

**ASSEMBLY BILL 327**

1 (a) 3., 181.1506 (2) (a) 7., 181.1506 (3) (a), 182.01 (3) (intro.), 182.017 (1),  
 2 182.025 (1), 183.0103 (2) (a), 183.0103 (2) (b), 183.0103 (2) (c), 183.0103 (4) (a),  
 3 196.01 (5) (b) 1., 196.01 (10), 196.02 (2), 196.025 (5) (ag), 196.09 (1), 196.11 (2),  
 4 196.20 (3), 196.20 (4) (a) 2., 196.205 (1m), 196.205 (2), 196.26 (4) (a), 196.28 (4),  
 5 196.37 (4), 196.374 (1) (c), 196.378 (1) (k), 196.485 (1) (b), 196.49 (2), 196.491 (1)  
 6 (bm), 196.491 (4) (b) 1., 196.495 (1m) (intro.), 196.495 (2), 196.495 (2m), 196.495  
 7 (3), 196.495 (4), 196.495 (5), 196.495 (6), 196.495 (7), 196.50 (2) (b), 196.52 (9)  
 8 (g), 196.595 (1) (c), 196.605 (1), 196.795 (7) (a) 1. b., 196.796 (1) (hm), 196.807  
 9 (1) (a), 196.857 (1g) (c), 196.857 (2m), 199.03 (12), 201.01 (3) (d), 223.105 (1) (b),  
 10 231.35 (2) (b), 234.59 (1) (d) 3., 234.622 (7), 285.41 (1) (f), 289.41 (1) (d), 346.50  
 11 (1) (c), 347.26 (9), 421.202 (3), 421.301 (28), 445.01 (8), 445.12 (3) (a), 551.22  
 12 (12), 560.16 (1) (c) (intro.), 560.17 (1) (b), 560.9801 (1) (b), 560.9801 (3) (a) 7.,  
 13 560.9804 (2) (e), 609.01 (2), 609.01 (4), 616.09 (1) (c) 1., 706.05 (2m) (b) 2., 706.09  
 14 (3) (a), 815.18 (2) (c), 893.28 (2), 893.33 (5), 946.69 (1) (c) and 990.01 (14); **to**  
 15 **repeal and recreate** 59.43 (2) (ag) 1.; and **to create** chapter 193 of the  
 16 statutes; **relating to:** unincorporated cooperative associations, granting  
 17 rule-making authority, and providing a penalty.

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**Analysis by the Legislative Reference Bureau**

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ANALYSIS

This bill authorizes the creation of a new type of business organization, called an unincorporated cooperative association (UCA). Significant provisions of the bill include:

**ORGANIZATION**

**Purpose**

The bill allows a UCA to be organized to market, process, or otherwise change the form or marketability of products (including crops, livestock, and other agricultural products); to manufacture products; to accomplish other purposes that are necessary or convenient to facilitate the production or marketing of products; and to accomplish other purposes that are related to the business of the UCA. In addition,

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a UCA may be organized to provide products, supplies, and services to its members or to accomplish any other lawful purpose.

***Organizers***

A UCA may be organized by one or more organizers, who must be individuals over the age of 18. The organizers may act for themselves as individuals or as the agents of other entities. If the UCA's initial board of directors (board) is not named in the UCA's articles of organization (articles), the organizers may elect the initial board or act as directors with all of the powers, rights, duties, and liabilities of directors, until the initial board is elected or until a contribution is accepted, whichever occurs first.

***Articles***

The organizers of a UCA must file articles with the Department of Financial Institutions (DFI). The bill requires certain information to be listed in the articles. Upon proper filing of the articles, the UCA is chartered as a separate legal entity and it is presumed that the UCA is properly organized. After the articles are filed, the organizers or the board named in the articles, as applicable, must hold an organizational meeting at the call of a majority of the organizers or of the board, as applicable, or perform other acts necessary for the purposes of transacting business and completing the organization of the cooperative. Under the bill, three days notice is required before any such meeting.

The articles of a UCA may be amended as specified in the bill. Generally, the bill requires the board to adopt a resolution stating the text of the proposed amendment and requires a majority of a quorum of members (or greater number, if specified in the articles or bylaws) to approve the amendment. If the UCA has no members with voting rights, the articles may be amended by majority vote of the board.

***Conversion***

A UCA may also be organized by converting from another form of business entity into a UCA under a procedure specified in the bill. Generally, to convert into a UCA, a business entity must amend its organizational documents as necessary and file amended articles with DFI.

***Name of UCA***

The name of a UCA must be distinguishable from the name of all business entities authorized to do business in this state and all names the right to which are, at the time of organization, reserved or provided for by law. The bill also prohibits any business entity from using the term "cooperative" as part of its business name or title, or representing itself as a cooperative, in this state unless the business entity is a UCA, a cooperative organized under current law, or a cooperative organized under a federal law or a law of another state that is consistent with the laws governing a UCA or a cooperative organized under current law.

***Registered office and agent***

The bill requires a UCA to establish and maintain a registered office and registered agent in this state. The bill specifies how the initial registered office and

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agent of a UCA is designated, how a registered office or agent may be changed, and how a registered agent may resign.

***Bylaws***

The bill requires a UCA to have bylaws, which must be adopted before any distributions to members or, if the articles or bylaws provide that rights of certain contributors will be determined in the bylaws, before the acceptance of any such contribution. Under the bill, the bylaws must contain provisions governing the UCA's business affairs and structure; the qualifications, classification, rights, and obligations of members; and the classifications, allocations, and distributions of membership interests which are not otherwise provided in the articles or by statute. The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that is not inconsistent with applicable law or the articles. In addition, the bill specifies certain information that must be listed in the bylaws if the information is not stated in the articles. This information includes, among other things, provisions concerning classes of member interests, rights to share in profits or distributions of the UCA, voting and governance rights, transfers of member interests, and the election and operation of the board.

With certain exceptions, the bylaws may be adopted or amended by the board. In addition, the bill specifies a procedure by which the members may adopt or amend bylaws at a regular or special members' meeting. The board may not amend the bylaws if the articles, the bylaws, or the statutes reserve the power exclusively to the members; the bylaws expressly prohibit the board from doing so; or the amendment would fix a greater quorum or voting requirement for members or would amend such a provision adopted by members as provided under the bill. Furthermore, a bylaw that fixes a greater quorum or voting requirement for the board generally may be amended only by the members, if the bylaw was originally adopted by the members, or by either the members or the board, if the bylaw was originally adopted by the board.

Unless the articles or bylaws provide otherwise, the bill also allows the board to adopt emergency bylaws for certain purposes if a quorum of the directors cannot be obtained because of a catastrophic event.

