the notice must be mailed to its principal office.

3. If the cooperative or foreign cooperative files its annual report after the notice with the fee provided for in section 10-15-54 for late filing, the secretary of state shall restore the certificate of incorporation or authority to good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting the cooperative or foreign cooperative except those incident to its dissolution or withdrawal.

10-15-53.3. Secretary of state - Reinstatement following an involuntary dissolution or revocation of authority - Appeals.

1. With respect to reinstatement following involuntary dissolution or revocation of authority:

a. A cooperative dissolved for failure to file an annual report or a foreign cooperative for which authority was forfeited by failure to file an annual report may be reinstated by filing the most recent past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee. The fees

must be paid and the report filed within one year following the date of the involuntary dissolution or revocation. Reinstatement under this section does not affect the rights or liability of any person for the time from the dissolution or revocation to the reinstatement.

b. With respect to a reinstatement that is more than one year after involuntary dissolution or revocation:
   (1) If the secretary of state dissolves a cooperative or revokes the certificate of authority to transact business in this state of any foreign cooperative, under the provisions of section 10-15-53.2, the cooperative or foreign cooperative may appeal to district court in the judicial district serving Burleigh County for reinstatement by filing with the clerk of court a petition, including:
      (a) A copy of the articles of incorporation of the cooperative and a copy of the notice of the involuntary dissolution given by the secretary of state; or
      (b) A copy of the certificate of authority of the foreign cooperative to transact business in this state and a copy of the notice of revocation given by the secretary of state.

      The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action as the court may deem proper.
   (2) If the court order sought is one for reinstatement of a cooperative that has been dissolved as provided in subsection 1 of section 10-15-53.2, or reinstatement of the certificate of authority of a foreign cooperative that has been revoked as provided in subsection 2 of section 10-15-53.2, together with any other actions the court deems proper, any order that reverses the decision of the secretary of state shall require the cooperative or foreign cooperative to:
      (a) File the most recent past-due annual report;
      (b) Pay the fees to the secretary of state for all past-due annual reports as provided in subsection 10 of section 10-15-54; and
      (c) Pay the reinstatement fee to the secretary of state as provided in subsection 10 of section 10-15-54.
   (3) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

c. Reinstatement returns the cooperative to active status:
   (1) As of the date of the reinstatement:
      (a) In the office of the secretary of state; and
      (b) As to persons adversely affected by the reinstatement; and
   (2) As of the date of the involuntary dissolution or revocation:
      (a) Validates contracts or other acts within the authority of the articles, and the cooperative is liable for those contracts or acts; and
      (b) Restores to the cooperative all assets and rights of the cooperative and its members to the extent they were held by the cooperative and its members before the involuntary dissolution or revocation occurred, except to the extent that assets or rights were affected by acts occurring after the involuntary dissolution or revocation, sold, or otherwise distributed after that time.

d. Reapplication for any license or permit by a reinstated cooperative must be pursuant to the law governing the issuance of the license or permit.

e. Appeals from all final orders and judgments by the district court under this subsection may be taken as in other civil actions.

2. With respect to appeals of the rejection by the secretary of state of any record required to be approved by the secretary of state before the record may be filed:
   a. The secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.

b. Within thirty days after the service of the notice of denial, the cooperative or foreign cooperative may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
c. The matter must be tried de novo by the court.
d. The court either shall sustain the action of the secretary of state or direct the secretary of state to take the action as the court may deem proper.
e. Appeals from all final orders and judgments by the district court under this subsection may be taken as in other civil actions.

10-15-54. Fees.

No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, twenty dollars.
3. Filing restated articles of association, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles or decree of dissolution, twenty dollars.
6. Receiving service of any process, notice, or demand, the fee provided in section 10-01.1-03.
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, forty dollars.
8. For filing a name reservation, a transfer of name reservation, a cancellation of name reservation, or a consent to use of name, ten dollars.
9. For filing a change of registered office or change of registered agent, or both, the fees provided in section 10-01.1-03.
10. Filing an annual report of a cooperative or foreign cooperative, twenty dollars.
    a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
        (1) After the date provided in subsection 4 of section 10-15-53.1, five dollars.
        (2) After the notice provided in subsection 5 of section 10-15-53.1, ten dollars.
        (3) After the dissolution of a cooperative or the revocation of the certificate of authority of a foreign cooperative, a reinstatement fee of thirty dollars.
    b. Fees paid to the secretary of state under this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because the report lacks information required by section 10-15-53.1, or the annual report lacks sufficient payment as required by this subsection.
11. Filing any other document or statement, or issuing any other certificate, ten dollars.
12. Filing a statement of correction, twenty dollars.
13. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
14. Furnishing a copy of any record, or paper relating to a cooperative or a foreign cooperative:
    a. The fee provided in section 54-09-04 for copying a record; and
    b. Five dollars for a search of records.
15. Furnishing a certificate of good standing, existence, authorization, or certifying any copy:
    a. Fifteen dollars; and
    b. Five dollars for a search of records.