***Required records***

The bill requires a UCA to keep a permanent record of the minutes of all meetings of its members and of the board, all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and all waivers of notices of meetings of the members and of the board. In addition, a UCA must maintain appropriate accounting records. The bill also specifies certain records that a UCA must keep at its principal office. With certain exceptions, the bill allows the board to determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and, policies relating to the confidentiality, disclosure, inspection and copying of records.

**POWERS**

The bill allows a UCA to do all of the following:

- 1) Perform every act necessary or proper to the conduct of its business or the accomplishment of the purposes of the UCA.

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2) Exercise all rights, powers, and privileges granted to a cooperative organized under current law, except those that are inconsistent with an express provision of the law governing the UCA.

3) Buy, sell, or deal in its own products or the products of any other person and negotiate the sales price of any product the UCA sells.

4) Enter into or become a party to a contract for the UCA or for the UCA's individual members or patrons or between the UCA and its members.

5) Acquire and hold, lease, mortgage, encumber, sell, exchange and convey real and personal property as the business of the UCA may require.

6) Act as a trustee or in any fiduciary capacity for any purpose not inconsistent with the purposes of the UCA.

7) Issue bonds and other debt instruments, borrow money, grant security interests, and invest.

8) Make certain advances to members or patrons.

9) Accept donations.

10) Loan money to and borrow money from its members.

11) Pay pensions, retirement benefits, and compensation for past services to or for the benefit of the cooperative.

12) Establish and carry out employee benefit plans and provisions for the benefit of any or all of its and its affiliates' officers, managers, directors, governors, employees, and agents. If an affiliate is another UCA, the UCA may establish and carry out provisions for the benefit of the affiliate's members who provide services to the UCA, and the families, dependents, and beneficiaries of any of them.

13) Indemnify a fiduciary of any employee benefit plan or provision described in item 12), above, and purchase insurance for or on behalf of such a fiduciary.

14) Purchase certain types of insurance.

15) Acquire, hold, or dispose of ownership interests in other business entities.

16) Organize business entities.

17) Acquire ownership interests in or organize a federation of organizations conducting business on a cooperative plan under the laws of any state, an entity that is organized for the purpose of forming a district, state, or national marketing, sales, or service agency, or an entity that is organized for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

18) Effect the forfeiture to the UCA of unclaimed allocations, distributions, or credits, unclaimed stock issued by the UCA, and unclaimed deposits held by the UCA, if certain conditions are met. A UCA must use any such forfeited money within one year after the date on which the funds are forfeited for providing scholarships or educational loans to students or for charitable purposes, as determined by the board.

19) Exercise certain emergency powers in anticipation of or during any time that a quorum of the directors cannot be obtained because of a catastrophic event.

20) Enter into a marketing contract with its patron member or patron, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a specified area exclusively to or through the cooperative or a facility established by

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the cooperative. The bill specifies who has title to a commodity or product subject to such a contract, the permissible term of such a contract, and certain remedies that are available to a UCA for breach or anticipated breach of such a contract. The bill also includes a civil and a criminal penalty for knowingly inducing or attempting to induce a patron member or patron to breach such a contract or for maliciously and knowingly publishing false reports about the finances or management of the UCA.

21) Provide indemnification concerning certain securities laws claims.

**DIRECTORS AND OFFICERS*****Board authority and selection of directors***

A UCA under the bill is governed by its board, which is required to take all action for and on behalf of the UCA except those actions reserved or granted to members. The bill specifies that each director has a fiduciary duty to represent the best interests of the cooperative and all members collectively. The voting authority of the directors may be allocated according to allocation units or equity classifications of the UCA if the directors elected by patron members have at least 51 percent of the voting authority on general matters of the UCA or the directors elected by patron members do not have minority voting authority on general matters of the UCA.

The board must have at least five directors, except that the board of a UCA with 50 or fewer members may have as few as three directors. Generally, unless the directors represent districts or units, the directors must be elected at a regular members' meeting. Unless the articles or bylaws so provide, directors may not be elected through the use of any system of voting that permits a voter to allocate multiple votes among eligible candidates.

A majority of the directors must be members and a majority of the directors must be elected exclusively by patron members, unless otherwise provided in the articles or bylaws. Any member that is a business entity or other organization may nominate one or more individuals as candidates for election as a director, unless the articles or bylaws provide otherwise. The bill also authorizes the patron members to elect an outside director who is an expert in financial matters but who has no financial interest in the UCA. An outside director may not receive any compensation other than authorized per diem reimbursements and, unless the articles or bylaws provide otherwise, may not vote. For other directors, the board may fix a rate of compensation, subject to any limits under the articles or bylaws.

The bill specifies how a director may be removed from office, either by the board or by the members, and the manner in which a replacement director may be elected. The bill also permits a director to resign. Furthermore, the bill provides a method for filling any vacancy in the office of director. The method varies depending upon whether the office is filled solely by election of the patron members.

***Board meetings***

In addition to a typical board meeting, the bill allows a UCA to hold a "virtual board meeting" by utilizing a means of communication through which the directors may simultaneously hear each other during the meeting. Also, a director may participate in any meeting of the board at which other directors are physically present by utilizing a means of communication through which the director, all other directors so participating, and all directors physically present may simultaneously

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hear each other during the meeting. To the extent permitted in the articles or bylaws, the bill also allows a director to give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, the writing does not constitute presence for purposes of determining the existence of a quorum. However, if the proposal to be acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or opposed, the writing must be counted as the vote of the director as though the director was present at the meeting.

With certain exceptions, unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings, at least three days' notice to all directors as specified in the bill. If the day, time, and place of a board meeting are provided in the articles or bylaws, or announced at a previous board meeting, no notice of the meeting is required. Also, notice that an adjourned meeting will be reconvened need not be given other than by announcement at the meeting at which adjournment is taken. The bill also permits a director to waive notice of a board meeting by giving a waiver of notice before, at, or after the meeting. In addition, attendance by a director at a board meeting is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

The bill specifies that, unless otherwise provided in the articles or bylaws, a majority of the directors currently holding office is a quorum for the transaction of business. Any director who objects at the beginning of a board meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection is not considered as present at the meeting for purposes of determining whether a quorum is present. In the absence of a quorum, a majority of the directors present may adjourn a meeting until a time when a quorum is present. In addition, if a quorum is present when a meeting is properly convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than a quorum.

With certain exceptions, the board may take action only by the affirmative vote of a majority of directors present at a meeting at the time the action is taken or a majority of the minimum number of directors that would constitute a quorum for the transaction of business at the meeting. In the latter case, if the action is taken with the authorization of less than all directors, the authorizing directors must ensure that all other directors are notified immediately of the action and its effective date. Failure to provide the notice does not invalidate the action, but any director who did not authorize the action may not be held liable as a result of the action.

As noted, there are certain exceptions to the affirmative vote requirement. Any director who objects at the beginning of a board meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of the majority vote requirement. Also, unless the articles or

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bylaws provide otherwise, any action required or permitted to be authorized at a board meeting may be authorized without a meeting if that action is authorized by all directors and is evidenced by one or more written statements, signed by each director, describing and consenting to the action. Furthermore, the articles or bylaws may allow the board to take any other action on behalf of the cooperative, other than an action requiring member approval, without a board meeting, if the action is authorized by the number of directors that would be required to approve the action at a board meeting at which all directors were present and if the action is evidenced by one or more written statements as described above.

***Board authority over UCA property***

The bill allows the board to sell, lease, transfer, or otherwise dispose of all or substantially all of the UCA's property in the usual and regular course of the UCA's business. In addition, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the UCA's property not in the usual and regular course of the UCA's business if the UCA's accountant has given the board an opinion that the UCA cannot continue as an ongoing business and is under financial duress, the board has given notice to the members of the impending or potential disposition prior to the disposition, and the board has determined that failure to proceed with the disposition would be adverse to the interests of the members and the UCA.

Under the bill, the board may grant a security interest in all or substantially all of the UCA's property whether or not in the usual and regular course of the UCA's business and may transfer any or all of the UCA's property to a business entity all the ownership interests of which are owned by the UCA. In addition, for purposes of debt financing, the board may transfer any or all of the UCA's property to a special purpose entity owned or controlled by the UCA for an asset securitization.

***Officers***

The bill requires the board to elect a chairperson and one or more vice-chairpersons and to elect or appoint a records officer and a financial officer (or a combined records and financial officer). The chairperson and first vice-chairperson must each be a director and a member. The board may employ a chief executive officer to manage the day-to-day affairs and business of the UCA and may elect additional officers as the articles or bylaws authorize or require.

***Audit committee***

The bill requires the board to establish an audit committee, consisting of members who will ensure an independent review of the UCA's finances, to review the financial information and accounting reports of the UCA. The board must present audited financial statements to the members unless the articles or bylaws permit unaudited financial statements, the financial statements clearly state that they are not audited, and the financial statements described the difference between the financial statements and audited financial statements that are prepared according to generally accepted accounting processes.

***Other committees***

The board, by resolution, may establish other committees having the authority of the board in the management of the business of the UCA. The board may also

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establish a special litigation committee, consisting of one or more independent directors or other independent persons, to consider the legal rights of and remedies available to the UCA and whether those rights should be enforced and those remedies should be pursued. The bill specifies that a special litigation committee is not subject at all times to the direction and control of the board. Under the bill, the establishment of a committee does not alone satisfy certain requirements relating to the standard of conduct of directors. The bill also states that certain duties of directors are also applicable to committee members and, with certain exceptions, allows the articles or bylaws to eliminate or limit the liability of committee members to the UCA or its members for violation of these duties.

***Conduct of directors***

Under the bill, a director must discharge the duties of the office of director in good faith, in a manner the director reasonably believes to be in the best interests of the UCA, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A director who so performs his or her duties may not be held liable by reason of being or having been a director. The bill allows a director to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by certain specified persons, unless the director has knowledge that makes the reliance unwarranted. The specified persons include certain officers or employees of the cooperative; counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; and certain committees of the board on which the director does not serve. In addition, under the bill, a director who is present at a meeting of the board when an action is approved by the board is presumed to have assented to the action approved, unless the director is prohibited by a conflict of interest from voting on the action, objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and fails to participate in the meeting after the objection, or votes against the action at the meeting.

The bill also voids certain contracts and transactions entered into by a UCA if specified conflicts of interest exist. Thus, with certain exceptions, a contract or transaction between a UCA and a director; a director's spouse, parent, child, or sibling; the spouse of a director's child or sibling; or a sibling of a director's spouse is void. With certain exceptions, the bill similarly voids any contract or transaction between a UCA and a business entity of which a director is a governor, director, manager, officer, or legal representative or has a material financial interest; a director's spouse, parent, child, or sibling is a governor, director, manager, officer, or legal representative or has a material financial interest; the spouse of a director's child or sibling is a governor, director, manager, officer, or legal representative or has a material financial interest; or a sibling of the director's spouse is a governor, director, manager, officer, or legal representative or has a material financial interest.

Under the bill, such a contract or transaction is not void if the contract or transaction is fair and reasonable as to the UCA at the time it is authorized or ratified by the UCA and requirements relating to disclosure of the conflict are satisfied. Also, such a contract or transaction is not void if the contract or transaction is a



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distribution, is a contract or transaction that is made available to all members or patron members as part of the cooperative's business, or is the result of a resolution fixing the compensation of a director or of another officer, employee, or agent of the UCA.

***Limitation of liability and indemnification***

Under the bill, the articles or bylaws may eliminate or limit a director's personal liability to the UCA or its members for monetary damages for violating, among other things, the requirement that the director discharge the director's duties with ordinary care. However, neither the articles nor the bylaws may eliminate or limit the liability of a director for any of the following:

- 1) A breach of the director's duty of loyalty to the UCA or its members.
- 2) An act or omission not in good faith or that involves intentional misconduct or a knowing violation of law.
- 3) A transaction from which the director derived an improper personal benefit.
- 4) An act or omission occurring before the date on which the provision in the articles or bylaws eliminating or limiting liability becomes effective.
- 5) A knowing violation of certain securities laws or illegal distributions of the UCA's assets.

Unless the articles or bylaws provide otherwise, the bill requires a UCA to indemnify certain current and former officers and agents of the UCA who are made or threatened to be made a party to litigation. The bill includes procedures that must be followed in determining whether a person is entitled to indemnification, including, in some cases, a determination by a court. The indemnification required under the bill must cover judgments, penalties, and fines applicable to a proceeding, against excise taxes assessed against the current or former officer or agent with both respect to an employee benefit plan and against settlements and reasonable expenses, including certain attorney fees and disbursements. Generally, indemnification is required only if another person is not already providing indemnification against the same amounts, the current or former officer or agent acted in good faith, and the current or former officer or agent did not receive an improper personal benefit or commit an act for which liability cannot be eliminated or limited under the laws governing the UCA.

In the case of a criminal proceeding, indemnification is only required if the current or former officer or agent had no reasonable cause to believe the acts or omissions were unlawful. Also, in the case of acts or omissions committed in an official capacity, as defined in the bill, indemnification is only required if the current or former officer or agent reasonably believed that the acts or omissions were in the best interests of the UCA or predecessor UCA or were not opposed to the best interests of the UCA or predecessor UCA. The bill further specifies that, if the acts or omissions relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the UCA or predecessor UCA if the current or former officer or agent reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

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Unless the articles or bylaws provide otherwise, the current or former officer or agent is entitled, upon written request, to payment or reimbursement by the UCA of reasonable expenses, including attorney fees and disbursements, incurred by the current or former officer or agent in advance of the final disposition of the proceeding. The current or former officer or agent must provide the UCA with a written statement that he or she believes in good faith that the applicable criteria for indemnification have been satisfied, along with a written undertaking to repay all amounts so paid or reimbursed by the UCA if it is ultimately determined that the criteria have not been satisfied. The UCA must accept the written undertaking without reference to the current or former officer's or agent's financial ability to make the repayment. If a court determines that the UCA unreasonably refused a director's or officer's request for indemnification, the court must order the UCA to pay the officer's or director's reasonable expenses incurred to obtain the court-ordered indemnification.