10-15-55. Defense of ultra vires.

No act and no transfer of property to or by a cooperative is invalid because made in excess of the cooperative's power, except that such lack of power may be asserted in a proceeding by:

1. A member, stockholder, or director against the cooperative to enjoin any act or any transfer of property to or by the cooperative.
2. The cooperative or its legal representative against any present or former officer or director.
3. The attorney general against the cooperative in an action to dissolve the cooperative or to enjoin it from the transaction of unauthorized business.

10-15-56. Member or stockholder derivative actions.

1. No action may be instituted or maintained in the right of any association by a member or stockholder unless the member or stockholder:
   a. Alleges in a complaint that the person was a member or registered stockholder when any part of the transaction of which the person complains took place, or that the person's stock thereafter devolved upon the person by operation of law from a stockholder at such time.
   b. Alleges in a complaint with particularity the person's efforts to secure from the board such action as the person desires. The person shall allege further that the person has either informed the association or board in writing of the ultimate facts of each claim for relief against each director or that the person has delivered to the association or board a copy of the complaint which the person proposes to file. The person shall state the reasons for the person's failure to obtain such action or the reasons for not making such effort.
2. The action shall not be dismissed or compromised without the approval of the court.
3. If anything is recovered or obtained as the result of the action, whether by means of a compromise and settlement or by a judgment, the court may, out of the proceeds of the action, award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorney's fees, and may direct the plaintiff to account to the association for the remainder of such proceeds.
4. In any action brought in the right of an association by less than three percent of the members or by holders of less than three percent of any class of stock outstanding, the defendants may require the plaintiff to give security for the reasonable expenses of defending such action, including attorney's fees. The amount of such security may thereafter be increased or decreased in the discretion of the court upon showing that the security provided is or may be inadequate or is excessive.

10-15-57. Forms to be furnished by secretary of state.

The secretary of state may provide forms for any document to be filed in the secretary of state's office under this chapter.

10-15-57.1. Correcting a filed record.

With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
   a. Must:
      (1) Be signed by:
         (a) The person that signed the original record; or
         (b) By a person authorized to sign on behalf of that person;
      (2) Set forth the name of the cooperative that filed the record;

(3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
(4) Identify the inaccuracy, error, or defect to be corrected; and
(5) Set forth a statement in corrected form of the portion of the record to be corrected.

b. May not revoke or nullify the record.

3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
   a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
   b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed on the date the original record was filed as to all other persons and for all other purposes.

10-15-57.2. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, may be taken and received in all courts, public offices, and official bodies as evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to a cooperative which would not appear from a certified copy of any of the foregoing records or certificates, may be taken and received in all courts, public offices, and official bodies as evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

10-15-58. Use of term cooperative - Penalty for improper use.

1. The term "cooperative", or any variation thereof, may be used either by any association organized under this chapter or under other laws of this state relating to cooperative corporations.
2. No other person may use the term "cooperative", or any variation thereof, as part of the person's corporate or other business name or title, nor may any other person in any other manner represent that that person is a cooperative. A violation of this subsection is an infraction.
3. Any cooperative may obtain an injunction against acts prohibited by subsection 2 without showing any damage to itself.

10-15-59. Associations not in restraint of trade.

No association organized under this chapter shall be deemed to be a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. The marketing contracts or agreements between any such association and its members, or any agreements authorized in this chapter, shall not be considered illegal nor in restraint of trade.

10-15-60. Application of chapter.

All foreign and domestic cooperatives are governed by the provisions of this chapter except that they shall not apply to cooperatives governed by title 26 or by chapters 6-06, 10-12, 10-13, 36-08, or 49-21, except when the laws governing such associations clearly adopt or refer to any provisions of this chapter or refer to provisions of the general law governing cooperatives.

10-15-61. Short title.

This chapter may be cited as the North Dakota Cooperative Association Act.

10-15-62. Secretary of state - Confidential records.

Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.