The bill requires a UCA that indemnifies or advances expenses to a person under these provisions to report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the date of the first members' meeting occurring after the payment. In addition, the bill allows a UCA to purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the UCA would otherwise be required to indemnify the person against the liability.

**MEMBERS*****General provisions***

The bill requires a UCA to have at least one patron member. Members may be grouped in districts or units, or on another basis, as authorized in the articles or bylaws. Under the bill, the board may require a member who knowingly, intentionally, or repeatedly violates a provision of the articles or bylaws, or certain contracts with the UCA, to surrender the member's membership interest or the member's governance rights or financial rights. Under the bill, a person is not personally liable for the acts, debts, liabilities, or obligations of a UCA merely on account of the person's status as a member.

***Inspection of records***

The bill allows a member to inspect and copy any of the required records of the UCA, if certain conditions are satisfied. However, a member generally may not inspect or copy any records relating to the amount of equity capital in the UCA held by any person or any accounts receivable or other amounts due the UCA from any person, or any personnel records or employment records relating to any employee of the UCA. The bill also includes a procedure that applies if the UCA refuses to allow a person to inspect or copy records that the person is entitled to inspect or copy.

***Annual members' meeting***

Unless the articles or bylaws provide otherwise, a UCA must hold an annual members' meeting. At the annual members' meeting, the officers must submit reports to the members covering the business of the UCA for the previous fiscal year

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and indicating the condition of the UCA at the close of the fiscal year. The bill specifies notice requirements applicable to the annual members' meeting, which apply to each member unless waived or limited as provided under the bill. Insufficient notice does not invalidate any action taken at the annual members' meeting.

***Special members' meetings***

The bill allows a special meeting of the members to be called by the board or, if certain requirements are satisfied, by petition of the members. The bill specifies notice requirements applicable to a special members' meeting, which apply to each member unless waived or limited as provided under the bill. Insufficient notice does not invalidate any action taken at the special members' meeting.

***Virtual members' meeting***

In addition to a typical meeting, the bill allows a UCA to hold a "virtual members' meeting" in a manner similar to the way a virtual board meeting is held. The bill requires a UCA that holds a virtual members' meeting to implement reasonable measures to verify that each person participating in the meeting by a means of communication is a member and to provide each member participating in the meeting by a means of communication with a reasonable opportunity to actively participate. A participating member must have an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, to have his or her remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks, if allowed by the procedures governing the meeting, and, if otherwise entitled, to vote on matters submitted to the members.

***Actions without a members' meeting***

Unless the articles or bylaws provide otherwise, this bill allows a UCA to take any action required or permitted to be authorized at a members' meeting without holding such a meeting, if that action is authorized by all members and is evidenced by one or more written statements, signed by each member, describing and consenting to the action. Also, the articles or bylaws may allow the members to authorize any other action on behalf of the UCA, other than an action requiring board approval, without a members' meeting, if the action is authorized by the number of members that would be required to approve the action at a members' meeting at which all members were present and if the action is evidenced by one or more written statements, signed by each authorizing member, describing and consenting to the action.

***Quorum and voting requirements***

Unless the articles or bylaws provide otherwise and with certain exceptions relating to votes by class or series of membership interests, a quorum for the transaction of business at a members' meeting is 10 percent of the total number of members for a UCA with 100 or less members and 15 percent of the total number of members for any other UCA. With certain exceptions, the bill allows the members to take action by the affirmative vote of the greater of a majority of the voting power of the membership interests present and entitled to vote on that item of business, a

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majority of the voting power that would constitute a quorum, or the proportion of voting power specified by law or in the articles or bylaws, or a specified contract between the member and the UCA. Under the bill, any member who objects at the beginning of a members' meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of determining whether quorum and voting requirements are satisfied.

***Allocation of voting rights***

Under the bill, all patron members collectively have one vote on each issue that patron members may vote upon. Generally, the collective vote of the patron members must be determined by the vote of the majority of patron members voting on the issue. With certain exceptions, in determining the collective vote of patron members, each patron member has one vote on the issue. The bill also provides for voting by delegates if the UCA has districts or other units and, in certain cases, allows a patron member to receive an an additional vote. Unless the articles or bylaws provide otherwise, no issue that patron members may vote upon may be approved unless, in determining the collective vote of the patron members, the number of patron members voting to approve the issue is a majority of all members voting on the issue. If nonpatron members are authorized, the articles or bylaws may not reduce the required number of patron members voting to approve the issue to less than 51 percent of the total member vote.

The bill allows the board to limit voting rights to members as of a date certain. Under the bill, the board may establish a date for the determination of membership interests entitled to notice of and entitled to vote at a members' meeting. The date established by the board may not be more than 60 days before the date of the meeting. If such a date is established, only members as of that date are entitled to notice of and may vote at that meeting.

Under the bill, if a membership interest is owned jointly by two or more persons, any one of the owners may vote based upon that membership interest, unless the UCA receives written notice from any of the owners denying the authority of that person to vote. If a member has more than one vote, the member may allocate the votes in any way the member chooses. The bill also specifies how votes may be cast by proxies, business entities, subsidiaries of the UCA, and certain fiduciaries and under what circumstances a UCA or its subsidiary may vote membership interests held in a fiduciary capacity.

The bill also allows any nonmember or class of nonmember to vote at a members' meeting in the same manner as patron members are permitted to vote, if authorized by the articles or bylaws.

***Member authority over UCA property***

With certain exceptions, the bill allows a UCA to sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets not in the usual and regular course of its business, upon those terms and conditions that the board considers expedient, when approved by the affirmative vote of the members owning a majority of the voting power of the interests entitled to vote. The bill requires

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written notice of any members' meeting at which such a vote will be taken to be given to all members.

**MEMBERSHIP INTERESTS*****Generally***

The bill generally permits a UCA to increase, decrease, establish, or alter the authorized amount and divisions of membership interests by amending the articles or the bylaws. A membership interest is personal property and does not give the owner of the interest any interest in specific cooperative property. A UCA may issue authorized membership interests on terms and conditions prescribed in the articles or bylaws or, if authorized in the articles or bylaws, on terms and conditions determined by the board. The bill specifies disclosures that a UCA must make to any person to whom a membership interest is issued and to other members. A UCA may not issue a membership interest to any person unless the subscription price of the membership interest has been paid for in money or property. Any subscription price paid for in property must be approved by the board. The bill includes provisions that apply if records of membership interests or UCA securities are missing.

***Patron membership interests***

A UCA may have patron members, who must engage in certain transactions for or with the UCA as a condition of receiving financial rights or distributions. A UCA may also have nonpatron members. With certain exceptions, if a UCA has patron members, all patron membership interests, collectively, must have not less than 51 percent of the UCA's financial rights to profit allocations and distributions. The bill allows a UCA to amend its articles, by a majority vote of patron members, to reduce this required percentage to as little as 30 percent. Any amendment to provide for a reduced percentage must be approved by affirmative vote of the patron members.

***Nonpatron membership interests***

The bill requires each person to whom a membership interest, other than a patron membership interest, is issued to sign a member control agreement (see below for definition) or a statement agreeing to abide by any applicable conditions imposed under the bylaws. Unless the bylaws contain a sufficient description, the UCA must provide each person to whom a nonpatron membership interest is issued a description of the rights and obligations applicable to holders of that nonpatron membership interest, the transferability of that nonpatron membership interest, and the manner in which profits and losses are divided and allocated among the membership interests and membership classes.

***Transfer and reacquisition of membership interests***

A membership interest may be transferred with the approval of the board. The bill, though, allows a restriction on the transfer or registration of a transfer of membership interests to be imposed by various methods. Such a restriction is not binding with respect to membership interests issued prior to the adoption of the restriction, unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction. Such a restriction is enforceable only if it is not manifestly unreasonable under the circumstances. In addition, such a restriction is enforceable only if the restriction is disclosed as provided in the bill, is

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imposed under the law governing the UCA or is included in the articles or bylaws, or relates to an uncertificated membership interest and is included in information sent to the holders of such a membership interest.

The articles or bylaws may provide the patron members, individually or collectively, or the UCA with the first privilege of purchasing the membership interests of any class of membership interests offered for sale. In addition, unless the articles or bylaws provide otherwise, a nonpatron member may force the UCA to acquire the member's nonpatron membership interests if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences applicable to the nonpatron membership interests of the nonpatron member. The bill provides a procedure that applies to a nonpatron member who intends to force such an acquisition. The bill also contains provisions concerning the wrongful transfer of certain UCA securities.

***Allocation of profits, losses, and distributions***

The bill specifies that, unless otherwise provided in the articles or bylaws, the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be based on the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually. Also, if not otherwise provided in the articles or bylaws, distributions of the UCA must be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests individually.

***Assignment of financial rights***

With certain exceptions, a member's financial rights in a UCA are transferable in whole or in part. An assignment of a member's financial rights under the bill entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment does not dissolve the UCA and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the UCA, or to cause dissolution. In addition, the assignment may not allow the assignee to control the member's exercise of governance or voting rights.

The bill allows a restriction on such an assignment to be imposed in the articles, in the bylaws, in a member control agreement (see below for definition), by a resolution adopted by the members at a members' meeting, or by an agreement among members and the UCA. A restriction may not affect financial rights reflected in the required records of the UCA before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction. Also, a restriction generally is enforceable only if it is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records of the UCA.

The bill also allows a security interest in a member's financial rights to be foreclosed and otherwise enforced, and allows a secured party to assign a member's financial rights in accordance with the chapter of the Uniform Commercial Code dealing with investment securities, without the consent or approval of the member whose financial rights are subject to the security interest.

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***Statement of membership interest***

The bill requires a UCA, upon the request of any member, to state in writing the particular membership interest owned by that member. The statement must also describe the member's rights to vote, if any, and to share in profits, losses, and distributions, restrictions on assignments of the member's financial rights or voting rights, and any assignment of the member's rights then in effect other than a security interest.

***Terms of membership interests***

Unless the articles or bylaws provide otherwise, all membership interests must be of one class, without series. The membership interests must be patron membership interests and, if authorized, nonpatron membership interests with specified voting rights. Unless the articles or bylaws provide otherwise, the membership interests must have equal rights and preferences in all matters not otherwise provided for by the board. The rights and preferences of membership interests may be made dependent upon facts ascertainable outside the articles or bylaws, or outside the resolution or resolutions establishing the particular class or series of membership interest, if certain disclosure requirements are satisfied. In addition, the rights and preferences may include by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the UCA in connection with the establishment of the particular class or series of membership interests, if the cooperative retains at its principal office a copy of the operative provisions in the agreements, contracts, or other arrangements.

The bill allows a UCA to specify in the articles or bylaws, or by resolution, that membership interests are subject to the right of the UCA to redeem the membership interests at a price fixed in the articles or bylaws or by the board; that owners of the membership interests may receive cumulative, partially cumulative, or noncumulative distributions; that particular membership interests may have preference over any other class or series of membership interests for the payment of distributions; that the membership interests may be convertible into membership interests of any other class or series; and that, with certain exceptions, the membership interests may have full, partial, or no voting rights. The bill allows the board, by resolution, to establish a class or series of membership interests, set forth the designation of the class or series, and fix the relative rights and preferences of the class or series.

The bill specifies that a subscriber for membership interests or a member is under no obligation to the UCA or its creditors with respect to the membership interests subscribed for or owned, except to pay to the UCA the full consideration for which the membership interests are issued or to be issued.

***Judgment creditors***

The bill generally allows a court to order the payment of an unsatisfied judgment from a member's or an assignee's financial rights in a UCA.

***Powers of estates and fiduciaries***

If a member who is an individual dies or a court adjudges the member to be incompetent to manage his or her person or property, or an order for relief under a

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judgment of bankruptcy is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the rights applicable to the member's membership interest for the purpose of settling the estate or administering the member's property. In addition, if a member is not an individual and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the member's legal representative or successor may exercise all of the rights applicable to the member's membership interest. However, in certain circumstances, if the member's membership interest is terminated, the terminated member's interest is considered to be that of an assignee of financial rights and the rights to be exercised by the executor, administrator, guardian, conservator, trustee, legal representative, or successor are limited accordingly.

***Certificated membership interests***

The bill allows a UCA to issue certificated membership interests. The UCA must provide each holder of a certificated membership interest with a certificate of membership interest as described under the bill. Among other things, a certificate of membership interest must contain the name of the cooperative; a statement that the cooperative is organized under the laws of this state and the laws established in this bill; the name of the person to whom the certificate is issued; the number and class of membership interests, and the designation of the series, if any, that the certificate represents; a statement that membership interests are subject to the articles and bylaws; and any restrictions on transfer of the membership interests that the certificate represents. This required information may be stated by reference to the back of the certificate or to another document. A certificate of membership interest is legally presumed to be proof of the ownership of the membership interest that the certificate represents. The bill contains a procedure for the issuance of replacement certificates of membership.

***Uncertificated membership interests***

Unless prohibited by the articles or bylaws, the board may adopt a resolution permitting uncertificated membership interests. With certain exceptions, the UCA must give each person who obtains an uncertificated membership interest a statement containing the information required to be stated on certificates. Holders of certificated and uncertificated membership interests of the same class and series generally have identical rights and obligations.

**CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS.*****Generally***

If authorized by the board, a UCA may accept a contribution, make agreements requiring a member or potential member to make a contribution as a condition of membership or receipt of a membership interest, and make agreements providing a person with rights to make a contribution. A person may make a contribution to a UCA under the bill by paying money or transferring property to the UCA or performing services to or for the benefit of the UCA, or by promising, in writing, to make such a payment or transfer or perform such services. Under the bill, no purported contribution is an actual contribution until it is accepted by the board, given a value, and recorded accordingly.



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***Value of contributions***

Under the bill, the value accorded to a contribution by the board is legally presumed to be proper if the board acted in good faith and on the basis of methods that are reasonable under the circumstances. The bill specifies that directors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the UCA, or who overvalue property or services received or to be received by the UCA as a contribution, are jointly and severally liable to the UCA for the benefit of the members who did not consent to and are damaged by the consideration or overvaluing of property or services.

The bill requires a UCA to restate the value of all existing contributions upon acceptance of a new contribution. The bill requires the board to follow a specific procedure to calculate the restated value of the contributions, unless a different procedure is provided in the articles or bylaws.

***Contribution agreements***

As noted above, the board may make agreements requiring a member or potential member to make a contribution as a condition of membership or receipt of a membership interest. Such an agreement, called a contribution agreement, must be in writing and signed by each person required to make a contribution under the agreement. A person's rights under a contribution agreement generally may not be assigned to nonmembers. Under the bill, a contribution agreement is irrevocable for a period of six months, unless otherwise provided in the contribution agreement or unless each person required to make a contribution under the agreement and, if in existence, the UCA consents to a different period. Unless the contribution agreement provides otherwise, all payments or other actions required under the agreement must be made or taken at the time or times determined by the board. The bill requires the board to ensure that any call for a person to make a payment or perform an action required under a contribution agreement is made uniformly to all membership interests of the same class or series.

Unless the contribution agreement provides otherwise, if a person fails to make a payment required under the contribution agreement, the UCA may bring an action for breach of contract, sell any membership interests that are subject to the contribution agreement and bring an action to collect any deficiency, or cancel the contribution agreement. The bill further requires any person who fails to make a required contribution of property or services to pay to the UCA an amount equal to that portion of the value of the contribution that has not been made, as stated in the UCA's required records.

A UCA may sell membership interests as described above only if the amount due under the contribution agreement relating to those membership interests remains unpaid for a period of 20 days after the UCA gives written notice of demand for payment. The total offering price of the membership interests in such a sale must be at least the amount of the balance owed by the person, plus the expenses incidental to the sale. After such a sale, the UCA must pay to the person whose interest was sold either the amount by which the proceeds of the sale, less the expenses incident to the sale and any additional amounts the person is required to

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pay under the terms of the contribution agreement, exceeds the amount of the payment the person failed to make or the total amount paid by the person under the contribution agreement, whichever is less.

A UCA may cancel a contribution agreement as described above only if the amount due under the contribution agreement remains unpaid for a period of 20 days after the UCA gives written notice of demand for payment to the person required to make the payment. Unless the contribution agreement provides otherwise, if the UCA cancels a contribution agreement, the UCA may retain any payments made as provided in the contribution agreement.

***Contribution rights agreements***

As noted above, the board may make agreements to provide a person rights to contribute to the UCA. These agreements, called contribution rights agreements, must be in writing, although they may incorporate terms by reference. A person's rights under a contribution rights agreement generally may not be assigned to nonmembers.

***Allocations of profits, losses, and distributions between members***

The bill generally requires profits and losses to be allocated between patron membership interests collectively and nonpatron membership interests collectively on the basis of the value of contributions received from patron membership interests collectively and nonpatron membership interests collectively. However, the allocation of profits to patron membership interests collectively in a fiscal year may not be less than 51 percent of the total profits for that fiscal year, except that, in certain circumstances, this allocation may be reduced to as little as 30 percent of the total profits.

The bill requires the articles or bylaws to prescribe the manner in which cash or other assets of a UCA will be distributed among the membership interests of the UCA. Unless the articles or bylaws provide otherwise, a UCA must distribute cash or other assets to patron membership interests collectively and nonpatron membership interests collectively on the basis of the value of contributions received from patron membership interests collectively and nonpatron membership interests collectively. As above, the distributions to patron membership interests collectively in any fiscal year may not be less than 51 percent of the total distributions for that fiscal year, except that in certain circumstances this required distribution may be reduced to as little as 30 percent of the total distributions.

***Allocations and distributions of profit to patron members***

The bill allows a UCA to set aside any portion of profits allocated to the patron membership interests that the board determines is advisable for the purpose of creating or maintaining a capital reserve. The bill also allows the board to set aside, from the portion of profits allocated to the patron membership interests, an amount not to exceed 5 percent of the annual net income of the UCA for promoting and encouraging cooperative organization and any amount for reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

At least once per year, a UCA must allocate and distribute to patron members (and, if authorized in the bylaws, to nonmember patrons) all profits allocated to

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patron members in excess of dividends on equity and additions to reserves. These distributions must be made on the basis of patronage, except that any distributions to nonmember patrons must be made as provided in the bylaws. A cooperative may establish allocation units and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements. Distributions may be made in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, or securities. In addition, if a nonmember patron with patronage credits is not qualified or eligible for membership, the UCA may credit to the nonmember patron's account a refund due to the nonmember patron. The board may issue a certificate of interest to reflect any such credit and, after the board issues such a certificate, the patron may receive distributions of profits in the same manner as a patron member.

***Member control agreements***

With certain exceptions, the bill allows any person who has entered into a subscription or contribution agreement, or any member, to enter into a written agreement with the UCA that relates to the control of or the liquidation, dissolution, or termination of the UCA, or any phase of the business and affairs of the UCA. Such an agreement, called a member control agreement, may not take effect unless it is signed by all persons who are then members and all persons who have entered into contribution agreements. A member control agreement may not relate to voting rights of patron members or patron member allocation and distribution provisions. The bill allows any result that is required or permitted to be accomplished through a provision in the bylaws to also be accomplished through a member control agreement.

***Unclaimed property***

The bill allows a UCA to distribute any abandoned property in its possession to an entity that is exempt from taxation under section 501 (a) of the Internal Revenue Code, rather than delivering the property to the state treasurer under the unclaimed property law. The bill allows the articles or bylaws to extinguish the rights of the owner of the abandoned property upon distribution to the tax exempt entity.

**MERGER AND CONSOLIDATION*****Generally***

The bill generally allows a UCA to merge or consolidate with any business entity to the extent permitted by the applicable law of the jurisdiction under whose laws the surviving business entity will be organized. To execute a merger or consolidation, the board must prepare a plan of merger or consolidation and notify each member of the proposed merger or consolidation. The plan must then be approved by a specified vote of the members and articles or merger or consolidation must be filed with DFI.

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***Merger of subsidiary or parent without member approval***

The bill generally allows a parent UCA that owns at least 90 percent of the outstanding ownership interests of each class and series of a subsidiary business entity to merge the subsidiary into the parent or the parent into the subsidiary without a vote of the members of the parent or the subsidiary. The bill also generally allows a parent UCA that owns at least 90 percent of the outstanding ownership interests of each class and series of two or more subsidiary business entities to merge the subsidiaries into one another without a vote of the members. However, in neither case may a UCA merge with a business entity organized under the laws of this state, other than a cooperative or UCA, unless the law governing the business entity specifically authorizes merger with a UCA. To execute either type of merger, the board must prepare a plan, give notice of the merger and other information to each member of each applicable subsidiary no later than ten days after the effective date of the merger, and file articles of merger with DFI. If, immediately prior to either type of merger, a business entity that is party to the merger is owned, at least in part, by persons other than the parent UCA or an affiliate of the parent UCA, those persons have dissenters' rights under the law governing the business entity's organization.

***Effect of merger or consolidation***

Under the bill, all of the following occur when a merger or consolidation takes effect:

- 1) All business entities that are party to the merger or consolidation become the business entity surviving the merger or consolidation, as designated in the plan, and the separate existence of every business entity that is party to the merger or consolidation, except the business entity surviving the merger or consolidation, ceases.
- 2) The title to all property owned by each business entity that is party to the merger or consolidation is vested in the surviving business entity without reversion or impairment.
- 3) If, under the laws applicable to a business entity that is a party to the merger or consolidation, other than taxation laws, one or more of the owners thereof is liable for the debts and obligations of such business entity, such owner or owners shall continue to be liable for the debts and obligations of the business entity, but only for such debts and obligations accrued during the period or periods in which such laws are applicable to such owner or owners.
- 4) If, under the laws applicable to the surviving business entity other than taxation laws, one or more of the owners thereof is liable for the debts and obligations of such business entity, the owner or owners of a business entity that is party to the merger, other than the surviving business entity, who become subject to such laws shall be liable for the debts and obligations of the surviving business entity to the extent provided in such laws, but only for such debts and obligations accrued after the merger or consolidation.
- 5) The surviving business entity has all liabilities of each business entity that is party to the merger or consolidation.

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6) A civil, criminal, administrative, or investigatory proceeding pending by or against any business entity that is a party to the merger or consolidation may be continued as if the merger or consolidation did not occur, or the surviving business entity may be substituted in the proceeding for the business entity whose existence ceased.

7) The articles or other similar governing document of the surviving business entity shall be amended to the extent provided in the plan.

8) The interests of each business entity that is party to the merger that are to be converted into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property are converted, and the former holders of the interests are entitled only to the rights provided in the articles of merger or consolidation or to their dissenters' rights under applicable law.

The bill also includes a procedure that a UCA may follow to abandon a merger before it takes effect.

**DISSOLUTION*****Voluntary dissolution***

The bill creates a procedure by which a UCA may voluntarily dissolve. In order for a voluntary dissolution to be initiated, a notice of intent to dissolve must be approved by the affirmative vote of the members. The board must then file the notice with DFI; collect, or make provision for the collection of, all unpaid subscriptions for shares and all other debts owing to the UCA; and pay, or make provision for the payment of, all debts, obligations, and liabilities of the UCA. After a notice is filed, the board may lease or dispose of all or substantially all of the property and assets of the UCA without a vote of the members.

Any property of the UCA remaining after discharge of the UCA's debts, obligations, and liabilities may be distributed to the members and former members as provided in the bylaws. If authorized by the members, the UCA's property may be liquidated and disposed of at the discretion of the board. The bill allows certain unclaimed assets to be forfeited to the UCA. After the board has provided for payment of all debts, obligations, and liabilities of the UCA and the remaining property of the UCA has been distributed or otherwise legally disposed of, the board must file articles of dissolution with DFI, at which time the UCA is dissolved.

The bill provides a procedure by which dissolution proceedings may be revoked before the articles of dissolution are filed. The bill also provides for court-supervised voluntary dissolution in certain circumstances.

***Involuntary dissolution***

The bill allows member, creditors, and the attorney general, in certain circumstances, to sue to dissolve a UCA. Under the bill, a member may bring an action against a UCA for dissolution, liquidation, and equitable relief if any of the following apply:

1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the UCA's affairs and the members are unable to break the deadlock.

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2) The directors or those in control of the UCA have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.

3) For a period that includes the time when two consecutive regular members' meetings were held, the members failed to elect successors to directors whose terms expired or would have expired upon the election and qualification of their successors.

4) The UCA's assets are being misapplied or wasted.

5) The UCA's period of duration as provided in the articles has expired and has not been lawfully extended.

A creditor may bring an action against a UCA for dissolution, liquidation, and equitable relief if the creditor has obtained a money judgment against the UCA and an execution on that judgment has been returned unsatisfied or the UCA has admitted in writing that a claim of the creditor against the UCA is due and owing and that the UCA is unable to pay its debts in the ordinary course of business.

After giving a UCA 30 days to make a correction, the attorney general may bring an action against a UCA for dissolution and liquidation, and for equitable relief for persons other than the attorney general, if the articles and certificate of organization of the UCA were procured through fraud; the UCA was organized for a purpose prohibited by state law or not permitted under the law governing the UCA; the UCA has knowingly violated a law governing the UCA, with intentional disregard of the harm which the law is intended to avert; the UCA has violated more than once a law governing the UCA or has violated more than one law governing the UCA; or the actions of the UCA, or its failure to act, constitutes surrender or abandonment of the business of the UCA.

The bill specifies procedures, including the appointment of a receiver, that apply to involuntary dissolution proceedings (the procedures also apply to court-supervised voluntary dissolution proceedings). In addition, the bill requires the court, in determining whether to order a remedy in an involuntary dissolution proceeding to consider the financial condition of the UCA. The court may not refuse to order a remedy solely on the ground that the UCA has accumulated operating profits or current operating profits. The court must also consider whether relief, other than dissolution, suggested by one or more parties would permanently remedy the cause of the action. If the court finds that a party to an involuntary dissolution proceeding has acted arbitrarily, vexatiously, or in bad faith, the court may award reasonable expenses, including attorney fees and disbursements, to any of the other parties.

With certain exceptions, the bill prohibits any creditor or claimant who does not file a claim or bring an action during the pendency of dissolution proceedings or who has not brought an action before the commencement of dissolution proceedings, and all those claiming through or under the creditor or claimant, from bringing an action to collect on that claim or otherwise enforcing it.

**OTHER PROVISIONS*****Administration***

The bill specifies UCA filing fees and permits DFI to assess a larger fee by rule for documents filed in paper format. Also, if a UCA makes an erroneous filing, DFI

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may revoke and expunge the filing and authorize a curative filing. Under the bill, DFI must charge a \$500 fee for any such curative filing.

***Statutory references***

The bill makes numerous changes to the statutes to incorporate references to UCA's in provisions that currently refer to cooperatives.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

*end ins analysis*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 11.29 (1) of the statutes is amended to read:

2           11.29 (1) Nothing in this chapter restricts any corporation, cooperative,  
3 unincorporated cooperative association, or voluntary association other than a  
4 political party or personal campaign committee from making disbursements for the  
5 purpose of communicating only with its members, shareholders or subscribers to the  
6 exclusion of all other persons, with respect to endorsements of candidates, positions  
7 on a referendum or explanation of its views or interests, without reporting such  
8 activity. No such corporation, cooperative, or voluntary association may solicit  
9 contributions from persons who are not members, shareholders or subscribers to be  
10 used for such purposes.

11           **SECTION 2.** 11.29 (4) of the statutes is amended to read:

12           11.29 (4) For purposes of this section, the members of a local or regional  
13 cooperative or unincorporated cooperative association are deemed to be members of  
14 a state cooperative or unincorporated cooperative association if the local or regional

INS 4-11

05 Wis. Act 177, s. 104



**Section 104.** 11.38 (8) (b) of the statutes, as affected by 2001 Wisconsin Act 109, is repealed and recreated to read:

ⓑ

05 Wis. Act 177, s. 104 - continued



11.38 (8) (b) Except as authorized in s. 11.05 (12) (b) and (13), prior to making any disbursement on behalf of a political group which is promoting or opposing a particular vote at a referendum and prior to accepting any contribution or making any disbursement to promote or oppose a particular vote at a referendum, a corporation or association organized under ch. 185 shall register with the appropriate filing officer specified in s. 11.02 and appoint a treasurer. The registration form of the corporation or association under s. 11.05 shall designate an account separate from all other corporation or association accounts as a campaign depository account, through which all moneys received or expended for the adoption or rejection of the referendum shall pass. The corporation or association shall file periodic reports under s. 11.20 providing the information required under s. 11.06 (1).

or 193



INS 8-9

or 193.111(1)(b)

05 Wis. Act 25, s. 1233

**Section 1233.** 59.43 (2) (ag) 1. of the statutes is repealed and recreated to read:



05 Wis. Act 25, s. 1233 - continued

59.43 (2) (ag) 1. Subject to s. 59.72 (5), for recording any instrument entitled to be recorded in the office of the register of deeds, \$11 for the first page and \$2 for each additional page, except that no fee may be collected for recording a change of address that is exempt from a filing fee under s. 185.83 (1) (b).



05 Wis. Act 177, s. 104

**Section 104.** 11.38 (8) (b) of the statutes, as affected by 2001 Wisconsin Act 109, is repealed and recreated to read:



05 Wis. Act 177, s. 104 - continued

11.38 (8) (b) Except as authorized in s. 11.05 (12) (b) and (13), prior to making any disbursement on behalf of a political group which is promoting or opposing a particular vote at a referendum and prior to accepting any contribution or making any disbursement to promote or oppose a particular vote at a referendum, a corporation or association organized under ch. 185 shall register with the appropriate filing officer specified in s. 11.02 and appoint a treasurer. The registration form of the corporation or association under s. 11.05 shall designate an account separate from all other corporation or association accounts as a campaign depository account, through which all moneys received or expended for the adoption or rejection of the referendum shall pass. The corporation or association shall file periodic reports under s. 11.20 providing the information required under s. 11.06 (1).



INS 142-7

of the statutes as affected by 2005 Wisconsin Act 193 (Senate Bill 617) is

05 Enrolled SB617, s. 7

WSP/SC/19  
Comp.

Section 7. 609.01 (4) of the statutes is renumbered 600.03 (37m) and amended to read:

05 Enrolled SB617, s. 7 - continued

or 193

600.03 (37m) "Preferred provider plan" means a health care plan, as defined in s. 628.36 (2) (a) 1., that is offered by an organization established under ch. 185, 611, 613, or 614 or issued a certificate of authority under ch. 618 and that makes available to its enrollees, without referral and for consideration other than predetermined periodic fixed payments, coverage of either comprehensive health care services or a limited range of health care services, regardless of whether the health care services are performed by participating, as defined in s. 609.01 (3m), or nonparticipating providers, as defined in s. 609.01 (5m).

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143-6

~~Section 111. 706.05 (2m) (b) 2. of the statutes is amended to read:~~

strike

or 193

05 Wis. Act 179, s. 111 - continued

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143-6

706.05 (2m) (b) 2. Descriptions of property that is subject to liens granted on property thereafter acquired by a rural electric cooperative ~~or~~ a telephone cooperative, organized under ch. 185, by a pipeline company under s. 76.02 (5), by a public utility under s. 196.01 (5) ~~or~~ by a railroad under s. 195.02 (1) ~~or~~ a water carrier under s. 195.02 (5).

by

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organized under ch. 185 ↑

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4911/1dn

CTS:.....

lmk

and reflects <sup>prior</sup> action of the  
Legislature in the current session

✓  
Sherrie Gates-Hendrix:

This draft is identical to enrolled 2005 AB-327, except that it deletes sections 28, 29, and 30 of the enrolled bill. Please contact me if you have any questions.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4911/1dn  
CTS:lmk:rs

April 12, 2006

Sherrie Gates-Hendrix:

This draft is identical to enrolled 2005 AB-327, except that it deletes SECTIONS 28, 29, and 30 of the enrolled bill and reflects prior action of the legislature in the current session. Please contact me if you have any questions.

Christopher T. Sundberg  
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**Kraft, Becky**

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**From:** Rep.Ainsworth  
**Sent:** Thursday, April 20, 2006 9:24 AM  
**To:** LRB.Legal  
**Subject:** Jacket Request - LRB 4911/1

*Representative Ainsworth is requesting that LRB 4911/1 be jacketed.*

*I would like to turn the Bill in later this afternoon, so it would be great if I could get the jacket as soon as possible.*

*Thank you!*

*Carol Redell, Committee Clerk  
Assembly Transportation Committee  
Office of Rep. John Ainsworth  
6th Assembly District*